

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 87 of 2021

Rajendra Panda

....

Petitioner

Mr. Amulya Ratna Panda, Advocate

-versus-

State of Orissa

....

Opposite Party

Mr. S.S. Pradhan, AGA

**CORAM:
JUSTICE SAVITRI RATHO**

Order No.

**ORDER
29.04.2022**

- 06.
1. This matter was heard through hybrid mode.
 2. This application has been filed challenging the order dated 23.02.2021 passed in CrI. Misc. Case No. 03 of 2021 arising out of C.T. (NDPS) Case No. 07 of 2020 by the learned District & Sessions Judge-cum-Special Judge, Jajpur rejecting the application of the petitioner filed under Section 457 of Cr.P.C. praying for release of Yamaha R-15 Motor cycle bearing registration no. OD-34L-2908.
 3. The prosecution case, in short, is that on 19.08.2020 while the informant along with other police staff were performing M.V. checking duty, they found one motorcycle-Yamaha R-15 Motor cycle bearing registration no. OD-34L-2908 coming from Kuakhia side NG-20 in high speed. They detained the above said motorcycle and the rider and pillion rider on suspicion . On searching the motorcycle , the informant found a bag which was being carried in a suspicious manner. On search of the said jari bag , 9.800 kg. of ganja was recovered for possession of which the accused persons could not

produce any supporting documents . The motorcycle was seized alongwith the ganja in presence of the independent witnesses and the accused persons arrested. Kuakhia P.S. Case No. 271 of 2020 was registered, for commission of offences under Section 20 (b)(ii)(B) of N.D.P.S. Act.

4. The petitioner filed an application for interim release of the vehicle which was rejected by the Sessions Judge-cum- Special Judge, Jajpur on 23.02.2021 on the ground that the vehicle in question is liable for confiscation in view of the Section 60(3) of N.D.P.S. Act and there is a strong prima-facie material on record that the present petitioner knew fully well that his motorcycle was used for transportation of ganja.

5. Learned counsel for the petitioner has submitted that the petitioner is the owner of the motorcycle-Yamaha R-15 Motor cycle bearing registration no. OD-34L-2908 , but the petitioner is not an accused in the F.I.R. and is in no way connected with the alleged crime. He further submits that the vehicle can only be confiscated at the end of trial and application of Section – 457 of the CrI.P.C has not been excluded by Section – 51 of the NDPS Act for which the motorcycle should have been released in his custody during pendency of the case . He has filed a written note alongwith citations and has relied on the following decisions of the Supreme court and the High Courts in the following cases :

i) Sunderbhai Ambala Desai Vs. State of Gujarat : (2003) 24 OCR 444, (SC)

ii) Santosh Kumar Das vs State of Orissa : (1992) 5 OCR-241:

iii) Surendra Panda Vs. State of Orissa : (2009) 42 OCR-653,

iv) Subash Chandra Panda Vs. State of Orissa : (2009) 44 OCR 859.

**v) B.Hassaimar Azeez Vs.State of Kerala : CRLMC No.2138 of 2017
decided by the by the Kerala High Court**

**vi) Kishore Kumar Choudhury vs State of Orissa : (2017) 66 OCR
1124**

6. Mr. S.S. Pradhan, learned Additional Government Advocate has not disputed the submission of the learned counsel for the petitioner that the petitioner has neither been named in the FIR nor has chargesheet been submitted against him . But he objects to the interim release of the motorcycle referring to Section 60 (3) of the NDPS Act , stating that the same is liable for confiscation if it is found in the trial to have been used for commission of the offence.

7. Section 60 of the NDPS Act provides for confiscation of illicit drugs, substances, plants, materials apparatus, utensils articles and conveyances in respect of which or by means of which such offence has been committed. A detailed procedure for making confiscation under Section 60 of the NDPS Act has been provided in Section 63 of the NDPS Act. Section 51 of the NDPS Act provides that the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) 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. Section 36-C. of the NDPS Act has interalia made the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), (including the provisions as to bail

and bonds) applicable to the proceedings before a Special Court and this is of course subject to the specific exceptions contained in the Act .

