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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.34 of 2022

(In the matter of an Application under Section 401 of Cr.P.C.)

Basudev Singh

....

Petitioner

-versus-

State of Odisha

....

Opposite Party

Appeared in this case:-

For Petitioner : Mr. B.K. Swain,

For Opposite Party : Mr. K.K. Nayak,
Additional Standing Counsel
for State

**CORAM:
JUSTICE A.K. MOHAPATRA**

J U D G M E N T

Date of Hearing: 23.02.2022 Date of Judgement:31.03.2022

A.K. Mohapatra, J.

1. The present criminal revision petition has been filed by the Petitioner under Section 401 Cr.P.C. challenging the order dated 28.12.2021 passed by the learned Sessions Judge-cum-Special Judge, Phulbani, in CrI. Misc. Case No.27 of 2021, which arises out of C.T. Case No.11 of 2020, corresponding to Phiringia P.S. Case No.13 of 2020, thereby rejecting the petition under Section 457 of

Cr.P.C. filed by the Petitioner to release the vehicle bearing RegistrationNo.OD-24-7214 (Swift Dezire Car).

2. The factual background of the case, in a nutshell, is that on 27.01.2020 at about 6.00 A.M., the IIC, Phiringia P.S., namely, P.S.S. Rao received credible information from his sources that two persons are in possession of Ganja, i.e. flowering and fruiting tops of cannabis plant were transporting the same in a Swift Dezire Car bearing Registration No.OD-24-7214 and they are likely to pass through Majhipada road. Upon getting such information, the IIC, Phiringia P.S. formed a team and proceeded to the spot, i.e. village Majhipada to verify the veracity of the information received. After reaching the spot, they waited for the suspicious vehicle by concealing their presence. At about 8.40 A.M., they intercepted the Swift Dezire Car bearing No.OD-24-7214 along with two persons including the driver. On being asked, they disclosed their names as (1) Basudev Singh (present Petitioner), S/o.Manmohan Singh of village Purna, PS-Raghunathpur, Dist.-Jagatsinghpur and (2) Babuna Swain, S/o.Sadhu Charan Swain of village-Jagatpur Road, Dasapalla, PS-Dasapalla, Dist.-Nayagarh. After completion of formalities of search, the vehicle was searched and a jerry bag

containing 30 kgs. 200 grams of Ganja was recovered from the dickey of the Car. Thereafter, the contraband Ganja and the vehicle was seized. Both the above named persons were arrested and were forwarded to the court on the allegation of commission of offences under Section 20(b)(ii)(C)/25/27 of the NDPS Act, 1985. Seizure list was prepared on 27.01.2020. After completion of the investigation, charge-sheet has been submitted under the aforesaid sections.

3. While the matter stood thus, the Petitioner filed a petition under Section 457 Cr.P.C. bearing Crl. Misc. Case No.16 of 2021 before the trial court for release of his vehicle (Swift Dezire Car) bearing No.OD-24-7214 on the ground that there is no dispute with regard to the ownership of the vehicle. After hearing the parties, learned Special-cum-Sessions Judge, Phulbani by order dated 15.09.2021 rejected the application of the Petitioner without assigning any reason whatsoever.

4. The said order dated 15.09.2021 was earlier challenged before this Court Crl. Rev. No.421 of 2021. This Court after hearing the parties and with an observation that the matter of

release of vehicle was not considered in its proper perspective and no reason has been assigned while rejecting such application of the Petitioner under Section 457 Cr.P.C., this Court was pleased to set aside the order dated 15.09.2021 and directed the court below to consider the application of the Petitioner afresh by giving opportunity of hearing to the parties and to dispose of the application within a period of 30 days from 02.12.2021, i.e. the date of passing of the order in CRLREV No.421 of 2021.

5. After the matter was remitted back to the court of learned Special Judge, Phulbani, the application of the Petitioner was again re-registered as Criminal Misc. Case No.27 of 2021 (36/2021) and the same was taken up for hearing. After hearing both the sides, learned Special Judge, Phulbani by order dated 28.12.2021 has again rejected the application of the Petitioner filed under Section 457 Cr.P.C. to release the aforesaid vehicle.

6. While rejecting the aforesaid application of the Petitioner, learned Special Judge, Phulbani raised the following objections:

- (i) The investigation of the case is over and charge-sheet has been filed. As such, prima facie evidence is available against the Petitioner for commission offences under the NDPS Act.

