

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2541 of 2018

Reserved on 03.09.2021

Pronounced on 16.11.2021

- Meghnath Sahu S/o Shri Nanduram Sahu Aged About 27 Years
R/o Village- Bhatgaon, Khorpa, Ward No. 13, Police Station-
Abhanpur, District- Raipur, Chhattisgarh.

---- Petitioner

Versus

- State Of Chhattisgarh Through The District- Magistrate, Durg,
District- Durg, Chhattisgarh.

---- Respondent

For Petitioner : Shri R. K. Gomasta, Advocate

For Respondent/State : Shri Sudeep Verma, Dy. G.A.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV ORDER

1. The petitioner has filed the present CRMP assailing the order dated 26.07.2018 passed in Criminal Revision No.138/2018 by learned Second Additional Sessions Judge, Durg, District Durg whereby the learned Second Additional Sessions Judge while affirming the order dated 25.06.2018 passed by the learned Judicial Magistrate First Class, Patan, District Durg, has rejected the revision filed by the petitioner wherein the application of petitioner for releasing his vehicle on Supurdnama has been rejected.
2. The brief facts as projected by the petitioner are that the offending vehicle of the present applicant motorcycle Hero Passion Pro vehicle bearing registration C.G. 04 KR 5108 was seized by the Forest Sub-Division Range Patan under the Durg Forest Sub-Division, forest crime No.5692/2013 alleging that the case was registered for the offence punishable under Section 9 and 52 of the Wild Life Protection Act, 1972 against accused persons. The forest Division Durg has filed complaint on the basis of which Criminal Case No.5692/2013 was registered against Makhan Duruv, Laxminarayan, Dhaniram, Prahlad,

Indrakumar, Gajanand, Sonuram for commission of offence under Section 9 and 52 of Wild Life Protection Act, 1972. It was alleged that on 07.06.2018 in sub area Patan at village Sipkonha on receiving secret information from the house of Pushkar that wild pig was killed, on such information Forest Officer conducted a raid whereby five accused persons have been arrested from whom the Police seized mass of wild pig 1.1/2kg, 1 plastic bori stained with blood of 50Kg, one plastic bucket of 14 litre, 2 pieces wooden and 3 motorcycles and also seized 6 bicycles thereafter final report submitted before concerned Magistrate and trial is pending consideration and two have been absconded from the place of incident and they have been arrested on 08.06.2018 and after that they have been submitted before Judicial Magistrate First Class and thereafter they have filed bail application and the learned Sessions Judge has granted bail to the accused.

3. The present petitioner has filed an application under Section 457 of CrPC for releasing of vehicle on Supurdnama of vehicle bearing registration C.G. 07 AR 1628 mainly contending that the vehicle is being kept in open space more than 15 days which deteriorates the vehicle and he will abide by any condition imposed by learned Judicial Magistrate First Class. Neither he will transfer the vehicle nor he will sell the vehicle and he will also abide with condition imposed by trial Court.
4. The learned Judicial Magistrate First Class vide its order dated 25.06.2018 has rejected the same by recording the finding that the vehicle was used for illegal hunting of wild pig and for their distribution. The offence relates to wild life which is of a serious nature, prima facie, involvement of the vehicle is there, therefore, the petition filed by the petitioner has been rejected. Against that order the petitioner has preferred criminal revision before the learned Second Additional Sessions Judge, Durg, who in turn by impugned order dated 26.07.2018 has rejected the revision by affirming the findings that the vehicle was used for transportation of forest pig meat and therefore, the vehicle is involved in the

serious offence related to wild life. Accordingly, criminal revision was rejected. Both the orders have been assailed by the petitioner by filing this petition before this Court.

