

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.669 of 2022

Harihar Sahoo

....

Petitioner

Mr. Purna Chandra Moharana, Advocate

-versus-

State of Orissa

....

Opposite Party

Mr. S.N. Mishra, Additional Government Advocate

CORAM:

JUSTICE B. P. ROUTRAY

ORDER
28.03.2022

Order No.

I.A. No.531 of 2022

01. 1. Having heard learned counsel for the Petitioner filing of certified copy of Annexure-1 is dispensed with.

2. The I.A. is disposed of. *संक्षिप्त न्याये*

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02. 3. Heard Mr. P.C. Moharana, learned counsel for the Petitioner as well as Mr. S.N. Mishra, learned Additional Government Advocate for the State-Opposite Party.

4. In the present petition, order dated 5th March, 2021 of the learned Sessions Judge, Jajpur in Criminal Revision No.7 of 2021 has been assailed.

5. Brief facts of the case is that, Hero HF Deluxe motorcycle bearing registration number OD-34-D-2786 was seized in connection with 2(a)CC Case No.73 of 2020 being involved in transportation of alleged I.D. liquor. The Petitioner, who is the owner of the said motorcycle, is not an accused in the said case. His prayer to release the motorcycle under Sec.457, Cr.P.C. was rejected by the learned trial court as well as by the revisional court. Learned Sessions Judge by the impugned order dated 5th March, 2021 rejected the prayer of the Petitioner on the ground that the confiscation proceeding in respect of the seized property has been initiated under Section 71 of the Odisha Excise Act. It is further observed by the learned Sessions Judge that in view of the provisions contained in Section 72 of the Odisha Excise Act, the power of the trial court under Section 457, Cr.P.C. is restricted.

6. This Court in the case of *Kalpana Sahoo and another vs. State of Orissa, 2019 (III) ILR-CUT 160*, have held that the bar as contemplated under Section 72 of the Odisha Excise Act will come into play only when the Collector or the Authorized Officer or the Appellate Authority is seized with the matter of confiscation of any property seized under Section 71 of the Odisha Excise Act, but not merely because any seizure has been taken place.

7. Here in the instant case, admittedly the owner is not an accused in the criminal case. It reveals that that learned trial court, i.e. J.M.F.C., Chandikhole as well as learned Sessions Judge, Jajpur have refused to release the vehicle on the ground that confiscation proceeding has already been initiated by the

appropriate authority under Section 71 of the Odisha Excise Act and such initiation of proceeding before the Collector operates as a bar for interim release of the vehicle. It becomes clear in course of hearing that despite initiation of confiscation proceeding, the authority concerned has not seized over the property in question as on date. Thus in view of the principles decided by this Court in the case of ***Kalpana Sahoo and another*** (supra), there should not be any impediment in release of the vehicle in favour of its owner in terms of Section 457, Cr.P.C.

8. In view of the discussions made above, the prayer of the Petitioner is allowed and the vehicle in question, i.e., Hero HF Deluxe motorcycle bearing registration number OD-34-D-2786 be released in faovur of the Petitioner subject to following conditions:

- (i) The Petitioner shall produce the original registration certificate, insurance paper before the concerned police station which shall be verified properly and true attested copies thereof shall be retained by the investigating officer/IIC of the police station;
- (ii) The Petitioner shall furnish property security worth of Rs.30,000/- (rupees thirty thousand) for the vehicle;
- (iii) The Petitioner shall keep the vehicle insured at all times till conclusion of the trial and produce the insurance certificate before the learned trial court as and when required;
- (iv) The Petitioner shall not change the colour or any part of the engine and chasis number of the vehicle;

- (v) The Petitioner shall furnish four photographs of the vehicle taken from different angles before taking delivery of the same;
- (vi) The Petitioner shall not transfer the ownership of the vehicle in favour of any other person;
- (vii) The Petitioner shall produce the vehicle before the court as and when called upon;
- (viii) The Petitioner shall not allow the vehicle to be used in commission of any offence.

9. The CRLMC is disposed of with aforesaid directions.

10. An urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge