**AFR** **IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLREV No. 196 of 2021**

From an order dated 18.03.2021 passed by the learned Judicial Magistrate First Class, Pipili passed in Criminal Misc. Case No. 10 of 2021.

***Mukund Namdev Sable*** **….** ***Petitioner***

***-versus-***

***State of Odisha*** **….** ***Opp. Party***

**Advocates appeared in this case through Hybrid Mode :**

For Petitioner : Mr. Budhadev Routray, Senior Advocate along with Mr. J. Biswal, Advocate

For Opp. Party : Mr. K.K. Nayak, Addl. Standing Counsel

**CORAM:**

**JUSTICE SAVITRI RATHO**

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**Date of Judgment : 25.03.2022**

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**Savitri Ratho, J** The petitioner-Mukund Namdev has filed this Criminal Revision petition challenging the order dated 18.03.2021 passed by the learned Judicial Magistrate First Class, Pipili , rejecting the application filed by him under Section-457 of Cr.P.C. for release of his vehicle (Grand I 10 car ) bearing Registration No. OD-02-AW-9916, in interim custody under Sections-

279/337/338/304(A) of I.P.C. read with Section-196 of Motor Vehicle Act.

2. The brief facts of the case is that when the petitioner was returning from Puri to Bhubaneswar in his Grand-I-10 car bearing Registration No. OD-02-AW-9916, two persons on a motorcycle in a rash and negligent manner dashed against his car near Mangalpur Petrol pump , as a result of which both the rider and pillion rider sustained grievous injury. They were immediately shifted to Capital Hospital, Bhubaneswar for treatment and during such treatment, the pillion rider succumbed to his injuries and the rider was shifted to Sree Hospital, Bhubaneswar for further treatment. An F.I.R. was registered against the present petitioner in Pipili Police Station. The vehicle was not covered under a policy of insurance on the date of accident .

3. Mr. Budhadev Routray, learned Senior Advocate for the petitioner submits that the vehicle is the personal car of the petitioner and since the date of its seizure , its lying in open exposed to the sun and rain and getting damaged and as it is not liable to be confiscated , it should be released in his custody . He relies on the decision of the Supreme Court in the case of

***Sundarbhai Ambalal Desai vs State of Gujarat*** reported in ***(2002)10 SCC 283*** in support of his submissions that no useful purpose will be served if the vehicle is left lying in the police station .

4. Mr. K.K. Nayak, learned Additional Standing Counsel opposes the prayer for interim release submitting that as the vehicle was not covered by a valid insurance policy on the date of accident , and one person has died and another seriously injured , the vehicle of the petitioner may have to be sold to satisfy their claims for compensation , for which it should not be released . He relies on the decision rendered in ***Jai Prakash vs National Insurance Company*** reported in ***(2010) 2 SCC 607*** and ***Ramakrishna Mahasuar vs State of Odisha*** reported in ***(2021) 81 OCR 635*** and Rule 6 of Orissa Motor Vehicles (Accidents Claims Tribunal) Rules, 2018 ( in short the "Odisha 2018 Rules") in support of his submissions **.**

5. The learned J.M.F.C Pipili relying on the decision in the case of ***Ramakrishna Mahasuar*** ( supra) has rejected the prayer for interim release of the vehicle **.**

6. In the case of ***Jai Prakash*** ( supra) , the Supreme Court has held as follows :

….“*Where there is no insurance cover for a vehicle, the owner should be directed to offer security or deposit an amount, adequate to satisfy the award that may be ultimately passed, as a condition precedent for release of the seized vehicle involved in the accident. If such security or cash deposit is not made, within a period of three months, appropriate steps may be taken for disposal of the vehicle and hold the sale proceeds in deposit until the claim case is disposed of. The appropriate Governments may consider incorporation of a rule on the lines of Rule 6 of the Delhi Motor Accident Claims Tribunal Rules, 2008 in this behalf.”*

This direction has been reiterated by the Supreme Court in the case of ***Ushadevi & Anr. vs. Pawan Kumar & Others , (Civil Appeal No(s). 9936-9937/2016), decided on 13.09.2018,*** and the State Governments who had not framed such rules were directed to bring out necessary notifications on the lines of the notification issued by the Govt. of NCT of Delhi keeping in view the decision in ***Jai Prakash*** (supra) within a period of twelve weeks. .

*7.* The State Government has soon thereafter enacted the *Orissa Motor Vehicles (Accidents Claims Tribunal) Rules, 2018 in* the Odissa 2018 Rules which came into force on 28.12.2018 containing the *pari materia* provision *of Delhi Motor Accident Claims Tribunal Rules, 2008* in Rule 6.

**Rule-6** of the Odisha 2018 Rules, provides as follows :

> *"6. Prohibition against release of motor vehicle involved in accident:-- (1) No court shall release a motor vehicle involved in an accident resulting in death or bodily injury or damage to property, when such vehicle is not covered by the policy of insurance against third party risks taken in the name of registered owner or when the registered owner fails to furnish copy of such insurance policy despite demand by investigating officer, unless and until the registered owner furnishes sufficient security to the satisfaction of the court to pay compensation that may be awarded in a claim case arising out of such accident.*
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> *(2) Where the motor vehicle is not covered by a policy of insurance against third party risks, or when registered owner of the motor vehicle fails to furnish copy of such policy in circumstance mentioned in sub-rule(1), the motor vehicle shall be sold off in public auction by the magistrate having jurisdiction over the area where accident occurred, on expiry of three months of the vehicle being taken in possession by the investigating officer, and proceeds thereof shall be deposited with the Claims Tribunal having jurisdiction over the area in question, within fifteen days for purpose of satisfying the compensation that may have*