8. The Supreme Court in **Sunderbhai Ambalal Desai** (supra) has laid down the parameters for considering an application for interim custody expeditiously so that the owner of the article would not suffer because of it lying unused or by its misappropriation and court or the police would not be required to keep the vehicle in safe custody. It has observed as under:-

“7. In our view, the powers under Section 451 Cr.P.C. 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 vehicle in safe custody;*
- 3. If the proper panchanama before handing over possession of 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.”*

In the case of **Subash Chandra Panda -Vrs.- State of Orissa** reported in (2009) 44 OCR 859., this Court after analyzing the relevant provision under section 60 of the N.D.P.S. Act and provisions under sections 451 and 457 of the Cr.P.C. has held as follows:-

"4. Taking into consideration the stage of confiscation of a vehicle or conveyance and protection of an innocent owner in the provision of the Act itself, as discussed supra, the obvious question that arises for consideration is as to whether an innocent owner of a vehicle or conveyance shall be made to suffer till an order for confiscation is passed or such an innocent owner is to be protected by taking resort to Section 451 or Section 457 of the Code.

5. Chapter-V of the Act provides for procedures relating to power to issue warrant and authorization, power of entry, search, seizure and arrest without warrant or authorization, power of seizure and arrest in public place and so on. Section 52 under Chapter-V of the Act provides for disposal of persons arrested and articles seized. Section 55 of the Act clearly mandates the police to take charge of articles seized and delivered. Section 51 of Act makes provisions for applicability of the provisions of the Code of Criminal Procedure in the manner provided in the Section which reads thus:- "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."

In the case of **General Insurance** (supra), the petitioner therein had approached the Court with the submission that despite the directions passed by this Court in **Sunderbhai Ambalal Desai** (supra), as also in **W.P.(C) No. 282 of 2007** titled **General Insurance Council and**

Others vs. State of Andhra Pradesh and Others, decided on 09.07.2007 reported in (2007) 12 SCC 354 , there has not been full and complete compliance of the same. Therefore, they had approached the Supreme Court for issuing further directions so that national waste with regard to the seized vehicles involved in commission of various offences may not become junk and their road worthiness be maintained , as by the time the recovered vehicles are released, the same are reduced to junk at the respective police stations. The Supreme Court directed as follows:

“..15. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of 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 road worthiness 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 concerned Division/Commissioner of Police of the

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

This Court in the case of **Balabhadra Nayak vs. State of Orissa : (2013) 54 Orissa Criminal Reports 893 : 2012 SCC OnLine Ori 312** , has observed as follows while allowing an application for release of a motorcycle of the petitioner who was not an accused.

...“8. 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.”..

This Court in **Kishore Kumar Choudhury vs. State Of Orissa: (2017) 66 OCR 1124 :-**

....“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 vs. Shaikh Abdul Karim**, 1989 Criminal Law Journal 1998; **Madanlal vs. State NCT of Delhi**, 2002 Criminal Law Journal 2605; and **Sujeet Kumar Biswas vs. State of U.P.** 2001 Criminal Law Journal 4431.”...*

A division bench of this Court in the case of **Ashis Ranjan Mohanty vs State and others** reported in (2022) 85 OCR 705 : 2022 SCC OnLine Ori 510 , a PIL filed by a practicing Advocate concerned about the ever-growing stock of seized vehicles and other properties in the various police stations in the State of Odisha, after referring to and discussing the decisions of the Supreme Court in **Manjit Singh v. State**, **Basavva Kom**

Dyamangouda Patil v. State of Mysore (1977) 4 SCC 358; Sunderbhai Ambalal Desai v. State of Gujarat (2002) 10 SCC 283, and General Insurance Council v. State of A.P. (2010) 6 SCC 768 and the Delhi High Court in Manjit Singh v. State decided on 10th September 2014 in CRLMC No.4485 of 2013), has held that “as far as release of the vehicle is concerned, the directions issued in this order would prevail,” and issued directions for expeditious and effective disposal of applications for interim release and disposal of the vehicles seized in connection with different cases and as far as vehicles are concerned , has directed 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 stage 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.

General directions

17. The following general directions shall also be adhered to:

(i) The concerned Court may impose any other appropriate conditions which it may consider necessary in the facts and circumstances of each case.

