

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1145 of 2021**

Shivprasad Chaturvedi, Son of Shri Kheluram Chaturvedi,
aged about 55 years, resident of Gorasi, Police Station
Masturi, District Bilaspur, Chhattisgarh

---- Petitioner**Versus**

State of Chhattisgarh through the Station House Officer,
Police Station Civil Line, District Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner : Shri Ravipal Maheshwari, Advocate
For Respondent/State : Shri Uddhav Sharma, Govt. Advocate

Hon'ble Shri Parth Prateem Sahu, Judge**Order on Board****28.10.2021**

1. Challenge in this petition is to the impugned order dated 22.09.2021 passed by the learned Sessions Judge, Bilaspur (C.G.) in Criminal Revision No.110 of 2021 whereby learned Sessions Judge has dismissed the revision upholding the order passed by Chief Judicial Magistrate in an application for grant of custody of vehicle involved in accident.
2. Facts of the case in nutshell are that, petitioner is owner of four-wheeler goods carrying vehicle bearing No.CG-10/AT/1476 ('offending vehicle'). The said vehicle met with an accident and dashed two-wheeler bearing No.CG-10/AG/2566. In the said accident, driver of two-wheeler Late Ashish Jaiswani suffered injuries and died. Petitioner filed an application seeking custody of four-wheeler goods carrying

vehicle seized by the Police during the course of investigation of the crime under Section 304-A of Indian Penal Code. Learned Chief Judicial Magistrate while considering application filed by petitioner for grant of custody of offending vehicle considering the provisions of Rule 240-A of Chhattisgarh Motor Vehicles Rules, 1994 (hereinafter referred to as 'Rules of 1994'), allowed the application in part and directed release of offending vehicle to custody of petitioner subject to furnishing bank guarantee of Rs.2 Lacs.

3. Shri Ravipal Maheshwari, learned counsel for the petitioner would submit that petitioner is a poor person, solely dependent upon his livelihood on the vehicle in question. Offending vehicle was being driven as goods carrying vehicle. Due to COVID-19 pandemic situation, proper work of transportation was not received by petitioner and inadvertently, petitioner failed to re-new his insurance policy. Earlier, offending vehicle was insured with ICICI Lombard General Insurance Company Limited. Vehicle owned by petitioner met with an accident on 25.03.2021 and since then, it is standing in open place exposed to direct sunlight, rains and other weather conditions. Petitioner moved an application under Section 457 of Cr.P.C. for getting custody of vehicle during pendency of criminal case supported with other relevant documents. Learned Magistrate allowed application in part, but imposed condition of furnishing bank

guarantee of Rs.2 Lacs. Direction of furnishing bank guarantee is arbitrary in the facts and circumstances of the case. Order of Magistrate was put to challenge in revision and Revisional Court also has not taken into consideration the submissions made by petitioner therein that he is poor person, fully dependent on offending vehicle which is standing in custody of Police since long. Putting such a harsh condition for releasing the offending vehicle which is source of livelihood of petitioner is in fact denying the relief of custody of offending vehicle to petitioner. He further submits that Court below ought to have imposed any other condition of furnishing security in the facts of the case, if provisions under Rule 240-A of the Rules of 1994 is to be complied with. Keeping the vehicle standing in an open place will only make the condition of vehicle to be deteriorated its value will be reduced and will not serve the purpose of Rule 240-A of the Rules of 1994 in any manner. It is contended that orders passed by Courts below be set aside and vehicle in question be released in favour of petitioner by way of granting temporary custody. Lastly, he argued that father of deceased i.e. Gulab Rai Jaiswani has executed agreement/consent deed before the Notary on 04.09.2021 stating therein that they have not filed any claim application and nor will further file any claim application as

they have entered into compromise. Copy of the deed is placed on record as Annexure A/3.

4. Per contra, Shri Uddhav Sharma, learned Government Advocate representing the State, opposing the submissions made by learned counsel for the petitioner, would submit that learned Courts below have passed order considering the provision of Rule 240-A of the Rules of 1994, which is incorporated with an object of securing interest of claimants.
5. I have heard learned counsel appearing for the respective parties.
6. Provisions of Rule 240-A of the Rules of 1994 as extracted by learned Revisional Court reads as under :

“240-A. Prohibition on release of motor vehicle causing accident.-(1) No court shall release a motor vehicle causing an accident resulting in death or bodily injury or damage to property, if such vehicle is not covered by a policy of insurance against third party risks or if the registered owner fails to furnish copy of such insurance policy despite demand by investigating police officer, unless and until the registered owner furnishes sufficient security to the satisfaction of the court, to pay compensation that is likely to be awarded in a claim case arising out of such accident.”

7. Provisions of Rule 240-A of the Rules of 1994 has been brought in with a particular object of secure and protect interest of the claimants. At the same time, it is also to be considered in the facts and circumstances of the each case. In the case at hand, as submitted by learned counsel for the petitioner that petitioner is a small transporter, earning his livelihood and his family members from earnings of offending vehicle. Direction issued by learned Court below of furnishing bank guarantee of Rs.2 Lacs means the petitioner must have Rs.2 Lacs apart from his needs and requirement. Since March 2020, every person got affected financially due to lock-down and transporters due to restrictions in mode of transportation etc. on account of COVID-19 pandemic situation across the globe. Definitely, from aforementioned situation, petitioner might have affected financially and a direction of furnishing bank guarantee of Rs.2 Lacs will be too harsh to comply with. In fact, aforementioned direction will lead to deny the relief of interim custody of offending vehicle, particularly, in these circumstances, when it is stated by learned counsel for the petitioner that petitioner is a poor person, wholly dependent upon the earning from vehicle in question. Submission of learned counsel for the petitioner that his vehicle is standing in open place exposed to direct sunlight, rains and other weather conditions is not disputed by learned counsel for the State. If the vehicle is kept

standing ideal under the aforementioned situation and circumstances, condition of offending vehicle will be deteriorated and after some time, it will be of no use for anyone nor anyone will be benefited.

8. Hon'ble the Supreme Court in the case of **Sunderbhai Ambalal Desai v. State of Gujarat** reported in **(2002) 10 SCC 283** 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.”

9. If the facts of the case is considered in the light of aforementioned ruling of Hon'ble Supreme Court, in the opinion of this Court, directing petitioner to furnish bank guarantee will be harsh and denying the relief of interim custody of offending vehicle. Even if the said direction though issued by learned Courts below in view of Rule 240-A of the Rules of 1994 is remained to stand as it is, may lead to keep the vehicle standing in open place, will even not

serve the purpose and object of Rules of 1994. There may be chances and hope of making arrangement of payment of amount of compensation to be awarded in favour of claimants to be paid by the petitioner, if he may be permitted to utilize the vehicle, seized and in custody of Police. Hence, in the opinion of this Court, it will be proper and in the interest of parties to modify the impugned order and to direct furnishing one personal bond of Rs.3 Lacs and one surety in the like sum amount to the satisfaction of the concerned Court for release of offending vehicle.

10. For the foregoing reasons, petition is allowed and impugned order is modified that four-wheeler goods carrying vehicle bearing No.CG-10/AT/1476 shall be released upon furnishing one personal bond of Rs.3 Lacs and one surety in the like sum amount (Rs.3 Lacs) to the satisfaction of the concerned Court for release of the offending vehicle. Other conditions of the order date 05.08.2021 passed in Criminal Case No.2392 of 2021 shall remain intact.

Sd/-
(Parth Prateem Sahu)
Judge