

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1381 of 2022

Suresh Majhi

.... **Petitioner**
Mamata Mishra, Advocate

-Versus-

State of Odisha

.... **Opposite Party**
Mr. Pradip Kumar Rout, AGA

CORAM:
MR. JUSTICE R.K. PATTANAİK

ORDER
07.09.2022

Order No.

- 01.
1. Heard learned counsel for the petitioner and learned counsel for the State.
 2. Instant petition under Section 482 Cr.P.C. has been filed by the petitioner praying for release of a motor cycle bearing registration No.OD-09S-8947 in his favour seized in connection with 2(a) CC Case No.372 of 2021 on the grounds stated therein.
 3. Perused the impugned order dated 8th April, 2022 passed by the learned S.D.J.M., Keonjhar in CMC No. 18 of 2022.
 4. Learned counsel for the petitioner submits that the vehicle in question has been seized and lying within the premises of the PS exposed to climatic conditions and therefore, it should be released in his custody with any terms and conditions fixed by the Court. It is further submitted that notwithstanding the fact that no confiscation proceeding shown to have been initiated, the revisional court rejected the application filed under Section 457 Cr.P.C. It is further

contended that the petitioner has never received notice vis-à-vis any confiscation proceeding having been initiated in respect of the vehicle. According to Ms. Mishra, learned counsel for the petitioner, the revisional court only by recording the intimation of the Excise officials to the effect that the confiscation proceeding to be pending before the authority dismissed the plea and confirmed the rejection of the application under Section 457 Cr.P.C. which is unjustified and untenable in law.

5. Learned AGA on the other hand submits that initiation of confiscation proceeding was informed and therefore, the learned S.D.J.M., Keonjhar as well as learned Sessions Judge, Keonjhar rightly passed the impugned order dated 8th April, 2022 declining release of the vehicle which thus calls for no interference. However on a bare reading of the impugned order under Annexure-1, the Court finds that on being reported by the Excise officials, the fact of confiscation proceeding was accepted. In fact, there is no material produced from the side of the State before the courts below to show that any such confiscation proceeding has been contemplated and initiated by the competent authority. At this juncture, Ms. Mishra, learned counsel for the petitioner submits that the petitioner has never received any notice in confiscation proceeding.

6. Learned counsel for the State had earlier taken time to obtain instruction vis-à-vis the confiscation proceeding but no information in that regard could be shared with the Court today. Rather Ms. Mishra, learned counsel for the petitioner forcefully submits that no confiscation proceeding has been initiated with respect to the alleged vehicle.

7. Ms. Mishra, learned counsel for the petitioner cites a decision in the case of **Sailesh Muduli @ Sailesh Kumar Vrs State of Orissa 2022 (II) OLR 301**, wherein, under similar circumstances, the owner who was an accused and in absence of any specific material

as to initiation of confiscation proceeding directed interim release of the vehicle regard being had to the decision of the Supreme Court in the case of **Sunderbhai Ambalal Desai Vrs. State of Gujarat (2002) 10 SCC 283** and this Court's decision in **Ashis Ranjan Mohanty Vrs State of Odisha 2022(I) OLR 595**.

8. Having regard to the above facts and submissions of the learned counsel for the respective parties, the Court is of the view that in absence of any such material to show that the confiscation proceeding is initiated and currently pending before the competent authority and the fact that the vehicle cannot be allowed to remain exposed to the vagaries of the climate for which time and again directions have been issued for immediate release by the Court and also keeping in view the position of law enunciated by the Apex Court in **Sunderbhai Ambalal Desai** case(supra), the motor cycle bearing registration No.OD-09S-8947 should be released in favour of the petitioner subject to conditions as fixed by the court below and accordingly, it is ordered.

9. With the above direction, the CRLMC stands disposed of.

10. Urgent certified copy of the above order be issued as per rules.

(R.K. Pattanaik)
Judge

U.K. Sahoo