

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR

WPCR No. 591 of 2021

Bulaki Ram Soni S/o Kheduram Soni Aged About 55 Years R/o Banjari Nagar, Rawanbhatha, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Station House Officer, Police Station, Bagbahra, District Mahasamund Chhattisgarh., District : Mahasamund, Chhattisgarh
2. The Collector Mahasamund, District Mahasamund Chhattisgarh., District : Mahasamund, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Raghavendra Pradhan, Advocate
For State/Res. No.1 & 2	:	Shri Ashish Gupta, Panel Lawyer

S.B.: Hon'ble Shri Parth Prateem Sahu, Judge

Order

18/10/2021

1. Challenge in this petition is to order dated 5.8.2021 passed by Collector, Mahasamund/respondent No.2 whereby the application filed by the petitioner under Section 451/457 Cr.P.C. for interim custody of the vehicle i.e. Hyundai Creta Car bearing registration number CG-04-LW-9042 alleged to be involved in commission of offence under Section 34 (2) of the Chhattisgarh Excise Act was rejected.
2. Facts relevant for disposal of this petition are that based on secret information, police within the territorial jurisdiction of Police Station- Bagbahara intercepted the aforementioned car. During course of search of the vehicle, police seized 18 bulk liters of illicit

liquor from the joint possession of Nitin Soni and Prakash Soni under Section 34 (2) of the Excise Act. The illicit liquor and the vehicle in which illicit liquor was being found to be transported was seized by the police. After seizure of the aforementioned vehicle, proceeding under Section 47-A of the Chhattisgarh Excise Act was initiated for confiscation of the vehicle seized by the police. During pendency of the confiscation proceedings, the petitioner moved an application under Section 451/457 of Cr.P.C. for interim custody of the vehicle allegedly involved in commission of the offence under the Excise Act which came to be rejected by the impugned order.

3. Shri Raghavendra Pradhan, learned counsel for the petitioner would submit that the petitioner is owner of the aforementioned vehicle alleged to have been involved in commission of offence under the Excise Act. The petitioner is not an accused in commission of the offence under Section 34 (2) of the Excise Act. He was not aware that the accused persons will use his vehicle for commission of the offence alleged under the Excise Act. The vehicle is kept in open place under direct sunlight and rains due to which there will be fast natural decay of the vehicle on account of weather conditions. Conclusion of proceedings of confiscation initiated by respondent No.2 will take little time and no purpose will be served if the vehicle owned by the petitioner is kept standing in open place. He further submits that the application for grant of custody of the vehicle was rejected by respondent No.2 on extraneous consideration that the vehicle may be used again in commission of similar offence. Hence the impugned order is not sustainable and is liable to be set aside. In support of his submissions, learned counsel for the petitioner placed reliance upon judgments of Hon'ble Supreme Court in the cases of **Sunderbhai Ambalal Desai Vs. State of Gujarat** (2002) 10 SCC 283 and **General Insurance Council and Ors. Vs. State of Andhra Pradesh and Ors.** (2010) 6 SCC 768. Lastly, learned counsel for the petitioner would submit that this Court may impose the conditions while granting custody of the aforementioned vehicle and the petitioner will abide by all the conditions imposed upon him while granting custody of the vehicle.

4. Shri Ashish Gupta, learned counsel for the State, opposing the

submissions made by learned counsel for the petitioner, submits that the vehicle was involved in commission of offence under Section 34 (2) of the Excise Act.. 18 bulk litres of illicit liquor was seized by the police which was being transported in aforementioned vehicle. Respondent No.2 has assigned reason for rejecting the application for custody of the vehicle that it can be used again for commission of similar nature of offence. Hence, the Collector justified in rejecting the application filed by the petitioner.

5. I have heard learned counsel for the parties.
6. Section 47-A of the Chhattisgarh Excise Act deals with confiscation of seized intoxicants, articles, implements, utensils, material, conveyance etc. Section 47-A (2) of the Excise Act envisages power on the Collector to pass interim order for the custody of articles and conveyance etc.
7. Sub-section (2) of Section 47-A of the Excise Act is extracted below for ready reference:

“47-A (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 litre] he may, on the ground to be recorded in writing, order the confiscation of the intoxicants, articles, implements, utensils, materials, conveyance etc so seized. He may, during the pendency of the proceedings for such confiscation also pass an order or 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.”

8. From perusal of aforementioned provision, it is evident that the Collector is having jurisdiction to pass the order of granting interim custody of the vehicle involved in commission of the offence under the Excise Act. Reason assigned by the Collector while rejecting the application filed under Section 451/457 is showing his apprehension that the vehicle can be used for commission of similar nature of offence. The aforementioned apprehension shown by the Collector while passing the impugned order is on extraneous consideration.
9. Undisputedly the vehicle which is a Creta Car might have been kept in open place as stated by learned counsel for the petitioner will prone to fast natural decay on account of weather condition of direct sunlight, rain etc.
10. The Collector rejected the application only on the apprehension that the vehicle can be used for committing similar offence. There is no further discussion or fact to support the apprehension as mentioned in the order. No useful purpose will be served if the vehicle is kept standing in open place directly under the sunlight and other weather conditions during pendency of the confiscation proceedings. Hon'ble the Supreme Court in the case of **Sunderbhai Ambalal Desai** (supra), has considered the issue with regard to custody and disposal of the valuable articles including the vehicles and held thus :-

“17. In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations 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.”

11. Hon'ble the Supreme Court in the case of **General Insurance Council** (supra), considering the decision passed in **Sunderbhai Ambalal Desai** (supra) has held thus :-

“14. It is a matter of common knowledge that

as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its roadworthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road.”.....

12. Consequently, applying the principles enunciated in aforementioned ruling of Hon'ble Supreme Court, it is directed that the vehicle be released in favour of the petitioner by way of interim custody if the confiscation proceedings have not been concluded till date of production of this order on following conditions:-

- A. Before release of vehicle, proper panchnama be prepared.
- B. Photographs of vehicle should be taken and bond should also be produced by the petitioner that the vehicle would be produced by him as and when required by the authority or the Court.
- C. The petitioner is directed to furnish surety of Rs.8 lakhs to the satisfaction of the District Magistrate/Confiscating Authority before release of the vehicle.
- D. The petitioner shall not transfer by way of sale the vehicle to any other person.

13. The writ petition is accordingly allowed.

Sd/-
(Parth Prateem Sahu)
Judge