(ii) The vehicle seized from the possession of the accused person is liable to be confiscated at the end of trial, if the accused are found guilty;

(iii) In the event the vehicle is released in favour of the accused Petitioner, he is likely to use the same for the same purpose and he may misuse the same for committing crime.

7. Finally, on considering the submissions made by learned counsels for the parties it is found that the vehicle is involved in the offences under Section 20(b)(ii)(C)/25/29 of NDPS Act and that the vehicle was found transporting contraband Ganja without any authority. Accordingly, the court hold that the seized vehicle is liable for confiscation and that, if the vehicle is released to the Petitioner, he is likely to use the same for commission of similar type of offences. Accordingly, the application under Section 457 Cr.P.C. had been rejected by the Special Judge, Phulbani.

8. Challenging the aforesaid rejection order, the present revision application was filed by the Petitioner on the ground that the order passed by the learned court below is erroneous and illegal and that the Petitioner who is admittedly the owner of the vehicle has been falsely implicated in the case and that the Petitioner has been released on bail by this Court and the confiscation proceeding, if any, under Section 60 of the NDPS Act can only be done after

conclusion of the trial and in the event the accused is found guilty of commission of the aforesaid offences. But during trial, there is no bar for interim release of the vehicle under the provision of the Code of Criminal Procedure.

9. It is submitted by learned counsel for the Petitioner that relying upon the ratio laid down by this Court in the case of **Kishore Kumar Choudhury vs. State of Orissa**, reported in **2017 (66) OCR** as well as the judgment of the Hon'ble Supreme Court of India in the case of **Sunderbhai Ambalal Desai vs. State of Gujarat**, reported in **(2002) 10 SCC 283**, it was observed that the vehicle should not be kept in court premises or police premises for an indefinite period till conclusion of trial by keeping it exposed to sky, sun and rain and the condition of the vehicle to be deteriorated by remaining idle in the police stations. He has further submitted that in the event the vehicle is not maintained properly and keep stationary at one place, the same would turn into a piece of junk, as a result of which, the value of the vehicle would deteriorate drastically and eventually the same would be sold at a scrap value.

10. Learned counsel for the Petitioner further submits that although the Petitioner is an accused in the above noted case, being the owner of the offending vehicle, he had no knowledge about the contraband articles, which were kept in his vehicle at the instance of the other occupant of the vehicle, i.e. the co-accused person, namely, Babuna Swain. It has also been submitted by learned counsel for the Petitioner that Petitioner had gone on the request of the co-accused Babuna Swain, as the said person had taken the vehicle on rent and therefore Section 60 of NDPS is not attracted to the facts of the present case.

11. It is further submitted by learned counsel for the Petitioner that no doubt, the vehicle can be confiscated under Section 60 of the NDPS Act by the Special Court constituted under Section 36 of the said Act, the provision contained under Sections 451 and 452(1) of the Cr.P.C. are required to be followed while considering he application for release of the vehicle. Further, it was submitted that since none of the provisions of NDPS Act are inconsistent with the provision of the Cr.P.C., the right to interim custody under Section 457 of the Cr.P.C. cannot be denied.

12. Learned counsel for the State on the other hand supports the impugned order rejecting the application under Section 457 Cr.P.C. by the Special Court, Phulbani. It is further submitted by learned State Counsel that the Petitioner was arrested and the vehicle was seized from the spot. Therefore, a prima facie case is well made out against the present Petitioner. Moreover, the investigation of the case has been concluded and charge-sheet has been filed. He further expresses his apprehension that in the event the vehicle will be released, the same may not be available for the Confiscation Proceeding at the conclusion of the trial and in the event the Petitioner is found guilty of the alleged offences and that the possibility of petitioner's transferring the vehicle during pendency of the trial by creating a third party interest over the vehicle cannot be ruled out. In such view of the matter, learned counsel for the State vehemently opposes the interim release of the vehicle in favour of the Petitioner.

13. Heard learned counsel for the Petitioner as well as learned Additional Standing Counsel for the State. Perused the records and the relevant documents.

