

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 410 of 2020

Subhashchandra, S/o. Balabhadrachandra, aged about 45 years. R/o. Kautola, Police Station -Koksara, District Kalahandi (Odisha).

----Applicant

Versus

State of Chhattisgarh, Through : The Station House Officer, Police Station Dharsinwa, District Raipur Chhattisgarh.

---- Respondent

For Applicant : Mr. Ashish Gupta, Advocate

For State/Respondent : Mr. Gurudev I. Sharan, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

13/01/2021

1. Challenge in this petition is to the order dated 11.02.2020, passed by the learned Special Judge, (N.D.P.S. Act), Raipur, District Raipur (C.G.), passed in Special Case No.9/2019, dismissing the application of the applicant for grant of interim custody of the vehicle under seizure.
2. It is submitted by the learned counsel appearing on behalf of the applicant, that the applicant is the registered owner of the vehicle truck bearing registration No. O.D./18/B/0979. Although, the applicant himself is the accused in this case, but he has been enlarged on bail. He is contesting the case and he is hopeful that he will get acquittal. Section 60 to 62 of the N.D.P.S. Act provides for

confiscation, but the proceeding regarding confiscation can only be initiated only after conclusion of trial according to the procedure laid down in Section 63 of the N.D.P.S. Act, therefore, the applicant is entitled to receive the vehicle on interim custody during the pendency of trial against him. Hence, the order passed by the learned Court below is erroneous, which is liable to be set-aside.

3. State counsel opposes the petition and the submission made in this respect. It is submitted that the applicant is though registered owner of the vehicle but he is the person, who is himself involved in the commission of offence of transporting contraband. Therefore, he can not take a plea that the vehicle was used without his knowledge and connivance. Hence, the Court below has not committed any error in rejecting the application.
4. I have heard the learned counsel for the parties and perused the documents placed on record.
5. Considered on the submissions. It is not disputed that the vehicle mentioned herein above is under seizure and the applicant is the registered owner of the same, which is liable to be confiscated under Section 60 of N.D.P.S. Act. Section 63 of the N.D.P.S. Act provides that on conclusion of trial, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to be confiscated under section 60 or section 61 or section 62 and, if it decides that the article is so liable, then the proceeding of confiscation shall be initiated. Hence, the stage of proceeding for confiscation has not arrived because the trial is still pending. On the basis of the

registered ownership of the applicant, he has entitlement to get the said vehicle on interim custody. There are other submissions also that the vehicle has been purchased on loan and there is hypothecation agreement with the finance company. Therefore, looking to these circumstances present and on the basis of entitlement of the applicant, interim custody of the said vehicle can be given to the applicant on appropriate direction and condition.

6. Accordingly, the revision petition is allowed. The impugned order dated 11.02.2020, passed by the learned Special Judge, (N.D.P.S. Act), Raipur, District Raipur (C.G.), passed in Special Case No.9/2019, is set-aside and it is directed that the vehicle truck bearing No. O.D./18/B/0979 be released in favour of the applicant by way of interim measure till the disposal of the trial. The learned trial Court is directed to make an assessment of seized vehicle and pass an order accordingly for furnishing bonds and Supurdnama. On furnishing such bonds and Supurdnama, the vehicle in question be released in favour of the applicant with a condition that the applicant shall not transfer or change description/ features of the vehicle in question and he shall produce the said vehicle before the trial Court or confiscation authority when any such order is passed during the course of trial or confiscation proceeding.

Sd/-
(Rajendra Chandra Singh Samant)
Judge