(ii) *The Court shall hear all the concerned parties including the accused, complainant, Public Prosecutor and/or any third party concerned before passing the order. The Court shall also take into consideration the objections, if any, of the accused.*

(iii) *If the Court is of the view that evidence in relation to the condition of the vehicle is necessary to be recorded even before its disposal in terms of the directions in paras 9 and 10 above, then such evidence be recorded, in the presence of the parties, forthwith and prior to disposal of the property.*

(iv) *Special features of the property in question could be noted in the Court's order itself in the presence of parties or their counsel.*

Besides, a mahazar clearly describing the features and dimensions of the movable properties which are the subject matter of trial could be drawn up.

(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....”*

In the case of **Basudev Singh vs State of Odisha** (CRLREV No.34 of 2022 decided on 31.03.2022), this Court directed for interim release of the vehicle involved in an NDPS case to the registered owner subject to complying with conditions (I) to (VI) in the case of **Ashis Ranjan** (supra) and has further held as follows:

“....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”

9. From a careful perusal of the relevant provisions of the NDPS Act and the provisions of section – 451 and 457 of the Cr.P.C. and the aforesaid decisions , it is apparent that the provisions contained in Sections 451 and 457 of the Cr.P.C. provide for interim custody in so far as they relate to passing of order for custody of conveyance or property pending conclusion of trial, are not inconsistent with any of the provisions including Sections 60 (3) and 63 of the NDPS Act nor has the application of Section – 451 and 457 Cr.P.C been excluded by any of the provisions of the NDPS Act. Question of confiscation will necessarily arise at the end of the trial. It can therefore safely be concluded that in appropriate cases, order for its release of conveyances and property pending conclusion of trial can be made under Section 451 and Section 457 of the Cr.P.C. That apart , such vehicles unnecessarily take up space in the police station premises and even encroach on the road side and are reduced to junk (as was brought to the notice of the Court in the case of **Ashis Ranjan** (supra) .

10. In view of the aforesaid discussion and discussions of the Supreme Court and this Court , I am of the considered view that the application for interim release of the vehicle during pendency of the trial deserves to be allowed . The impugned order dated 23.02.2021 passed in

Crl. Misc. Case No. 03 of 2021 arising out of C.T. (NDPS) Case No. 07 of 2020 by the learned District & Sessions Judge-cum-Special Judge, Jajpur rejecting the application of the petitioner filed under Section 457 of Cr.P.C. for interim release of Yamaha R-15 Motor cycle bearing registration no. OD-34L-2908 is therefore set aside . The Yamaha R-15 Motor cycle bearing registration no. OD-34L-2908 be released in the interim custody of the petitioner who is its registered owner during pendency of the trial subject to the conditions to be imposed by the learned Court below taking into consideration the directions contained in the decisions in **Kishore Kumar Choudhury** (supra) , **Ashis Ranjan** (Supra) and **Basudev Singh** (supra) as well as the 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/I.I.C. of the police station;
- (ii) the petitioner shall furnish property security , equivalent to the present value of the vehicle which is to be fixed by the learned Special Judge after valuation of the vehicle .
- (iii) the petitioner shall keep the vehicle insured at all times till the conclusion of the trial and produce the insurance certificate before the Trial Court as and when required;
- (iv) the petitioner shall not change the colour or any part of the engine and chassis number of the vehicle;
- (v) the petitioner shall furnish two photographs of the vehicle 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 not allow the vehicle to be used in the commission of any offence.

(viii) the interim release of the vehicle will be subject to final decision in the trial.

11. As per the direction in the case of **Asish Ranjan** (supra) , in the event the vehicle in question is insured, and the registered owner (in this case the petitioner) does not furnish property security or bank guarantee to take the interim release of the vehicle , instead of allowing the vehicle to disintegrate , the learned trial Court shall issue notice to the owner and the insurance company to take custody of the vehicle . If there is no response and there is delay in conclusion of the trial , the learned trial court may consider sale of the vehicle in public auction and keep the proceeds in fixed deposit which will abide by the final decision regarding confiscation . While doing so , necessary precautions be taken so that disposal of the vehicle will not affect the trial.

12. The CRLREV is accordingly allowed.

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

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(**Savitri Ratho**)
Judge

Sukanta