14. It is undisputable fact that the vehicle was intercepted on the basis of the information received from reliable sources by the IIC of the concerned police station and the contraband Ganja was seized from the dicky of the vehicle. Further, the Petitioner and other co-accused persons were arrested from the spot. Thereafter, the contraband articles as well as the vehicle were seized by the police. Since the date of seizure, i.e. 27.01.2020, the vehicle is lying in the premises of Phiringia police station in a stationary condition exposed to sun and rain.

15. The issue of vehicles accumulating in different police stations had drawn the attention of the Hon'ble Supreme Court for the first time in the case of **Basavva Kom Dyamangouda Patil vs. State of Mysore**, reported in (1977) 4 SCC 358, In paragraph-4 of the said judgment, Hon'ble Supreme Court observed as under:

“4. The object and scheme of the various provisions of the Code (Cr.P.C.) appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner

after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice....The object of the Code (CrPC) seems to be that any property which is in the control of the Court either directly or indirectly, should be disposed off by the court and a just and proper order should be passed by the Court regarding its disposal. In this broad sense, therefore, the court exercises an overall control on the actions of police officers in every case where it has taken cognizance.”

16. In Ram Parkash Sharma v. State of Haryana, reported in **(1978) 2 SCC 491**, in paragraph 3 of the judgment, the Hon’ble Supreme Court of India has observed as follows;

“3. Section 457 covers the facts of the present case. The police have recovered a considerable sum of money from the appellant and the money is stated to be seized in connection with an offence registered against an accused person, namely, Bansilal. Whether the appellant himself will be a witness or an accused is not possible to state at the present moment according to the counsel for the State. Be that as it may, the situation is squarely covered by Section 457 CrPC. However, the fact that the court has power to dispose of property seized by the police but not yet produced before the Court does not mean that the Special Judge

must always release such property to the person from whom the property has been recovered, especially when the stage of the case is in suspicion, the investigation is not over and charge-sheet has not yet been laid. The court has to be circumspect in such a situation before releasing the property. While we reverse the decision of the courts below that the Special Judge had no power to release the seized property, we should not be taken to mean that whenever the claimant asks for the property back, he should be given back the said property. That has to be decided on its own merits in each case and the discretion of the court has to be exercised after due consideration of the interests of justice including the prospective necessity of the production of these seized articles at the time of the trial. If the release of the property seized will, in any manner, affect or prejudice the course of justice at the time of the trial, it will be a wise discretion to reject the claim for return.”

17. In **Sunderbhai Ambalal Desai vs. State of Gujarat**, reported in **(2020) 10 SCC 283**, the Hon'ble Supreme Court of India has observed as under:

“7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;
2. court or the police would not be required to keep the article in safe custody;
3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its

production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

Vehicles

15. Learned Senior Counsel Mr Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, a number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to their owners or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicles if required by the court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over the vehicle to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the persons concerned.

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.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such

vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

14. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only do they occupy substantial space in 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. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police station, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the division/Commissioner of Police concerned of the

cities/Superintendent of Police concerned of the district concerned.”

18. In General Insurance Council and others vs. State of Andhra Pradesh, reported in **(2010) 6 SCC 768**, in paragraph 14 of the said judgment, Hon’ble Supreme Court has observed as under:

“13. In our considered opinion, the aforesaid information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the insurer. We also feel, it is necessary that in addition to the directions issued by this Court in *Sunderbhai Ambalal Desai* [(2002) 10 SCC 283 : 2003 SCC (Cri) 1943] considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given:

(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the jurisdictional court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.

(B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.

(C) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally

adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer.”

14. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only do they occupy substantial space in 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. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the division/Commissioner of Police concerned of the cities/Superintendent of Police concerned of the district concerned.”

19. In K.W. Ganapathy v. State of Karnataka reported in 2002

SCC On Line Karnataka, the Karnataka High Court was called

upon to decide the issue of interim custody of the seized property. The Karnataka High Court divided the properties seized into two distinct categories 1. Properties having evidentiary value required to be protected for a fair trial, and 2. Property only having property value required to be secured for final order under section 452 Cr.P.C. . The relevant portions of the judgment of the Karnataka High Court has been extracted here in below;

“4. After hearing the counsel for the State and the petitioner, I find that the grievance made out by the petitioner is genuine. Of course, in the usual course of routine conditional orders are passed while delivering the property to the interim custody. When the property has any evidentiary value, it is to be kept intact and to ensure its production during the course of evidence for the purpose of marking as a material object the condition of non-alienation is imposed. However, when the property has no evidentiary value and only the value of the property is to be properly secured for passing of final order under Section 452 Cr.P.C., the necessity of keeping such properties intact by imposing onerous conditions, prohibiting its alienation or transfer would not be necessary in law.

5. The production of property which has evidentiary value during evidence is a part of a fair trial. With the advanced technology, it is not necessary that the original of the property inevitably has to be preserved for the purpose of evidence in the changed context of times. The reception of secondary evidence is permitted in law. The techniques of photography and photo copying are far advanced and fully developed. Movable property

of any nature can be a subject matter of photography and taking necessary photographs of all the features of the property clearly is not a impossible task in photography and photo copying. Besides, the mahazar could be drawn clearly describing the features and dimensions of the movable properties which are subject matters of criminal trial. Many a time, we find as a routine course, the Courts impose condition of non-alienation and to keep the property intact without alteration in any manner. Many a time such conditions act harshly upon rightful owners of the property from exercising their lawful ownership rights.

6. Irrespective of the fact whether the properties have evidentiary value or not it is not necessary that the original of the property has to be kept intact without alienation. As suggested above, the photography or photostat copy of the property can be taken and made a part of the record duly certified by the Magistrate at the time when the interim custody of the property is handed over to the claimant. In the event of the original of the property not produced in the evidence, photograph could be used as secondary evidence during the course of evidence. Ultimately, while passing final orders, it is only the value of the property that becomes a prime concern for the Court. If a person to whom the interim custody is granted, is not entitled to the property or its value and if some other person is held to be entitled to have the property or its value by taking necessary bonds and security from the person to whom interim custody is granted, the value could be recovered and made payable to the person entitled to. The rightful owners, who have lost the property by an act of crime even after detection and recovery are continued to be prevented from beneficial possession and enjoyment of the same

by the archaic conditions imposed as a regular routine despite the changed context of scientific developments.

9. In the instant case, the vehicle in question is a car and it has no evidentiary value, it is only required for the purpose of passing final orders under Section 452 Cr. P.C. Therefore, to ensure the recovery of its value, it is suffice only necessary bonds and security is to be taken from the petitioner to recover the value from him in the event of final orders going adverse to him.”

20. This Court in a PIL filed by a practicing Advocate with a prayer as to how to deal with the ever growing seized vehicles and other properties in various police stations in the State of Odisha, i.e. in the matter of **Ashis Ranjan Mohanty (Adv.) vs. State of Odisha and others** in (W.P.(C) No.31622 of 2021) decided on **31.01.2022**, while adjudicating the aforesaid issue, this Case has came to learn about the fact that large number of seized vehicles are dumped in police stations are causing encroachment on the public road adjoining the police stations and further due to lack of proper maintenance and due to expose to the sun, rain, the said vehicles were turning to junk, as such, are losing its value. A Division Bench of this Court after a thorough discussion on the issue and considering all aspects of the matter have set up a guideline for release of such vehicles, which reads as follows:

“Vehicles

16. As regards the vehicles, the following directions are issued:

(I) Vehicles involved in an offence may be released either to the rightful owner or any person authorised by the rightful owner after

- (a) preparing a detailed panchnama;
- (b) taking digital photographs and a video clip of not more than 1 minute duration of the vehicle from all angles;
- (c) encrypting both the digital photograph and the video clip with a hashtag with date and time stamp with the hash value being noted in the order passed by the concerned court;
- (d) preserving the encrypted digital photograph and video clip on a pen drive to be kept in a secure cover in the file and preferably also uploading it simultaneously on a server kept either in the concerned Court premises or in the server of the jurisdictional District Court
- (e) preparing a valuation report of the vehicle by an approved valuer;
- (f) obtaining a security bond.

(II) the concerned court will record the statements of the complainant, the accused as well as the person to whom the custody of the vehicle is handed over affirming that the above steps have taken place in their presence.

(III) Subject to compliance with (I) and (II) above, no party shall insist on the production of the vehicle at any subsequent stages of the case. The panchnama, the encrypted digital photograph and video clip along with the valuation report should suffice for the purposes of evidence.

(IV) The Courts should invariably pass orders for return of vehicles and/or accord permission for sale thereof and if in a rare instance such request is refused, then reasons thereof to be recorded in writing should be the general norm rather than the exception.

