

The High Court Of Madhya Pradesh

CRR-1676-2018

(SHERU SINGH Vs THE STATE OF MADHYA PRADESH)

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Gwalior, Dated : 18-07-2018

Shri Anoop Gupta, Advocate for the petitioner.

Shri A.K.Nirankari, Public Prosecutor for the respondent-State.

Heard finally with the consent of the parties.

The present criminal revision has been filed under sections 397 and 401 of the Cr.P.C. being aggrieved of the order dated 31/3/18 passed by I Additional Sessions Judge, Gwalior in Criminal Case No. 115/18, whereby the application under sections 451 and 457 of the Cr.P.C. has been rejected and release of Rifle belonging to the petitioner has been denied.

Brief facts of the case are that the petitioner was found involved in commission of crime registered as Crime No. 525/17 for the offences punishable under sections 308, 327, 294 and 323 along with 34 of the IPC in which the said Rifle was used.

Learned counsel for the petitioner submits that the petitioner is owner of the Rifle and the same has not been used in any criminal activity. It is further submitted that he has already produced documents before the learned Sessions Judge to substantiate his ownership and also produced valid licence. Petitioner is seeking release of the Rifle on *Supurdgi* as the same is required for the purpose of safety of his agricultural field, as well as, his family. It is submitted that there is no criminal record of the petitioner. The licence has been issued after due verification by the competent Authority. It is submitted that no proper care/maintenance of Rifle is being done by the Police Authorities which may subsequently render it useless as the trial would take long time to conclude. It is submitted that the learned trial Court, without taking into consideration the procedure laid down in sections 451 and 457 of the Cr.P.C., has rejected the application on the ground that the weapon was used in commission of offence and another crime at Crime No. 528/17 has been registered against the petitioner which goes to show that the petitioner, as well as, the complainant are having enmity and there is every likelihood of commission of another offence in case the Rifle and licence are released on *Supurdgi*. To buttress the contentions, learned counsel relied on decision of the Apex Court in the case of **Sunderbhai**

Ambalal Desai Vs. State of Gujarat (AIR 2003 SC 638). It is submitted that the Apex Court has thus clearly held that appropriate orders should be passed immediately because keeping articles at the Police Station for long period would only result in its decay. Similar view has been followed in number of decisions. In the case of **Tulsi Rajak Vs. State of Jharkhand (2004 CrLJ 2450)** it was held that truck lying in the police station for more than one year resulted in heavy loss to the petitioner and in the circumstances, the High Court permitted to release the vehicle. In **Gurnam Singh and another Vs. Sate of Uttaranchal (2003 (47) ACC 1086)**, it was held that whatsoever the situation be, there is no use to keep the seized vehicle at the police station or court campus for a long period, the Magistrate should pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicle, if required at any point of time.

Per contra learned counsel for the respondent-State opposed the prayer and submitted that the Court below has rightly come to the conclusion that the weapon was used in committing the offence and there was every likelihood that the offence would be repeated in case the Rifle is released/handed over to the petitioner.

Heard learned counsel for the parties.

The Apex Court in **Sunderbhai Ambalal Desai (Supra)** has elaborately dealt with the issue and laid down self explanatory guidelines, to be brone in mind while exercising powers under sections 451 and 457 of the Cr.P.C. The same read thus:

"In our view, the powers under Section 451, Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes namely :-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;
2. Court or the police would not be required to keep the article in safe custody;
3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of property in detail; and
- 4 . This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further

chance of tampering with the articles."

Thus the intent of the legislature is quite clear as explicated by the Apex Court above that owner of the article should not be made to suffer. In the case in hand the applicant is the owner of licensed Rifle. By no stretch of imagination the view of the trial Court can be held to be justified which is based on surmise that the weapon may be used in another offence. Such reasoning certainly falls outside the purport of the provision of section 451, Cr.P.C. Besides there is every possibility that the Rifle in lack of proper maintenance would ultimately decay and also there also probability of it being replaced, resulting into loss to the petitioner. Similar view has been taken in **Shail Kumar Singh Vs. State of UP** (2001 (1) JIC 262) and **Virendra Jaiswal Vs. State of UP** (2012 (77) ACC 876), wherein seized firearms were released in favour of the licence holder.

Accordingly, the impugned order dated 31/3/18 is set aside. The Court concerned is directed to release the Rifle along with its licence in favour of the petitioner within a period of three weeks from the date of receipt of certified copy of this order, after taking adequate guarantee/security for the said Rifle from the petitioner, to its satisfaction and also after recording the undertaking that the Rifle shall not be disposed of during pendency of the criminal proceedings.

With the aforesaid directions, the revision stands disposed of.

(S. A. DHARMADHIKARI)
JUDGE

(and)