

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.206 of 2022

Ajay Kumar Sara

....

Petitioner

Mr. Arijeet Mishra, 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 29.04.2022 passed by the learned Special Judge, Jajpur in CrI. Misc. Case No.03/22 in connection with Jajpur Sadar P.S. Case No.24 of 2022 framing charge against the accused person under Section 21(b)(ii)(B) 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 vehicle of a TVA Apache Motorcycle bearing Registration No.OD-02-AX-8100 along with mobile phones of the petitioner namely a Samsung bearing SIM No.8144531389 and another Realme Phone having SIM No.9348669211, which was

seized by the I.I.C., Jajpur Sadar 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 21.01.2021 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 TVA Apache Motorcycle bearing Registration No.OD-02-AX-8100 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, Jajpur in the aforesaid case, learned Special Judge, Jajpur 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 vehicle TVA Apache Motorcycle bearing Registration No.OD-02-AX-8100, 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