5. Learned counsel for the applicant would further submit that the applicant was not involved in the offence and his vehicle has been used without his knowledge, the vehicle has been seized only on the basis of suspicions causing irreparable loss to the petitioner. He would further submit that even from the perusal of the charge sheet, it is evident that the Forest Officer has wrongly seized the said vehicle. He would further submit that he will abide with any condition imposed by the Court therefore, the order dated 26.07.2018 passed by the learned Second Additional Sessions Judge, Durg as well as order dated 25.06.2018 be quashed and vehicle be released on supurdnama.
6. The State has filed its return in which he has supported the impugned order passed by Judicial Magistrate First Class and Revisional Court order and would submit that vehicle was involved in the offence relating to wild life which is grievous offence, therefore, the present CRMP is liable to be dismissed. The petitioner is not entitled to release of the seized vehicle when the trial is in progress. He would further submit that CrPC further provides for disposal of the property at the conclusion of the trial in which the trial Court take all the necessary measures therefore, at the time of conclusion of the trial therefore, petitioner is not entitled for interim custody and the present CRMP is liable to be dismissed by this Court.
7. I have heard learned counsel for the petitioner as well as learned counsel for the State.
8. Before proceeding further, it is expedient for this Court to go through the relevant provisions of Wild Life Protection Act, 1972 which are necessary for adjudication of the present case i.e. Sections 2 Sub-Section 36 and 37, 9, 39, 50, 51 which are as under:-

"2. Definition.- In this Act, unless the context otherwise

requires- xxx

(36) "Wild animal" means any animal found wild in nature and includes any animal specified in Schedule I, Schedule I Schedule III, Schedule IV or Schedule V, wherever found;

(37) "Wild Life" includes any animal, bees, butterflies, crustacea, fish and moths, and aquatic or land vegetation which forms part of any habitat;"

“9.Prohibition of hunting.—No person shall hunt any

wild animal specified in Schedules I, II, III and IV except as provided under section 11 and section 12.]

39.Wild animals, etc., to be Government property.-(1) Every-

(a) wild animal, other than vermin, which is hunted under section 11 or sub-section (1) of section 29 or sub-section (6) of section 35 or kept or 1[bred in captivity or hunted] in contravention of any provision of this Act or any rule or order made thereunder or found dead, or killed 2[***] by mistake; and

(b) animal article, trophy or uncured trophy or meat derived from any wild animal referred to in clause (a) in respect of which any offence against this Act or any rule or order made thereunder has been committed;

3[(c) ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made thereunder has been committed;

(d) Vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act,] shall be the property of the State Government, and, where such animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat 4[derived from such animal, or any vehicle, vessel, weapon, trap or tool used in such hunting] shall be the property of the Central Government.

Any person who obtains, by any means, the possession of Government property, shall, within forty-eight hours from obtaining such possession, make a report as to the obtaining of such possession to the nearest police station or the authorised officer and shall, if so required, hand over such property to the officer-in-charge of such police station or such authorised officer, as the case may be.

(3) No person shall, without the previous permission in writing of the Chief Wild Life Warden or the authorised officer—

(a) acquire or keep in his possession, custody or control, or

(b) transfer to any person, whether by way of gift, sale or otherwise, or

(c) destroy or damage, such Government property.

50. Power of entry, search, arrest and detention.—

(1) Notwithstanding anything contained in any other law for the time being in force, the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer or any forest officer or any police officer not below the rank of a sub-inspector, may, if he has reasonable grounds for believing that any person has committed an offence against this Act,—

(a) require any such person to produce for inspection any captive animal, wild animal, animal article, meat, 1[trophy, uncured trophy, specified plant or part or derivative thereof] in his control, custody or possession, or any licence, permit or other document granted to him or required to be kept by him under the provisions of this Act;

(b) stop any vehicle or vessel in order to conduct search or inquiry or enter upon and search any premises, land, vehicle or vessel, in the occupation of such person, and open and search any baggage or other things in his possession; 2[(c) seize any captive animal, wild animal, animal article, meat, trophy or uncured trophy, or any specified plant or part or derivative thereof, in respect of which an offence against this Act appears to have been committed, in the possession of any person together with any trap, tool, vehicle, vessel or weapon used for committing any such offence and, unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest him without warrant, and detain him: Provided that where a fisherman residing within ten kilometres of a sanctuary or National Park, inadvertently enters on a boat, not used for commercial fishing, in the territorial waters in that sanctuary or National Park, a fishing tackle or net on such boat shall not be seized.] 3[***]

