

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CRMP No. 1317 of 2016**

- Rajan Kashyap S/o Shri Ramadhar Kashyap, aged about 44 years, resident of Bhanupratappur, Thana & Tahsil Bhanupratappur, Distt. Kanker, Chhattisgarh

**---- Petitioner**

**Versus**

- State of Chhattisgarh Through the District Magistrate, District Dhamtari Chhattisgarh

**---- Respondent**

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| For Petitioner       | : | Shri Rakesh Sahu, Advocate      |
| For Respondent/State | : | Shri Sameer Behar, Panel Lawyer |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant**

**Order On Board**

**20/02/2017**

1. Heard on petition under section 482 of the Cr.P.C. challenging the order dated 07/11/2016 passed by the Sessions Judge, Dhamtari in Criminal Revision No. 61/2016 upholding the order of Judicial Magistrate First Class regarding dismissal of application under Section 457 of the Cr.P.C. for interim release of seized vehicle in question.

2. As per the contents of the impugned order one vehicle Scorpio bearing registration number C.G. 04 KX 2874 was seized vide Crime No. 73/2016 of Police Station, Nagri in connection with offence under Section 51 read with Section 44/09 of the Wild Life (Protection) Act, 1972 and Section 26 of Indian Forest Act. Petitioner filed an application under Section 457 of the Cr.P.C. before the Judicial Magistrate First Class, Kurud (Link Court) District Dhamtari. The application was heard and decided on 23/09/2016 and rejected on this ground that confiscation proceeding in connection with the seized vehicle has been initiated before the District Magistrate, Dhamtari

and the intimation has been received by the Court. This order was challenged in the revision before the Sessions Court. The order in revision dated 07/11/2016 was passed in which the order of trial Court was upheld.

3. The grounds in this petition are these, that the Courts below failed to exercise their jurisdiction in passing the order for interim release of the seized vehicle. The petitioner is registered owner of the seized vehicle and he is not involved in the alleged crime. Petitioner intends to comply with all the conditions imposed for interim release of the seized vehicle. On this ground, it is prayed that the orders passed by the Courts below be set-aside and relief be given to the petitioner.

4. It is submitted by counsel for the petitioner that there is no bar in statute for interim release of the seized property/vehicle in question. Copies of the registration details and insurance paper have also been filed with the petition. Charge-sheet has been filed before the Court. Hon'ble Supreme Court in the matter of ***State of M.P. and others vs. Madhukar Rao, (2008) 14 SCC 624*** has clearly laid down, that in accordance with the provision under Wild Life (Protection) Act, 1972 Magistrate has power to order for interim release of the vehicle during pendency of trial.

5. Counsel for the State has opposed the ground in this petition and the submission made by counsel for the petitioner. It is submitted that proceeding for confiscation of the vehicle concerned has been initiated by the office of Deputy District Forest Officer, Nagri, in the situation the vehicle in question should not be released in favour of the petitioner.

6. It is not objected by the State that petitioner is registered owner of the vehicle in question. The power of criminal Court order for interim release of seized vehicle under the provision of Wild Life (Protection) Act, 1972 has to be considered. The pronouncement of the judgment of Hon'ble Supreme Court in ***State of M.P. & others vs. Madhukar Rao (supra)*** is very clear on

this point, wherein it has been held that Section 39(1)(d) of the Act, 1972 gives entitlement of the State Government to take over the property seized in connection with the offence under this Act. It was further held that Section 39(1)(d) of the Act comes in the play only after the Court of competent jurisdiction has passed an order on accusation and allegation made against the accused persons and recorded finding that the seized article was used in commission of said offence. Thus, the Magistrate is empowered to order for interim release of the seized property during the pendency of trial.

7. On the basis of above mentioned discussion, it is apparent that the Courts below have failed to exercise their jurisdiction in this matter, hence this petition is fit to be allowed and accordingly it is allowed. The impugned order of the Court below is hereby set-aside. Petitioner is directed to appear before the trial Court. The trial Court shall decide the application in accordance with law and as per the directions given in this order.

Sd/-

(Rajendra Chandra Singh Samant)  
Judge