

**COURT OF PRINCIPAL SESSIONS JUDGE,
BUDGAM**

Present: Rajeev Gupta.

File No	Date of institution:	Date of order:
01/M	16.04.2018	10.04.2018

In the case of:

Waseem Raja Zarger S/O Gh. Nabi Zarger R/O
Kanihama, Magam.

...Applicant

VS

SHO P/S Magam through PP Budgam

...Non-applicant.

IN THE MATTER OF:

**Application for release of vehicle
bearing registration No. JK-
04/4516 seized in case FIR No. 45
of 2018 u/s 8/22 NDPS Act by P/S
Magam.**

:O R D E R:

Applicant Waseem Raja Zarger has filed this application seeking release of vehicle bearing registration No: JK-04/4516 seized in case FIR No. 45 of 2018 u/s 8/22 NDPS Act by P/S Magam, alleged to be seized by Police under NDPS Act. The applicant claims to be rightful owner of the vehicle. He had given lift to Riyaz Ahmad Rather S/O Sona Ullah Rather R/O Wanihama from whose possession some bottles have been recovered. The owner of the vehicle is not involved directly or indirectly in the commission of offence. The vehicle if remains in custody of police, is likely to deteriorate, which shall cause financial loss to the applicant.

Police report received from P/S Magam discloses that on 05.04.2018, the police party conducting the routine checking, stopped a vehicle bearing registration No: JK-

(S)

2

04/4516 which was being driven by the applicant namely Waseem Ahmad Zarger. Another person was also sitting in the vehicle. From the said person person namely Reyaz Ahmad Rather, one bag was recovered in which fifty one bottles of codeine phosphate and thirty strips of proxiyon plus capsules were recovered and seized on spot. The applicant has not been found involved in the commission of crime. Accused Reyaz Ahmad Rather S/O Sona Ullah Rather R/O Wanihama is found involved in the commission of crime and he has been taken into custody. The vehicle and the narcotic substance recovered from the accused were taken into custody. During the course of investigation of the case, statements of witnesses conversant with the facts of the case, have been recorded. The samples drawn from the seized materials have been sent for forensic examination at FSL Srinagar. The report is awaited from FSL Srinagar.

Ld. Public Prosecutor has objected to the release of vehicle by stating that the vehicle is involved in serious offence under NDPS Act. The vehicle was used for transportation of narcotic substance. Since the vehicle has been used in the commission of offence, it may not be released. The same may be used again by the lawful owner in the commission of similar offence.

I have considered the arguments and have gone through the material on record.

The applicant has produced an affidavit executed by Nazir Ahmad Beigh, the registered owner of the vehicle, in favour of the applicant herein. Copy of the affidavit is retained on the record and the original is returned.

The vehicle is alleged to have been used by the accused person in the commission of offence. Even if the vehicle is used for transportation of the narcotic substance, there is no bar to release the vehicle till the conclusion of trial in the case. The vehicle involved in the commission of offence under NDPS Act is liable to be impounded if the case ends in conviction. It shall take considerable time to dispose



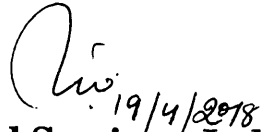
6

3

of the case. Until that stage reaches, the vehicle involved in the commission of offence cannot be permitted to be retained in custody of the police. The vehicle can be misused and its condition may deteriorate during the pendency of trial. Moreso, the vehicle has to be released only on interim custody with restrictive condition as to its production in the court when required for the purpose of trial.

For the aforesaid reasons, the vehicle is directed to be released on the interim custody of the applicant, on furnishing undertaking to the effect that the vehicle shall not be disposed of during the course of trial and it shall be produced for the inspection of court as and when directed. The registration certificate and the driving licence shall be retained until further orders. Application is disposed of and be consigned to records after due completion.

Announced:
19.04.2018.


Principal Sessions Judge,
Budgam.

"Jagdish Singh"
P.A