

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1563 of 2018**

- Anand Sinha S/o Late Shivshankar Prasad Sinha Aged About 27 Years R/o Village Devgarh, Police Station Ambikapur, District Surguja, Chhattisgarh

---- Petitioner

Versus

- State Of Chhattisgarh Through Excise Officer Ambikapur, District Surguja, Chhattisgarh

---- Respondent

For Petitioner	:	Shri Nishikant Sinha, Advocate
For State	:	Shri Chandresh Shrivastava, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****20/09/2018**

This petition has been filed by the petitioner aggrieved by order dated 20/07/2018, by which, revision against the order of rejecting application for interim custody of the vehicle has been dismissed.

2. The vehicle in question is alleged to have been involved in commission of offence under Section 34 (1)A, 34 (2) and Section 59 (A) of the C.G.Excise Act. It is alleged that in the vehicle, country made liquor was being illegally transported. The petitioner himself was involved in the alleged commission of offence.

3. Learned counsel for the petitioner would submit that the petitioner has been granted bail. The vehicle has remained idle and in the absence of proper care, it is likely to become rot. Therefore, on appropriate terms and conditions, the vehicle may be released by way of interim custody. It is submitted that as the application for interim custody has been rejected, the petitioner has come before this Court.

4. On the other hand, learned State counsel opposes bail application and submits that as the vehicle is also liable to be subjected to confiscation proceedings separately, release of vehicle by way of interim custody may frustrate the proceedings which have already been initiated by the Collector (Excise).

5. True it is that the petitioner is alleged to have committed offence of illegal

transportation of country liquor in the vehicle of which interim custody is sought, it is found that the petitioner has already been granted bail and the vehicle has remained in custody since 25/04/2018 and in the absence of proper care, is likely to become rot. Moreover, in the case of *Hajari Kachwaha v. State of Chhattisgarh* (CrMP No.1593/2017) decided on 09/01/2018, this Court had an occasion to examine State's objection to interim custody on the face of pendency of confiscation proceedings wherein upon examination of the scheme of the Excise Act, it has been held as below -

“Section 47 (B) of Chhattisgarh Excise Act, 1915 provides for appeal against the order of confiscation. Therefore it necessarily leads that order of confiscation can only be challenged when it reaches it's finality and the statute do not give any space to challenge any other order except the final one. In view of this, the necessary implication would be that any order of interim nature if any passed, the High Court in exercise of it's power vested in it under article 227 can always test the propriety or legality of the order. It is a settled proposition of jurisprudence that every wrong will have a remedy. So if the order is found to be wrong then certainly the High Court would have all the power to correct the same.”

6. Therefore, notwithstanding State's objection, in the circumstances of the present case, I am inclined to allow the application for interim custody. The impugned order is therefore set aside. The application for interim custody is allowed. The vehicle is released on following conditions -

- i. Before release of vehicle proper panchnama be prepared.
- ii. Photographs of vehicle should be taken and bond should also be furnished that the article would be produced if required at the time of trial.
- iii. Proper security i.e. personal bond of Rs.1 lakh and like sum of surety be obtained before release of vehicle.

7. The petition is accordingly allowed. No order as to cost.

Sd/-
(Manindra Mohan Shrivastava)
Judge