

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No. 679 of 2021**

Loknath Patel S/o Sadanand Patel, aged about 55 years R/o Village Bhanvarchua, House No. 54/1, Ward No.6, Badesajapali, Thana & Tehsil Basna, Distt. Mahasamund (C.G.).

---- Petitioner

Versus

1. State of Chhattisgarh, through S.H.O., Police Station, Basna, Distt. Mahasamund (C.G.).
2. The District Magistrate (Collector) Mahasamund, Distt. Mahasamund (C.G.).

--Respondents

For Petitioner	:	Ms. Sharmila Singhai, Senior Adv. along with Mr. Sanjay Agrawal, 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 28/10/2021 passed in Case No. 42/2021 by the Collector, Mahasamund (C.G.) whereby an application filed for interim custody of vehicle i.e. Maruti Swift VXi bearing registration No. CG06 GR 5863 seized by Basna Police in the offence under Chhattisgarh Excise Act, 1915 (for short 'the Act') has been dismissed while the proceeding under the confiscation was continue.
2. Brief facts of the case are that on 08/04/2021, the police station Basna registered an FIR for the offence under Section 34(1) and 34(2) of the Act

against the applicant and other accused persons that they were carrying 45 bulk liters of country made liquor in the said vehicle. After filing of the charge-sheet, the authority informed the Collector for starting the proceeding under Section 47-A (3) for the said vehicle, then the applicant moved an application seeking interim custody of the said vehicle which has been dismissed by the impugned order. Hence, this petition.

3. Counsel for the petitioner submits that though the confiscation proceeding have been commenced, it did not put any bar to release the vehicle on interim custody. She *places* her reliance in the matter of **Sunder Bhai Ambalal Desai v. State of Gujarat, AIR 2003 SC 638** and submits that applying such principles the vehicle should have been handed over to the petitioner till the confiscation proceeding gets concluded. 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.
4. Learned counsel appearing on behalf of the State opposes the submission made by the counsel for the petitioner.
5. I have heard counsel for the parties and perused the impugned order dated 28/10/2021 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 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 **Sunder Bhai Ambalal Desai (Supra)** 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 condition:-
 - i. Proper panchnama be prepared before release of vehicle.
 - ii. Photographs of vehicle should be taken and bond should also be produced that the article would be produced if required at the time of trial.
 - iii. Proper security i.e. personal bond of Rs. 3 lakhs 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