

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.2359 of 2019

Abdul Shahid Khan, S/o Abdul Sharif Khan, aged about 25 years, R/o Rawanbhat, Supela, Bhilai, District Durg (C.G.)

---- Petitioner

Versus

State of Chhattisgarh, through the District Magistrate, District Balodabazar-Bhatapara (C.G.)

---- Respondent

For Petitioner: Mr. Supriya Upasane, Advocate.

For Respondent / State: -

Mr. Aakash Pandey, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

19/12/2019

1. The petitioner is registered owner of truck bearing registration No.CG-07/E-8543. It has been seized for commission of the offence punishable under the Chhattisgarh Agricultural Cattle Preservation Act, 2004 (for short, 'the Act of 2004') on 10-9-2018 and the petitioner made an application for grant of interim custody of the vehicle which was rejected by the trial Magistrate and the same has been upheld by the revisional Court against which this petition under Section 482 of the CrPC has been preferred.
2. Ms. Supriya Upasane, learned counsel appearing for the petitioner, would submit that the order impugned is unsustainable and bad in law and six months period had already expired therefore the prohibition period as mentioned in Section 6(3) of the Act of 2004 has come to an end and the petitioner will abide by the conditions imposed by this Court while granting the order of interim custody of the vehicle.
3. Whereas, Mr. Aakash Pandey, learned State counsel, would submit

that confiscation proceeding has already been initiated.

4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and went through the material available on record with utmost circumspection.
5. By virtue of Section 6(3) of the Act of 2004, the vehicle seized under Section 6(2) shall not be released by the order of the court on bond or surety before the expiry of six months from the date of such seizure or till the final judgment of the court, whichever is earlier and such vehicle shall also be liable for confiscation at the end of the trial. Therefore, six months period has already expired and the vehicle, if released, shall be liable for confiscation at the end of trial and there is no bar for release of vehicle in interim custody which will be subject to the order of confiscation, if any, at the end of trial. The vehicle in question is a truck. The Supreme Court in the matter of **Sunderbhai Ambalal Desai v. State of Gujarat**¹ in paragraphs 7 and 17 has categorically enumerated the guidelines for releasing of the vehicle seized by the police which are as follows: -

“7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;
2. court or the police would not be required to keep the article in safe custody;
3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

¹ (2002) 10 SCC 283

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17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the polices for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.”

6. Therefore, in view of the above, the petition is allowed and the impugned order passed by the trial Court as well as by the revisional Court are set aside. The said vehicle shall be released to the petitioner upon his furnishing an appropriate bond and guarantee as quantified by the trial Magistrate for return of the same, if required at any point of time. In the bond, the petitioner shall give an undertaking that he shall not change the ownership of the vehicle nor shall he change the colour of the vehicle neither shall he create a third party right or interest over the said vehicle. He shall also undertake that he shall produce the vehicle as and when required by the prosecution during the course of investigation, trial and even at the appellate stage. He shall further undertake to produce the vehicle to any competent authority under different statutes as and when required. So far as bond is concerned, it shall be equal to the present day value of the vehicle seized to the satisfaction of the trial Magistrate.

Sd/-
(Sanjay K. Agrawal)
Judge