(3) It shall be lawful for any of the officers referred to in sub-section (1) to stop and detain any person, whom he sees doing any act for which a licence or permit is required under the provisions of this Act, for the purposes of requiring such person to produce the licence or permit and if such person fails to produce the licence or permit, as the case may be,

he may be arrested without warrant, unless he furnishes his name and address, and otherwise satisfies the officer arresting him that he will duly answer any summons or other proceedings which may be taken against him. 4[(3A) Any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation or 5[an Assistant Conservator of Forests], who, or whose subordinate, has seized any captive animal or wild animal under clause (c) of sub-section (1) may give the same for custody on the execution by any person of a bond for the production of such animal if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.]

(4) Any person detained, or things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law 6[under intimation to the Chief Wild Life Warden or the officer authorised by him in this regard].

(5) Any person who, without reasonable cause, fails to produce anything, which he is required to produce under this section, shall be guilty of an offence against this Act. 7[(6) Where any meat, uncured trophy, specified plant or part of derivative thereof is seized under the provisions of this section, the Assistant Director of Wild Life Preservation or any other officer of a gazetted rank authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer may arrange for the disposal of the same in such manner as may be prescribed.]

(7) Whenever any person is approached by any of the officers referred to in sub-section (1) for assistance in the prevention or detection of an offence against this Act, or in apprehending persons charged with the violation of this Act, or for seizure in accordance with clause (c) of sub-section (1), it shall be the duty of such person or persons to render such assistance. 8[(8) Notwithstanding anything contained in any other law for the time being in force, any officer not below the rank of an Assistant Director of Wild Life Preservation or 9[an officer not below the rank of Assistant Conservator of Forests authorised by the State Government in this behalf] shall have the powers, for purposes of making investigation into any offence against any provision of this Act,—

- (a) to issue a search warrant;
- (b) to enforce the attendance of witnesses;
- (c) to compel the discovery and production of documents and material objects; and
- (d) to receive and record evidence.] 8[(9) Any

evidence recorded under clause (d) of sub-section (8) shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of the accused person.]

51. Penalties:- Any person who 1[contravenes any provision of this Act 2[(except Chapter VA and section 38J)] or any rule or order made thereunder or who commits a breach of any of the conditions of any licence or permit granted under this Act, shall be guilty of an offence against this Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to 3[three years] or with fine which may extend to 4[twenty-five thousand rupees] or with both: 5[Provided that where the offence committed is in relation to any animal specified in Schedule I or Part II of Schedule II or meat of any such animal or animal article, trophy or uncured trophy derived from such animal or where the offence relates to hunting in a sanctuary or a National Park or altering the boundaries of a sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and also with fine which shall not be less than ten thousand rupees: Provided further that in the case of a second or subsequent offence of the nature mentioned in this sub-section, the term of imprisonment shall not be less than three years but may extend to seven years and also with fine which shall not be less than twenty-five thousand rupees.] 6[(1A) Any person who contravenes any provisions of Chapter VA, shall be punishable with imprisonment for a term which shall not be less than 7[three years] but which may extend to seven years and also with fine which shall not be less than 8[ten thousand rupees].] 9[(1B) Any person who contravenes the provisions of section 38J shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both: Provided that in the case of a second or subsequent offence the term of imprisonment may extend to one year, or with fine which may extend to five thousand rupees.] 10[(1C) Any person, who commits an offence in relation to the core area of a tiger reserve or where the offence relate to hunting in the tiger reserve or altering the boundaries of the tiger reserve, such offence shall be punishable on first conviction with imprisonment for a term which shall not be less than three years but may extend to seven years, and also with fine which shall not be less than fifty thousand rupees but may extend to two lakh rupees; and in the event of a second or subsequent conviction with imprisonment for a term of not less than seven years and also with fine which shall not be less

than five lakh rupees but may extend to fifty lakh rupees.

1(D)Whoever abets any offence punishable under sub-section (1C) shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided for that offence.]

