

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 2457 of 2019**

Narayan Das, aged about 64 years, S/o Govind Das, R/o PV No. 112, Devipur, Thana and Tahsil Pakhanjore, Distt. U.B. Kanker (C.G.)

-----Applicant

Versus

State of Chhattisgarh, through Police Station Pakhanjore, Distt. Uttar Bastar, Kanker (C.G.)

----- Respondent

For Applicant	: Mr. Shalivk Tiwari, Advocate.
For Respondent/State	: Mr. Ravi Kumar Bhagat, Dy.GA

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

19/02/2020

(1) This petition is directed against the impugned order dated 30.08.2019 passed by Additional Sessions Judge, Bhanupratappur, District Uttar Bastar, Kanker in Criminal Revision No. 09/2019 whereby learned Revisional Court has affirmed the order passed by the trial Magistrate rejecting the petitioner's application under Section 457 of the Code of Criminal Procedure, 1973 for interim custody of the seized vehicle.

(2) Learned counsel appearing for the applicant would submit that the petitioner is registered owner of the seized vehicle Motorcycle bearing registration No. CG -05

k/3931, which was found involved in the commission of offence under Section 304-A of the IPC. He submits that trial Court has rejected application under Section 457 of the CrPC for interim custody of the said vehicle and which has been affirmed by the first Appellate Court ignoring the principle of law laid down by the Supreme Court in the matter of **Sunderbhai Ambalal Desai Vs. State of Gujarat**¹ with regard to interim custody of seized vehicle, etc.

(3) On the other hand, counsel for the State would support the impugned order.

(4) I have heard learned counsel appearing for the parties and perused the impugned order.

(5) The Supreme Court in the matter of **Sunderbhai Ambalal Desai** (Supra) with regard to interim custody of seized vehicle. has held 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

¹ (2002) 10 SCC 283

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

(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."

(6) A careful perusal of the impugned order would show that both the courts below have 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.

(7) In view of above, the impugned order passed by the trial Magistrate as affirmed by the Revisional Court is set aside. The matter is restored to the file of trial Magistrate, 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 10 days from the date of production of certified copy of this order.

(8) The writ petition (Cr.) is partly allowed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-