

SUPR EME COUR T OF I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1) No(s).4003/2007

(From the judgement and order dated 19/07/2006 in CLRM No. 1918/2006 of The HIGH COURT OF PATNA)

STATE OF BIHAR & ANR. Petitioner(s)

VERSUS

SHANO BANO Respondent(s)

(With appln(s) for stay

Date: 17/07/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.S. SIRPURKAR
HON'BLE DR. JUSTICE B.S. CHAUHAN

For Petitioner(s) Mr. Gopal Singh,Adv.
Mr. Manish Kumar, Adv.

For Respondent(s) Mr. Manoj Saxena, Adv.
Mr. Rajneesh Kr. Singh, Adv.
Dr. Kailash Chand,Adv.

UPON hearing counsel the Court made the following
ORDER

Leave granted.
The appeal is disposed of in terms of the signed order.

(Neetu Khajuria)
Sr.P.A.

(Shashi Bala Vij)
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1279 OF 2009
(Arising out of SLP(Cr1.) No.4003 of 2007)

STATE OF BIHAR & ANR. Petitioner(s)

VERSUS

SHANO BANO Respondent(s)

ORDER

Leave granted.

This is an appeal against the order passed by the High

Court releasing the vehicle which was allegedly carrying 850 tortoise. The vehicle was seized as the carrying of tortoise would amount to an offence under Section 39(1)(d) of the Wildlife (Protection) Act, 1972. It is reported at bar that the Investigating Agency seized the said vehicle along with 850 tortoise. The prosecution is going on before the Trial Court.

After the vehicle was seized under the provisions of Wildlife (Protection) Act, the owner of the vehicle applied for the release thereof. Having failed before the Trial Court, he approached the High Court by way of an application under Sections 48 and 49 of the Act. The High Court seems to have ordered the release of the vehicle in favour of the respondent without putting him into any terms. The High Court has merely stated in its order "I am of the opinion that only on the basis of the allegation that 850 tortoise were being transported by the vehicle belonging to the petitioner it is not proper to refuse the release of the vehicle in favour of the petitioner."

The learned counsel appearing on behalf of the State of Bihar pointed out that the tortoise are covered in the provisions of the Wildlife (Protection) Act, 1972 particularly Entry No.3 of the First Schedule thereof.

Without expressing anything on merits, we feel that the High Court was not justified in unconditionally releasing the vehicle. We, therefore, direct that the vehicle can be released only if the respondent herein deposits in the Trial Court Rupees one lakh or provides a bank guarantee therefor. The vehicle should be released during the pendency of the trial, only if this condition is complied with. With this modification we dispose of the appeal.

.....J.
(V.S.SIRPURKAR)

.....J.
(B.S. CHAUHAN)

New Delhi,
July 17, 2009.