

**Court of Ist Additional Sessions Judge,
Baramulla**

CNR No:JKBA010022492022
Date of Institution: 16-12-2022
Date of Decision: 04-03-2023

Manzoor Ahmad Sheikh S/o Ghulam Nabi Sheikh
R/o Lawaypora, Srinagar.

....Applicant

Through: Advocate, Showkat Ahmad Dar & associates

Vs

UT of J&K
through SHO Police Station Pattan, P/P Mirgund
FIR No. 310/2022 Under section 8/15, 21, 29 NDPS Act
207, 3/181 M.V Act.

In the matter of: -
Application for release of Scooty bearing registration No. JK01AH-1342.

Coram: Malik Shabir Ahmad
J.O.Code: JK-00108

O R D E R

1. Petitioner through counsel has filed the instant petition whereby he has sought the release of Scooty bearing registration number JK01AH-1342, which stands seized by the police in connection with the aforementioned FIR on the grounds inter-alia mentioned in the application.
2. As per the record the Scooty in question has been seized by police post Mirgund/P/s Pattan in case FIR No. 310/2022 for the commission of offences punishable

under section 8/15, 21, 29 NDPS Act & 207, 3/181 M.V. Act.

3. Prosecution has filed its objections and has resisted the application on the grounds the scooty in question may not be released at this stage, as the same has been used in trafficking of narcotic substances, besides the scooty is to be displayed to witnesses for its identification. Lastly it is prayed that the application may be rejected as the same shall be in the interests of justice.

3. Heard and perused the record. The provisions of NDPS Act are clear to the effect that the Vehicle which is involved in the commission of offence can be confiscated if the prosecution proves its case that the Vehicle in question has been used in commission of the offence falling under NDPS Act but, the same can be done at the time of conclusion of the trial and not during or before the trial of the case. It is also settled position of law that the vehicle can be temporary released in favour of the rightful claimant on any condition till the disposal of the case. It has been observed by the **Hon'ble Supreme Court that, "keeping the vehicle in the courtyard of police station, seized in any crime will not serve any purpose because there is quite possibility that vehicle may get damaged."** The vehicle is required by

the court at the conclusion of trial only and that too when the prosecution establishes that vehicle in question has been used in the commission of offence falling under NDPS Act and thereafter, confiscation order can be passed. **It has been held by the Hon'ble Supreme Court in Ashok Kumar v. State of Bihar** as under:-

“We do not think it necessary to keep the vehicle in the compound of the court indefinitely for a very long time till the disposal of the case. It is more advisable to entrust it to the registered owner on behalf of the court under certain conditions.”

6. In another case titled **Sunder Bani Ambalal Desai v. State of Gujarat, reported in 2002 Supp(4) SCR 17**, the Hon'ble Supreme Court has laid down guidelines for the disposal of property including the vehicle pending criminal trial. **The Hon'ble Supreme Court has laid down the law in the following manner.**“

“In our view, whatever be the situation, it is of no use to keep the seized vehicles at the police stations for a long period, It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicle/ Tata Sumo, if required, at any point of time. This can be done pending hearing of applications for return of such

vehicles. In case where the vehicle is not claimed by the accused, owner or the Insurance Company or by third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the Insurance Company then Insurance Company by the court to take possession of the vehicle which is not claimed by the owner or a third person."

7. Thus, in the circumstantial backdrop of case in hand and having regard to the law supra coupled with the fact that the investigation of the case has been completed and challan has been presented before the Court, further detention of vehicle with the police will not serve any substantial purpose. At this stage the applicant has placed on record photocopy of registration certificate, same is made part of the file. The petitioner herein being the registered owner of the scooty bearing registration number JK01AH-1342 has prima-facie made out a case for interim custody of the vehicle in his favour. Accordingly, the scooty bearing registration number JK01AH-1342 is released in favour of applicant/Manzoor Ahmad Sheikh, being its registered owner after retaining its original R/C, on furnishing of Superdnama on the following conditions:-

- a) That the petitioner/ registered owner shall not sell or dispose of the scooty in any manner whatsoever, without prior permission of the court.*

- b) That he will take necessary measures to up keep the scooty in question in good condition without changing its nature.*
- c) That he shall produce the scooty before the Court as and when directed.*

8. A docket for the release of scooty bearing registration number JK01AH-1342, shall be issued accordingly. Application is accordingly disposed of. Be annexed with the main file after due completion.

Announced
04-03-2023

Sd/=
1st. Addl. Sessions Judge,
Baramulla.