

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 1373 of 2020**

Bhuneshwar Sahu, son of Kartik Sahu, aged about 35 years, R/o. Village Ghauthala Bade, Post Amjhar, Police Station and Tahsil Sarangarh, District Raigarh (C.G.)

---- Petitioner.

Versus

1. State of Chhattisgarh, Through : The District Magistrate/Collector, Raigarh, District Raigarh (C.G.)
2. Station House Officer, Police Station Sarangarh, District Raigarh (C.G.)
3. Amit Kumar Sahu, son of Upendra Prasad Sahu, aged about 30 years, R/o. Village Chikhali, Police Station and Tahsil Sarangarh, District Raigarh (C.G.)

---- Respondents.

For Petitioner : Shri M.K. Jaiswal, Advocate.
For Respondents No. 1 & 2 : Shri Animesh Tiwari, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/12/2020

(1) Petitioner's vehicle Scorpio bearing registration No. CG-13, C-5291 has been seized by the jurisdictional police and its confiscation proceedings is pending before the Collector, Raigarh. He made an application for grant of interim custody of the said vehicle, which has been rejected by the impugned order holding that it is not the interest of justice to grant interim custody of the said vehicle to the petitioner, which has been questioned in the instant writ petition.

(2) I have heard learned counsel appearing for the parties and perused the material available on record.

(3) Their Lordships of the Supreme Court in the matter of **Sunderbhai Ambalal Desai v. State of Gujarat**¹ has laid down the parameters for grant of interim custody of the vehicle seized in commission of offence. Relevant paragraph of the report states as under:-

“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.

12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:

(1) preparing detailed proper panchnama of such articles;

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

1 (2002) 10 SCC 283

(3) after taking proper security.

13. For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr.P.C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition.”

(4) A careful perusal of the impugned order would show that learned Collector, Raigarh has not noticed the decision rendered by the Supreme Court in the matter of **Sunderbhai Amalal Desai** (supra) while deciding the petitioner's application for interim custody of seized vehicle and rejected the said application.

(5) In view of above, the impugned order dated 7.9.2020 passed by the Collector, Raigarh is set aside. The matter is restored to the file of Collector, Raigarh, who will consider and decide the petitioner's application afresh for interim custody of the seized vehicle in light of decision rendered by the Supreme Court in the matter of **Sunderbhai Ambalal Desai** (supra) expeditiously preferably within a period of two weeks from the date of production of certified copy of this order.

(6) The Cr.M.P. is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

