

Khema Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-12-1999

Reported in : 2000CriLJ2079; 1999WLC(Raj)UC273

Judge : G.L. Gupta, J.

Acts : Narcotic Drugs and Psychotropic Substances Act, 1985 - Sections 60

Appeal No. : Cri. Misc. Petn. No/680/98

Appellant : Khema

Respondent : State of Rajasthan

Advocate for Def. : L.R. Upadhyay, P.P.

Advocate for Pet/Ap. : Sandeep Mehta, Adv.

Disposition : Petition allowed

Judgement :

ORDER

G.L. Gupta, J.

1. This misc. petition is directed against the order dt. 25-10-97 passed by the learned Special Judge, N.D.P.S. Cases, Chittorgarh whereby he dismissed the application of the petitioner for handing over Motor Cycle No. RNS-7127 to him.

2. Mr. Mehta pointing out that the motor cycle has not been claimed by any other person contends that if it is allowed to lie in the police station it will get damaged. Relying on the case of Bal Mikand v. State, 1994 Cri LR (Raj) 4, he submits that the motor cycle should be given to the petitioner on furnishing 'Superdginama'.

3. The learned Public Prosecutor contends that the motor cycle was used to carry opium and this is likely to be confiscated under Section 60 of the N.D.P.S. Act, 1985, and hence the learned Special Judge has rightly refused the delivery of the motor cycle to the petitioner.

4. I have considered the above arguments. It is not disputed that the motor cycle has not been claimed by any other person. It is further not disputed that the petitioner was not caught while carrying opium. The opium was found in the possession of Papuda alias Bhanwarlal and he informed that the motor cycle was being driven by one Nathu Bavari, who is absconding. It cannot be denied that motor cycle, if allowed to remain in the police station, is likely to get damaged and ruined. On the ground that the vehicle is liable to be confiscated under Section 60 the interim custody of the vehicle cannot be denied to the petitioner who is its registered owner. It is after the trial of the case that confiscation order can be passed. The order passed by the learned Special Judge is not sustainable.

5. Consequently, the petition is allowed. It is directed that the motor cycle No. RNS-7127 shall be delivered to the petitioner on 'Superdginama' on his producing the original registration certificate and on satisfying the following conditions :

(i) He furnishes a personal bond in the sum of Rs. 40,000/- each with two sureties of Rs. 20,000/- each to the satisfaction of the trial Court undertaking to produce the motor cycle in the Court as and when required to do so.

(ii) He shall get the motor cycle photographed showing the registration number as well as the chassis number. Such photograph shall be taken in the presence of the investigating officer, to be kept on the file of the case.

(iii) The personal bonds of the petitioner and bonds of sureties shall carry the photographs of the petitioner and his sureties and the bond of sureties shall further

carry the photographs of persons identifying them before the Court with full residential particulars of the sureties and the persons identifying them.

(iv) The petitioner shall undertake not to transfer the ownership of the motor cycle and not to lease it to any one and not to make or allow any changes in it to be made so as to make unidentifiable.

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