(V) In the event of the vehicle in question being insured, the concerned Court shall issue notice to the owner and the insurance company prior to disposal of the vehicle. If there is no response or the owner declines to take the vehicle or informs that he has claimed insurance/released his right in the vehicle to the insurance company and the insurance company fails to take possession of the vehicle, the vehicle may be ordered to be sold in public auction.

(VI) If a vehicle is not claimed by the accused, owner, or the insurance company or by a third person, it may be ordered to be sold by public auction.”

21. Further while laying down the guidelines to deal with the seized vehicles, the Division Bench of this Court has also taken note of the judgment rendered by a Single Bench in the case of **Ghasana Mohapatra vs. State of Odisha**, reported in (2019) 1 OLR 275 and **Ramakrushna Mahasura vs. State of Odisha**, reported in (2021) 81 OCR 635. After taking note of the above two judgments, the Division Bench of this Court has categorically stated that so far as release of vehicle is concerned, the directions as has been issued by this Court in **Ashis Ranjan Mohanty (supra)** would prevail.

22. Further, in **Ashis Ranjan Mohanty (supra)**, the Division Bench of this Court under the heading ‘General Directions’ under Paragraph-17 (v) has also provided a safeguard, which is quoted hereinabove:

“17(v) If a person to whom the interim custody of the property/vehicle is granted is ultimately found not entitled to it, and is unable to return it, its value shall be recovered by enforcing the bonds and the security taken from such person or recovering the monetary value from him as arrears of land revenue.”

23. In view of the judgment delivered by the Division Bench of this Court in **Ashis Ranjan Mohanty (supra)**, the law with regard to release of seized vehicle has been crystallized and the direction issued by the Division bench of this Court have to be followed by the trial courts in the entire State of Odisha while considering the application for interim release of the seized vehicles.

24. So far as the confiscation of the vehicle in question is concerned, Section 60 (3) of the NDPS Act deals with the liability of illicit drugs, substances, plants, articles and conveyances to confiscation, which reads as under:

“Section 60 (3)~ Any animal or conveyance used in carrying any narcotic drug or psychotropic substance or controlled substance, or any article liable to confiscation

under sub-section (1) or sub-section(2) shall be liable to confiscations, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.”

25. With regard to the procedure to be followed while confiscating any seized articles/vehicles, the provision as enshrined under Section 63 of the NDPS Act is applicable. Section 63 of the NDPS Act reads as under:

“Section 63 ~ Procedure in making confiscations– *In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the Court shall decide whether any article or thing seized under this Act is liable to confiscation under Section 60 or section 61 or section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.”*

26. In view of the aforesaid provisions, a vehicle seized under the NDPS Act for the alleged commission of crime of carrying contraband articles can only be confiscated after the accused is convicted in the trial. In other words, the confiscation proceeding could only be initiated only after conclusion of the trial. Therefore,

the vehicle which has been seized in connection with the offences shall remain dumped /stationary at the police station for months/ years together. Moreover, the provision contained in section 60(3) of the NDPS Act doesn't stand on the way for interim release of vehicles involved in the offence punishable under the NDPS Act. Such view of this Court is supported by a judgment of this Court in the matter of **Balabhadra Nayak vs. State of Orissa**, reported in **2013 (I) OLR 820**. Paragraph 6 of the aforesaid judgment reads as follows;

“6. Section 60(3) of the NDPS Act is no bar for interim release of the vehicle as the said provision is only substantive in nature and speaks of the liability of the vehicle to be confiscated where the owner fails to prove that it was used without his knowledge or connivance or the knowledge and connivance of his agent in charge of the vehicle.”

27. The next question that crops up for consideration in the context of the present dispute is the applicability of the provisions of the Criminal Procedure Code, 1973 to the trials under NDPS Act. In this context the provisions of section 51 of the NDPS Act is noteworthy;

“**Section 51** – Provisions of the Code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and seizures- The provisions of the Code of Criminal Procedure, 1973, shall apply, in so far as they are not inconsistent with

the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act.”

