

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLREV No.64 of 2022**

***Pratap Nayak***

.... ***Petitioner***  
*Mr. R.C. Barik, Advocate*

***-versus-***

***State of Odisha***

.... ***Opposite Party***  
*Mr. M.K. Mohanty, A.S.C.*

**CORAM:**

**JUSTICE A.K. MOHAPATRA**

**ORDER**

**30.06.2022**

**Order No.**

01.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard learned counsel for the petitioner as well as learned counsel for the State. Perused the records.
3. The petitioner assails the order dated 04.10.2022 passed by the learned Special Judge, Phulbani in Criminal Misc. Case No.17 of 2021 in connection with C.T. Case No.73 of 2019 framing charge against the accused person under Sections 20(b)(ii)(C)/25/29 of the N.D.P.S. Act rejecting the prayer of the petitioner under Section 457 of the Cr.P.C.
4. It is submitted by learned counsel for the petitioner that the petitioner is the owner of one Auto rickshaw bearing Registration No.OD-12-8971, which was seized by the I.I.C., Phiringia P.S. with the allegation of transporting of contraband articles. It is further submitted that final prosecution report has already been submitted

and the petitioner has not been arrayed as an accused. Learned trial court has rejected the application of the petitioner with the observation that the vehicle is liable for confiscation. It is also submitted that the question of confiscation would arise only after conclusion of trial and in a number of similar situation, the release of the vehicle has been allowed in favour of the registered owner, even though the owner is an accused.

5. The vehicle was seized on 02.12.2019 and final prosecution report was submitted. It is also submitted that the vehicle would be lying exposed to sun and rain and would be likely to be damaged. Copy of the final prosecution report is placed before the Court to show that the petitioner is not an accused in the case.

6. It is further submitted by learned counsel for the petitioner that similar case has been decided by this Court in the case of **Basudev Singh vrs. State of Odisha** decided on 31.03.2022 in **CRLREV No.34 of 2022** and in the case of **Ashish Ranjan Mohanty(Adv.) vrs. State of Odisha and others** : reported in 2022 (I) OLR 555 wherein this Court directed interim release of the vehicle in favour of the person from whom seized. After taking note of several judgments, this Court had directed for release of the vehicle subject to certain terms and conditions.

7. On the other hand, learned counsel appearing for the State submits that as the alleged Auto rickshaw bearing Registration No.OD-12-8971 was used during commission of the crime and the trial of the case has not yet been commenced as such prayed to reject the revision filed by the petitioner.

8. Considering the submissions and the circumstances of the

case, the impugned order is set aside and it is directed that the petitioner on filing a fresh application before the learned Special Judge, Phulbani in the aforesaid case, learned Special Judge, Phulbani shall consider the said application in the light of law laid down by this Court in ***Basudev Singh's case*** (supra) and ***Ashish Ranjan Mohanty (Adv.)*** (supra) shall interim release the Auto rickshaw bearing Registration No.OD-12-8971, in favour of the owner on such terms and conditions as has been indicated in the ***Basudev Singh's case*** (supra). It is also directed that an undertaking shall be obtained while releasing the vehicle in question to the effect that he will produce the vehicle before trial court as and when required for the purpose of trial.

9. With the aforesaid observation/direction, the CRLREV is disposed of.

Urgent certified copy of this order be granted on proper application.

( ***A.K. Mohapatra*** )  
***Judge***