

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 822 of 2022

Niranjan Aich

....

Petitioner

Mr. Alok Kumar Das, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. T.K. Praharaj, SC

CORAM:

MR. JUSTICE R.K. PATTANAIK

ORDER

18.10.2022

Order No.

04.

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner challenging the impugned order dated 24th December, 2021 passed by the learned District & Sessions Judge, Jajpur in Criminal Revision No.11 of 2021 whereby the order of learned S.D.J.M., Jajpur in Crl. Misc. Case No.95 of 2020 has been confirmed filed under Section 457 Cr.P.C. vis-à-vis the seized items and its release in favour of the petitioner was declined.
3. The petitioner is the proprietor of Mohan Ayurvedic Pharmacy which is engaged in the manufacture of ayurvedic drugs having a valid licence obtained from the competent authority under the Director of AYUSH, Department of Health and Family Welfare, Government of Odisha. Pursuant to the allegation made, Kuakhia P.S. Case No.235 of 2020 was registered under Sections

419/420/272/284/34 IPC and Section 20 of the Cigarettes and other Tobacco Products Act, 2003, consequent upon which, large quantity of Bhang (Indian hemp) was seized from the manufacturing unit of the petitioner which corresponds to C.T. No.1217 of 2020. In that connection, the petitioner moved an application before the learned S.D.J.M., Jajpur for release of seized Bhang. The said application under Section 457 Cr.P.C. was, however, rejected. Being aggrieved by the order of the learned court below, the petitioner approached the revisional court but then it yielded no result. The learned District and Sessions Judge, Jajpur dismissed Criminal Revision No.10 of 2021 by order dated 24th December, 2021.

4. In fact, as per the learned counsel for the petitioner, the local police submitted chargesheet against the petitioner for the offence under Section 20 of the Cigarettes and other Tobacco Products Act, 2003. Learned counsel for the petitioner further submits that the seized articles are lying idle ever since the date of seizure. As submitted, the petitioner is the manufacturer and proprietor of Mohan Ayurvedic Pharmacy and though large quantity of Bhang was seized by the Excise Department, he is having the licence to keep and retain it. While claiming so, a copy of the licence which is at Annexure-2 is referred to by learned counsel for the petitioner. As it appears, the licence was issued in the year 2021 as per which the petitioner is entitled to possess 50 Kgs of Bhang. That apart, the learned counsel for the petitioner referred to Annexure-4 so also Annexure-3 in order to satisfy the Court that the Bhang was received by the manufacturing unit till the month of July, 2022 which stands at 4.33 quintals. It is contended that the seized Bhang was to the tune of 350kgs found in possession received towards manufacture of ayurvedic medicines by the year 2020-21. It is also submitted that since the chargesheet has already

been filed, the seized item which is in the custody of the court, its release in favour of the petitioner should be allowed.

5. Mr. Praharaj, learned Standing Counsel for the State on the other hand submits that the seized article is under the custody of the court for the last two years and there is every possibility and risk involved for its use or consumption as it is a perishable substance. In fact, the State has filed an affidavit to that effect. The apprehension with regard to possibility of reuse of Bhang after release might cause problem and can be hazardous for human consumption even for manufacturing ayurvedic medicines or any other purpose.

6. In response to the above, the learned counsel for the petitioner submits that it should be handed over to him for its onward return to the Excise Department which would serve the purpose and the same is not objected to by Mr. Praharaj, learned counsel for the State.

7. In view of the above, the Court is of the view that instead of allowing the petitioner's unit to use the contraband item for manufacturing purpose, it should be returned to the Excise Department subject to proof of records which shall be verified by the learned court below. Accordingly, it is ordered.

8. The CRLMC stands allowed.

9. In the result, the impugned order under Annexure-6 passed by the learned District and Sessions Judge, Jajpur in Criminal Revision No.11 of 2021 is hereby set aside. Consequently, the Court directs that the seized item is directed to be released in favour of the petitioner subject to conditions imposed by the learned S.D.J.M., Jajpur in connection with C.T. Case No.1217 of 2020 on verification of records besides a condition that it would be handed over to the Excise Department with an intimation and confirmation received

from the latter thereby completing the entire exercise within a week from the date of receipt of a copy of this order and it shall be carried out by the learned S.D.J.M., Jajpur with a notice to the Excise Department and in presence of any official of the said department duly authorized to endorse the release and to finally receive the same which again to be intimated to the court forthwith.

10. A copy of this order be supplied to the learned court below forthwith for necessary order.

11. Issue urgent certified copy as per rules.

U.K.Sahoo

