

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No. 681 of 2021**

Sukhdev Chaturvedi S/o Mohal Lal, aged about 54 years R/o Satnamipara, Ward No. 17, Kumhari, Dhamdha, District Durg (C.G.).

---- **Petitioner**

Versus

1. State of Chhattisgarh, through the Collector Durg, District Durg (C.G.).
2. Assistant Commissioner (Excise) Durg, District Durg (C.G.).

--**Respondents**

For Petitioner	:	Mr. Ganesh Ram Burman, Advocate
For Respondent No.1	:	Mr. B.P. Banjare, Dy. AG
For Respondent No.2	:	None

Hon'ble Shri Justice Deepak Kumar Tiwari
Order on Board

17/12/2021

1. The instant writ petition under article 227 of the Constitution of India has been preferred against the order dated 02/08/2021 passed by the Collector, Durg (C.G.) whereby an application filed for interim custody of vehicle i.e. Honda Activa bearing registration No. CG07 BN 7435 seized in the offence under Chhattisgarh Excise Act, 1915 (for short 'the Act') has been dismissed.
2. Brief facts of the case are that the police station Kumhari, District Durg has registered a FIR No. 132/2021 against Rajesh Dahariya for the offence punishable under Section 34(2) of the Chhattisgarh Excise Act and the vehicle used in transportation of 32 quarters of country made liquor was seized. The confiscation proceeding has been drawn by the

Collector, Durg. During the said proceeding, the petitioner moved an application for interim custody of the scooty and by the impugned order, his application has been rejected. Hence, this petition.

3. Counsel for the petitioner submits that though the confiscation proceeding have been commenced, it does not put any bar to release the vehicle on interim custody. It is further submitted that no necessary fruitful purpose would be served by keeping the vehicle in custody except lost of cost. It is further submitted that the charge-sheet has been filed and no further inquiry is necessary in respect of criminal case and as such vehicle should have been released in favour of the applicant. Reliance has been placed in the case of **Ranjeet Kumar Gupta v. State of Chhattisgarh (WP(CR) No. 121/2016**
4. Learned counsel appearing on behalf of the State opposed the submission made by the counsel for the petitioner.
5. I have heard counsel for the parties and perused the impugned order dated 02/08/2021 minutely.
6. The learned Collector has rejected the application on the reasoning that if the vehicle is released on interim custody, there is likelihood of the vehicle getting involved in further transportation of illegal liquor and looking to the continuous increase in crime of liquor transportation in the district, the Collector did not find fit to release the vehicle till the conclusion of the confiscation proceeding.
7. Section 47 (2) of the Act empowers the Collector on having satisfied that the offence covered under the clause (a) or clause (b) of subsection (1) of

Section 34 of the Act has been committed and if liquor is more than 5 bulk liters, he may order for confiscation of articles, intoxicants, implements, utensils including the conveyance so seized. It also records that he may during pendency of the proceeding, pass an order of interim nature for custody, disposal etc. of the confiscated intoxicants, articles, implements, conveyance as may appear to be necessary in the facts of this case.

8. In **Ranjeet Kumar Gupta v. State of Chhattisgarh (WP(CR) No. 121/2016** decided on 17/04/2021, it has been held that though against the final order passed under Section 47 (2) of the Act, an appeal may be preferred under Section 47 of the Act, no order of interim nature is passed. The high Court in exercise of its power vested in it under article 227 of the Constitution of India always tests the propriety or legality of the order. It has been further observed that it is a settled propositions of jurisprudence that every wrong will have a remedy. So, if the order is found to be wrong then certainly the High Court would have all the power to correct the same.
9. Looking to the authoritative pronouncement by the Supreme Court in case of **Sunderbhai Ambalal Desai v. State of Gujarat**, reported in **(2002) 10 SCC 283** and also in case of **General Insurance Council and others v. State of Andhra Pradesh and others** reported in **(2010) 6 SCC 768**, if the vehicle is kept in the police station, it must be occupying space or is prone to sustain natural decay and may lose its road-worthiness when kept

in stationary position. So, the order of rejection of the application for interim custody cannot be allowed to remain.

10. Consequently, applying the said principles, it is directed that the vehicle be released in favour of the petitioner by way of interim measures if the confiscation proceedings have not been concluded till date of production of this order.
11. Therefore, the vehicle is directed to be released to the petitioner on the following conditions:-
 - i. Proper panchnama be prepared before release of vehicle.
 - ii. Photographs of vehicle should be taken and bond should also be produced with conditions that the article would be produced if required at the time of trial.
 - iii. Proper security i.e. personal bond of Rs. 25,000/- and like sum of surety be obtained before release of vehicle.
12. In view of the foregoing discussions, the petition succeeds and is allowed.

Sd/-
(Deepak Kumar Tiwari)
Judge