(2)When any person is convicted of an offence against this Act, the court trying the offence may order that any captive animal, wild animal, animal article, trophy, 11[uncured trophy, meat, ivory imported into India or an article made from such ivory, any specified plant, or part or derivative thereof] in respect of which the offence has been committed, and any trap, tool, vehicle, vessel or weapon, used in the commission of the said offence be forfeited to the State Government and that any licence or permit, held by such person under the provisions of this Act, be cancelled.

(3)Such cancellation of licence or permit or such forfeiture shall be in addition to any other punishment that may be awarded for such offence.

(4)Where any person is convicted of an offence against this Act, the court may direct that the licence, if any, granted to such person under the Arms Act, 1959 (54 of 1954), for possession of any arm with which an offence against this Act has been committed, shall be cancelled and that such person shall not be eligible for a licence under the Arms Act, 1959 (54 of 1959), for a period of five years from the date of conviction. 12[(5) Nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974) or in the Probation of Offenders Act, 1958 (20 of 1958) shall apply to a person convicted of an offence with respect to hunting in a sanctuary or a National Park or of an offence against any provision of Chapter VA unless such person is under eighteen years of age.]

9. The Full Bench of the High Court of Madhya Pradesh in the matter of Madhukar Rao V. State of M.P. and others considered the question whether the property seized under the Act, 1972 becomes the property of the State Government on accusation or suspicion of commission of an offence or there should be finding of the competent authority about the commission of offence; and it was held by their Lordships that seized property may be treated as property of the State, only upon a finding by the competent court that vehicle seized has been used for committing an offence

and observed as under:-

"16. Strong reliance has been placed on behalf of the State on Clause (d) of sub-Section (1) of Section 39 of the Act. It is submitted that vehicle including properties mentioned therein which have been seized on the ground of having been used for committing the offence become the property of the State and, therefore, such property including vehicle cannot be released even by the Magistrate. It is submitted that other interpretation would frustrate the object of the Amendment Act whereby the power to grant interim release of the property allegedly used in commission of offence has been taken away. On the plain language used in sub-clause (d) of sub-section (1) of Section 39, we are unable to accept the interpretation placed and 1 2000 (1) JLJ 304 submission made on behalf of the State that every property seized merely on accusation or suspicion of commission of an offence under the Act would become property of the State. The language used in sub-clause (d) of sub-section (1) of Section 39 is "Vehiclethat has been used for committing an offence and has been seized". In order that that the seized property may be treated as property of the State, there should be a finding by the competent Court that vehicle seized has been used for committing an offence. The seized vehicle or other property merely on the charge of commission of an offence cannot be declared to be the property of the State Government under said Clause (d) of Section 39(1). The power to seize a vehicle by an Authority or officer under the Act is contained in Section 50(1)(c). The power of seizure can be exercised in respect of a property including a vehicle if it appears to the Authority that an offence under the Act has been committed. The seizure of property or vehicle is, effected on accusation or suspicion of commission of an offence Under sub-section (3-A) introduced by Amendment Act No.44 of 1991, power has expressly been conferred on the specified Forest Authorities to grant interim release of any captive animal or wild animal seized in commission of an offence on a condition of executing a bond by the person concerned that the said animal shall be produced before the Magistrate having jurisdiction to try the offence. Such a power in respect of certain properties including vehicles existed in sub- section (2) of Section 50 prior to its deletion under Amendment Act No.44 of 1991. The omission of sub- section (2) of Section 50 by amendment has necessary consequence of taking away power of the prescribed Authorities under the

