

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1849 of 2017

Tankeshwar Teli S/o Radhelal Teli Aged About 36 Years R/o Village
Kopra Rajim District Gariyaband Chhattisgarh

---- Petitioner

Versus

State Of Chhattisgarh Through The Station House Officer, Police
Station Kurud, District Dhamtari Chhattisgarh

--- Respondent

For petitioner -	Shri Kunal Das, Advocate.
For Respondent/State –	Shri Suryakant Mishra, PL.

Hon'ble Shri Justice Goutam Bhaduri
(Order on Board)

7/03/2018

1. Instant petition is against the order dated 25/11/2017 passed in Criminal Revision No.78/2017 whereby the order refusing the custody of the vehicle by the Judicial Magistrate by an order dated 15/11/2017 was affirmed.
2. As per the prosecution case, Crime No.100/2017 was registered under Sections 186, 294, 506-B, 323, 332, 353 read with 34 of IPC and Section 34 (2) of the C.G. Excise Act that on 12/03/2017 when police party received information that in vehicle bearing No.C.G.23/0162 certain liquor are being transported, same was intercepted and in the vehicle liquor was found. When the police was completing the procedure it was objected and the police party was attacked and 9 litres of liquor was seized. Having asked the valid documents no documents pertaining to the liquor was shown, therefore eventually case was registered and the vehicle was seized. It was alleged by the State that the vehicle was being used for transporting illicit liquor as such proceeding under Section 47-A of the C.G. Excise Act was drawn.

3. Learned counsel for the petitioner would submit that the order would reflect that the only confiscation proceedings are contemplated which do not put a bar to release the vehicle on interim custody. He placed a reliance in case of **General Insurance Council and others Vs. State of Andhra Pradesh and others** reported in **(2010) 6 SCC 768** wherein the earlier principles laid down in **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in **(2002) 10 SCC 283** was reiterated and submits that in that case applying the said principle it is directed that the vehicle be released in favour of petitioner by way of interim measure if the confiscation proceedings have not been concluded till date of production of this order. Therefore, he prays that the order rejecting the application for interim custody cannot be allowed to sustain.

4. Perused the order dated 25/11/2017. The order engrafts the fact that the vehicle was seized when it was used for transportation of the illicit liquor and the learned court below referred to section 47-A of the Excise Act and observed that the court is not empowered to release the vehicle.

5. The confiscation proceeding under Chhattisgarh Excise Act, 1915 is governed by Section 47-A of the Act. Section 47 (2) regulates the power and procedure to be adopted for confiscation which reads as under:-

“47 (2) When the Collector, upon production before him of intoxicants, articles, implements, utensils, materials, conveyance etc. or on receipt of a report about such seizure as the case may be, is satisfied that an offence covered by clause (a) or clause (b) of sub-section (1) of Section 34 has been committed and where the quantity of liquor found at the time or in the course of detection of such offence exceeds five bulk liters he may, on the ground to be recorded in writing, order the confiscation of the intoxicant,

articles, implements, utensils, materials, conveyance etc. so seized. He may, during the pendency of the proceedings for such confiscation also pass an order of interim nature for the custody, disposal etc. of the confiscated intoxicants, articles, implements, utensils, materials, conveyance etc. as may appear to him to be necessary in the circumstances of the case.”

6. Perusal of the sub section-2 would show that power has been given to the Collector upon production of the article and on having satisfied that offence covered under the clause (a) or clause (b) of sub-section (1) of Section 34 has been committed and if liquor is more than 5 bulk liters he may order for confiscation of articles, intoxicants, implements, utensils including the conveyance so seized. It also records that he may during pendency of the proceeding may pass an order of interim nature for custody, disposal etc. of the confiscated intoxicants, articles, implements, conveyance as may appear to be necessary in the facts of this case.

7. 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.

8. Reply has been filed on behalf of the State which would show that only the proposal for confiscation has been made. It is not clear that

whether the confiscation proceedings has started or not. The impugned order of the rejection records that since confiscation is recommended and investigation was going on as such vehicle cannot be released. As per principles as laid down by Supreme Court in **General Insurance Council and others Vs. State of Andhra Pradesh and others** reported in (2010) **6 SCC 768** it is obvious that the vehicle if is kept in custody of police contemplating confiscation the vehicle for all practical purposes it will loose its road worthiness and also will occupy space in police station and it would further would be prone to casual and natural decay.

9. Therefore, in view of the foregoing discussion, this court is inclined to direct for releasing the vehicle in favour of the petitioner by way of interim measure. Accordingly, it is directed that the the vehicle shall be released to the interim custody of petitioner on the following conditions:-

1. Before release of vehicle proper panchnama be prepared.
2. 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.
3. Proper security i.e. personal bond of Rs. 5 lakhs and like sum of surety be obtained before release of vehicle.

10. Accordingly, the petition succeeds and is allowed. No order as to cost.

Sd/-

(Goutam Bhaduri)
JUDGE