Provisions contained in Section 51 of the NDPS Act has been interpreted by this Court in **Subash Chandra Panda vs. State of Orissa**, reported in **2009 (II) OLR 946**. The observation of this court in paragraph 5 of the judgment has been extracted here in below;

“.....A cursory reading of the aforesaid provision in Section 51 of the Act makes it clear that the provisions of the Cr.P.C. will not apply if they are inconsistent with the provision of the Act in respect of warrants issued, arrests, searches and seizures made under the Act. There is provision in Section 55 of the Act interdicting an Officer-in-charge of a Police Station to take charge of and keep in Safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of the Police Station and which may be delivered to him. There is no express provision in the act for release of the property like vehicle or conveyance in interim custody of a rightful owner. Provision contained in Section 51 of the Act does not expressly bar operation of the provision of the Cr.P.C. if they are not inconsistent with the provision of the Act. Taking into consideration the stage of the confiscation proceeding in the scheme of the trial as provided under Section 60(3) of the Act, safe custody of the articles seized and delivered to a police officer under Section 55 of the Act pending order of the Magistrate, absence of any specific provision in the Act for release of valuable articles like vehicle etc. in the interim custody of the registered owner and

especially in view of the mandate for confiscation of a vehicle or conveyance after the trial is concluded and further fact that the commercial price of such an article is to be protected in the interest of justice, I have no hesitation to hold that operation of Sections 451 and 457 Cr.P.C. is not specifically excluded by Section 51 of the Act. In my view I am supported by the decisions rendered in the case of B.S. Rawant v. Shaikh Abdul Karim : 1989 Cri LJ 1998 Madanlal v. State NCT of Delhi : 2002 Criminal Law Journal 2605; and Sujeet Kumar Biswas v. State of U.P. : 2001 Criminal Law Journal 4431.”

28. By the time the trial is concluded, the seized vehicle would be reduced to a piece of junk thereby losing its value drastically and ultimately the same would be sold at a scrap value. Therefore keeping the seized vehicle stranded/ dumped/stationary at the police stations would not enure to any one's benefits either for the State or the actual owner of the vehicle. The commercial value of the vehicle in question would go down considering the deteriorated condition of the vehicle. Moreover, the Govt. has to spent additional amount on security and safe keep of the vehicles seized which is an additional burden on the Govt. Keeping the said fact in mind, the legislatures have incorporated Sections 451 and 452 in criminal procedure code. Section 451 of the Cr.P.C. confers power upon the trial court to pass necessary order for custody and disposal of the property pending trial. A close scrutiny of

the provision contained under Section 451 Cr.P.C. would reveal that the trial court is vested with wide power to deal with the seized property as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

29. Similarly the provision contained under Section 457 Cr.P.C. lays down the procedure to be followed by the police upon seizure of the property. Since the impugned order has been passed while dealing with in an application u/s.457 Cr.P.C. it would be apt to quote the provision of Section 457 hereunder:

“457. Procedure by police upon seizure of property-

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) *If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.”*

30. A bare reading of Section 457 Cr.P.C. gives a clear impression that in a criminal enquiry or trial, the Magistrate has been vested with wide powers to pass such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

31. Sub-Section 2 of Section 457 provides the Magistrate may order the property to be delivered to a person lawfully entitled to on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim

thereto, to appear before him and establish his claim within six months from the date of such proclamation. Therefore, there is no bar in law for interim release of vehicle in favour of a known owner of the vehicle.

32. Despite such wide power having been conferred on the Courts/ judicial magistrates, it is observed that the Courts are passing orders in a routine manner rejecting the application for release of the vehicle in a mechanical manner. As a result of which vehicles are piling up in police stations and at times blocking the public roads which are being used as parking place in the absence of adequate space in the police station. Such scenes are very common in every police station of the State. Time has come to deal with the problem head on and every endeavour must be made to ensure that the load of iron junks under which almost all police stations are buried be relieved of that burden in a manner which will be most beneficial to all stakeholders and in a manner as provided under the law. The Courts and magistrates have to act in a proactive manner. Further, instead of passing orders in a mechanical manner rejecting applications for release of such vehicles, possibilities must be explored for at least interim release of the seized vehicle in

accordance with the guidelines issued by this court in **Asish Ranjan Mohanty's case (supra)**.

33. Whether we admit it or not, it is a well known fact that the criminal trial is not likely to be concluded shortly because of the procedural requirements and many witnesses are to be examined in the trial. Therefore, it would not be proper and it may not be in the interest of justice to keep the vehicles stranded/ dumped/stationary at a police station thereby allowing the property/vehicle to lose its value drastically due to exposure to extreme weather condition and lack of timely maintenance. Further even after the conclusion of the trial, if it is found that the accused is guilty and is convicted and the vehicle seized is to be confiscated, in such eventuality, State is not likely to gain much as by then the vehicle would have turned into a piece of scrap.