Act to grant interim release of seized property including vehicle to the person claiming ownership to the same. The omission of sub-section (2) of Section 50 cannot, however, be construed to hold that the power to grant interim release already available to an established criminal Court, meaning the Magistrate under Section 452 of the Code of Criminal Procedure, has also been taken away. No such intention can be gathered from any of the provisions of the Act quoted above. We on the contrary, find a clear indication in them that the power of the Magistrate as a Criminal Court empowered to deal and try the offence under the Act is not in any manner affected. Sub-section (4) of Section 50 requires that any person detained or things seized under sub-section (1) of Section 50 shall forthwith be taken before a Magistrate to be dealt with according to law. It is not disputed on behalf of the State that by virtue of the provisions contained in sub-section (2) of Section 4 of the Criminal Procedure Code any offence under the Act can be investigated, enquired into and tried under the Code. The Magistrate, therefore, as a Criminal Court under the Code is empowered to try the offences and impose penalties and punishments provided by the Act or proving of commission of the offence under the Act. (17) If the interpretation, as has been sought to be put on behalf of the State on Clause (d) of sub-section (1) of Section 39, is accepted, every property mentioned therein including a vehicle seized merely on accusation or suspicion would become property of the State and that would be the result even though in the trial ultimately the Magistrate finds that no offence has been committed and acquits the accused. In our considered opinion the property seized under Section 50 of the Act from an alleged offender cannot become property of the State under Clause (d) of Section 39(1) unless there is a trial and a finding reached by the competent Court that the Property was used for committing an offence under the Act. If the seizure of a property was enough to declare it as the property of the Government, there was no necessity to provide under sub-section (2) of Section 51 that on proof of commission of the offence, the properties including vehicle, vessel, or weapon used in the commission of the offence would be forfeited to the State Government, we do not find any dichotomy or conflict in the provisions under Section 39(1)(d) and Section 51 (2) of the Act. Properties including vessel can be seized on accusation of commission of an offence under the Act and if the offender is available and is arrested, on proof of his guilt, the property seized from him and used in commission of the offence is

liable to forfeiture to the State under Section 51(2) of the Act. Similarly every property seized and is held to have been used for committing an offence by competent Court, whether the offender is available or not for punishment, would be declared to be the property by virtue of the provisions contained under Section 39(1) (d) of the Act. We find that Section 39 contained in Chapter-V is sort of a residuary provision to make all properties seized and found to be used in commission of an offence as properties of the State Government irrespective of the fact whether they are liable to forfeiture at the conclusion of the trial under sub- section (2) of Section 51 of the Act. A situation can be envisaged where the offence is proved to have been committed but the owner of the property or the offender himself is not available for prosecution. In that situation by virtue of Clause (d) of Section 39 of the Act the property would become the property of the State without any requirement of passing an order of forfeiture in a trial by the Criminal Court in accordance with sub-section (2) of Section 51 of the Act."

Their Lordships finally concluded:-

"We also hold that mere seizure of any property including vehicle on the charge of commission of an offence would not take the property to be State Government under Section 39(1)(d) of the State"

10. From persual of the judgment of Full Bench of the High Court of Madhya Pradesh, it is quite vivid that mere seizure of any property including vehicle on the charge of commission of an offence would not make property to be of the State Government under Section 39(1)(d) of the Act of 1972, unless there is finding returned by the criminal court that said vehicle seized has been used for committing offence.
11. From the perusal of the aforesaid provision laid down by High Court of Madhya Pradesh, it is clear that if we examine the present facts of the case it would be clear that proceedings for confiscation of the vehicle has not been initiated so far and even trial has not been completed, therefore, it cannot be held that no finding can be recorded that vehicle is being used for commission of offence under the Wild Life Protection Act, 1972 as trial is

pending. Therefore, the order of the learned Judicial Magistrate First Class rejecting the application for supurdnama by recording of finding that vehicle is used in commission of offence without conclusion of trial is prima facie, illegal and the same has also been affirmed without assigning any reason, therefore, the orders passed by Judicial Magistrate First Class as well as Revisional Court are illegal and unjustified.

12. Accordingly, the orders passed by both the Courts below are set aside and the present CRMP is allowed. It is directed that the said vehicle be given to the petitioner on supurdnama by way of interim measure till disposal of the trial with the following conditions:-

- (i) He shall execute the Supurdnama to the tune of Rs.50,000/-(Fifty thousand).
- (ii) He shall not alienate or transfer the said vehicle (Motorcycle bearing Registration No. C.G. 04 KR 5108) to anybody till the disposal of the trial.
- (iii) He shall produce the vehicle as and when directed by the Court during the course of the trial.
- (iv) He shall produce a solvent surety to the tune of Rs.50,000/- ensuring compliance of the conditions of the Supurdnama executed by the petitioner.

Sd/-
(Narendra Kumar Vyas)
Judge

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