

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.176 of 2021

Kalia Nayak

....

Petitioner

-versus-

State of Odisha

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER
04.02.2022

Order
No.

03.

1. This matter is taken up through virtual mode.
2. This Court heard this matter and order was reserved. But, in the meanwhile a Division Bench judgment passed in ***Writ Petition (Civil) No.32580 of 2021 (State of Odisha vs. Registrar General, Orissa High Court, Cuttack)*** with regard to pre-trial disposal of the vehicle as contemplated under Section 52-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”) having been rendered, this case is listed today under the heading “To Be Mentioned”.
3. The Petitioner in this Criminal Revision has challenged the order dated 04.12.2020 passed by the learned Special Judge, Koraput at Jeypore in Misc. Case No.77 of 2020 rejecting the

prayer made by him under Section 457 Cr.P.C. for release of the vehicle bearing registration number OR-10-H-8343.

4. A Division Bench of this Court in the abovementioned case basically relying on the authoritative pronouncements of the Apex Court in various decisions, have held as follows:-

“24. Before concluding, the Court would like to note that there have been decisions of the learned Single Judges of this Court on the subject of release of vehicles seized after being found carrying the narcotic drugs. In *Jitendra Kumar Digal v. State of Odisha* by judgment dated 22nd October 2020 in Criminal Revision No. 281 of 2020, it was held that when the accused is the owner of the seized vehicle carrying the narcotic goods, the vehicle should not be released in his favour.

It is clarified that the directions issued in the present judgment would prevail hereafter.

Concluding directions

25. Nevertheless, in order to speed up the process under Section 52-A (2) to (4) NDPS Act, the following directions are issued:

(i) All pending applications shown in Annexure-3 to the petition shall be taken up forthwith by a First Class Magistrate specifically nominated in each of the respective districts by the District and Sessions Judge, who will deal with such applications exclusively on all working Saturdays of the month till the entire backlog is cleared. If the number of such pending cases is large in a particular district, the concerned District and Sessions Judge will nominate more than one Magistrate for that purpose who will take up the applications likewise.

(ii) All such applications will be taken up chronologically with the oldest applications being listed first. Of course, wherever the urgent directions are required because of the possibility of the seized substances deteriorating, such applications can be

taken up out of turn for reasons to be recorded in writing by the concerned Magistrate.

(iii) There shall be strict compliance with the guidelines issued by the Supreme Court of India in Mohanlal (supra). All the applications under Section 52-A (2) to (4) NDPS Act pending before the learned Magistrates in the different judgeships in Odisha should be disposed of within a period of three months from today i.e. in any event on or before 1st May, 2022 and all fresh applications filed hereafter will be endeavoured to be disposed of within a period of ten days from the date of their filing.

(iv) The State Forensic Science Laboratory (FSL) is requested to cooperate with the concerned Magistrates' Courts for the purposes of the implementation of the above directions in a time bound manner and correspondingly submit the test result reports to the concerned Courts within a period of two weeks of the receipt of the samples sent hereafter. As regards pending samples, the State FSL will clear the backlog and send their reports to the concerned Courts within a period of two months from today and in any event not later than 1st April, 2022.

(v) On receipt of the test report, the Magistrate shall complete the remaining part of the exercise of taking photographs/videograph (of not more than 1 minute duration) that reveal the dimensions of the seized conveyance from all angles in digital format and encrypting them with the hash value in the presence of counsel for the parties within ten days from the date of receipt of the test report. In this regard, the Registry of the High Court will communicate to each District Judge, the detailed Standard Operating Procedure (SoP) and this part of the direction will take effect immediately after the receipt of the SoP by the District Judge. The Registry of the High Court is requested to circulate to all the District Judges, the detailed SoP to be followed by each of the Magistrates.

(vi) A monthly statement on the disposal of all such applications will be submitted to the concerned District Judge by the Magistrates and in turn such monthly statement should be forwarded simultaneously to the corresponding HLDDC and the Committee constituted by the Chief Justice of the High Court of Odisha on the administrative side. Both the HLDDC

as well as the High Court Committee will meet with fair regularity to monitor implementation of these directions on the administrative side and call for an explanation from the concerned Magistrate if there is an inordinate delay in disposal of the application.”

5. After the aforesaid judgment rendered by a Division Bench of this Court, this Court is of the view that the prayer for release of the vehicle in question of the petitioner is no more survives as the same is subject to pre-trial disposal as per Section 52-A of the NDPS Act.

6. Accordingly, giving liberty to the Prosecution / Investigating Agency to seek disposal of the conveyance in question under Section 52-A of the NDPS Act before the Magistrate concerned and in that event, the Magistrate concerned shall deal with the same in accordance with law, more particularly in the light of the directions given in the abovementioned Division Bench judgment of this Court, this CRLREV stands disposed of.

7. However, so far as seizure of other articles, if any, is concerned, the petitioner is also at liberty to approach the Court where the case is pending for release of the same and in that event, the same shall be decided on its own merit, within a period of fifteen days from the date of receipt of a copy of this order, notwithstanding the earlier rejection by the Court concerned.

8. As restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout copy of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Court's Office order circulated vide Memo Nos.514 & 515 dated 7th January, 2022.

PKS/MRS