34. Considering all the aforesaid aspects and taking a holistic view of the matter, this Court is of the considered view that no fruitful purpose would be achieved by simply keeping the seized vehicles at the police stations without proper maintenance and by keeping the vehicles exposed to open sky, sun and rain under

extreme weather conditions and keep on spending a huge sum of money for the safety and security of the seized vehicle. On the contrary, if the vehicle is given on interim release in favour of the person with the terms and conditions and following the guidelines laid down by this Court in the case of **Ashis Ranjan Mohanty (supra)**, the deteriorating condition of the vehicles and the loss commercial value of the vehicle could be prevented to a large extent. Further the court below can always impose conditions to ensure that the vehicle is not misused/alienated and the same is produce before the court below as and when it is required by the court. In addition to the conditions laid down by this Court in **Ashis Ranjan Mohanty (supra)**, the trial court can always intimate the fact of interim release of the vehicle in favour of the owner to the concerned RTO/RTA, who shall record the same in the registrar so that any attempt to alienate the same or create any third party interest in any manner would be prevented.

35. In view of the aforesaid discussion, this Court deems it proper to allow the criminal revision petition by setting aside the order 28.12.2021, passed by the learned Sessions Judge-cum-Special Judge, Phulbani in Crl. Misc. Case No.27 of 2021, arising

out of C.T. Case No.11 of 2020, corresponding to Phiringia P.S. Case No.13 of 2020 and the vehicle bearing Registration No.OD-24-7214 (Swift Dezire Car) is directed to be released interimly in favour of the recorded owner subject to the terms and conditions as laid down by the Division Bench of this Court in the case of **Ashis Ranjan Mohanty (supra)** paragraph 16 (I) (a) to (f) which has been quoted here in below;

(I) Vehicles involved in an offence may be released either to the rightful owner or any person authorised by the rightful owner after

(a) preparing a detailed panchnama;

(b) taking digital photographs and a video clip of not more than 1 minute duration of the vehicle from all angles;

(c) encrypting both the digital photograph and the video clip with a hashtag with date and time stamp with the hash value being noted in the order passed by the concerned court;

(d) preserving the encrypted digital photograph and video clip on a pen drive to be kept in a secure cover in the file and preferably also uploading it simultaneously on a server kept either in the concerned Court premises or in the server of the jurisdictional District Court

(e) preparing a valuation report of the vehicle by an approved valuer;

(f) obtaining a security bond.

The interim release of the vehicle shall also be subject to further condition as follows;

- (i) The petitioner shall not transfer or dispose of or create any third party interest in any manner whatsoever in respect of the offending vehicle to anyone else and shall not make any change in its body, colour or engine;
- (ii) It is needless to say that make, colour, chassis number and engine number of the offending motorcycle shall be furnished by the petitioner before the Trial Court with an undertaking that no damage shall be caused or no part of the vehicle be substituted and subject to reasonable wear and tear the vehicle shall be kept in a good condition;
- (iii) He/ She shall keep the vehicle insured at all times and produce the Insurance Certificate before the Trial Court as and when called upon;
- (iv) The Petitioner or his agent authorized person shall produce the vehicle before the concerned court as and when the same would be required in a confiscation proceeding by the court;
- (v) An intimation shall be given to the RTO/RTA under whose jurisdiction the vehicle has been registered not to allow transfer of ownership/creation of any charge hypothecation etc/grant NOC etc. in respect of the seized vehicle without the permission of the court in seisin over the matter;
- (vi) The petitioner shall also file an undertaking before the Trial Court that the offending motorcycle shall

not be used for commission of any offence of similar nature.

36. Since necessary infrastructural facilities have not been made available to the Courts in the State of Odisha as of now, the compliance of conditions under (I) (a) to (f) shall be followed as far as possible and practicable, however, condition under clause (i) to (vi) are required to be followed mandatorily in every case involving interim release of the vehicle seized. The Revision Petition is accordingly allowed. There shall be no order as to cost.

(A.K. Mohapatra)
Judge

U.K. Sahoo, PA-cum-Secy.