*been awarded, or may be awarded in a claim case arising out of such accident."*

From a careful reading of the rule , it is apparent that keeping in mind the difficulties tribulations of many victims and families of victims, who are not paid compensation awarded in their favour in a claim case , on account of the inability of the owner of the vehicle to satisfy the award as the vehicle is uninsured because the insurance policy does not cover third party risk , Rule 6 has been framed . There is no absolute bar in the rule for interim release of the said vehicle , but such release has been made subject to certain conditions in order to protect the interest of the accident victims who are entitled to payment of compensation . After securing the interest of accident victims in case of uninsured vehicles , the vehicle can be released if the registered owner furnishes "*sufficient security to the satisfaction of the Court"* so that the said amount may utilised towards compensation in a claim case arising out of such accident. Keeping in mind that it would not be in the interest of any person if the vehicle is left lying idle in the police station resulting in reduction of its value , provision has also been made for auction of such vehicle in case the registered owner is unable to provide adequate security for its release.

8 . In the case of ***Ramakrushna Mahasuar*** ( supra) , this Court referring to Rule 6 of the Orissa 2018 Rules , has held that unless the vehicle involved in the accident has insurance against third party risk in the name of the registered owner of the vehicle on the date of accident , it cannot be released by the Officer effecting the seizure and even the Court cannot release such a vehicle without requiring the owner to furnish adequate security . This Court further observed that in order to rule out release of such vehicles on production of spurious insurance policies , the Investigating Officer allowing such release has to certify that he has verified the genuineness and validity of the insurance certificate such policy and an attested copy of the policy is to be kept in the record and in case it is found that vehicles are released on the basis of fake certificates the concerned officer will be proceeded against.

It is necessary to state at this juncture that as on date verification of insurance policies have become easy as details are available online on the website of the Insurance Information Bureau ( in short " IIB") which maintains records of vehicles with effect from 01.04.2010 or the VAHAN e services website and an investigating officer cannot give any excuse for accepting a spurious certificate for releasing vehicle , but details of third party risk have to be verified after a perusal of the policy .

9. In the case of ***Sundarbhai (*** supra ) in the matter of seizure and release of vehicle, the Supreme Court has held as follows:

> …“ ***Vehicles***
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> *15. Learned senior counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.*
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> *16. However, the learned counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.*
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> *17. In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at*

*any point of time. This can be done pending hearing of applications for return of such vehicles.*

*18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared." .....*

Recently , a division bench of this Court in the case of ***Ashis Ranjan Mohanty vs State and others*** reported in ***(2022) 85 OCR 705*** , 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 as follows :

> *"...13. It is clarified that hereafter as far as release of the vehicle is concerned, the directions issued in this order would prevail.*
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> *14. In light of the decisions of the Supreme Court referred to hereinbefore, and the directions issued in* ***Manjit Singh v. State*** *(supra), the following specific directions are issued:*
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> ***Articles/properties in general***
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> *15. (i) Within one week of their seizure, properties seized by the police during investigation or trial are to be produced before the Court concerned;*
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> *(ii) the concerned Court shall expeditiously, and not later than two weeks thereafter, pass an order for its custody in terms of the directions of the Supreme Court in* ***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.***
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> *(iii) In any event, no property will be retained in the malkhana of the Court or in the police station longer than a period absolutely necessary for the purposes of the case; if it has to be longer than three months, the Court concerned will record the reasons in an order but on no account will the period of retention exceed six months.*

*(iv) In the event the property seized is perishable in nature, or subject to natural decay, or if cannot for any reason be retained, the Court concerned may, after recording such evidence as it thinks necessary, order the said property to be disposed of by way of sale, as the Court considers proper, and the proceeds thereof be kept in a separate account in a nationalized bank subject to orders of the concerned court.*

***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.*

*(vi) As regards the directions issued in 16 (I)(c) and (d) is concerned, the Registry of the High Court will communicate to each of the District Judges the detailed Standard Operating Procedure (SoP) that is required to be followed. The directions issued in 16(I) (c) and (d) will become operational as soon as the said SoP is received by the concerned District Judge.*

*(vii) Similar directions concerning the encryption of digital photographs and video clips will become effective on receipt of the SOP by District Judge from the registry of the High Court….."*

10. From a careful reading of the aforesaid decisions and the provisions of Rule 6 of the Orissa 2018 Rules , it is apparent that an uninsured vehicle can be released on the registered owner providing "sufficient security to the satisfaction of the Court " . "Sufficient security" in such cases can not be more than the value of the vehicle . This value can be arrived at by asking the competent authority to get the valuation of the vehicle done immediately if necessary through an approved valuer , so that the said vehicle can be released in favour of the registered owner promptly if he files an application for its release and deposits the value of the vehicle . The conditions laid down in the decisions referred to above should be kept in mind , while directing for interim release . The valuation of the vehicle can be done in the presence of the owner , if he so

desires and cooperates . As provided in the Rule , if the owner does not come forward to take custody of the vehicle by providing the security , the same should be sold in open auction . This would be in the interest of the victims of the accidents as well as the owner and even the State as this would get rid of the menace of the seized vehicle taking up space in the police station or outside the police station .

11. The learned JMFC having rejected the application for interim release without allowing opportunity to the registered owner to provide sufficient security , has committed error for which the impugned order is liable for interference . The impugned order dated 18.03.2021 is therefore set aside and the matter is remanded to the learned JMFC Pipili , to enable him to get the valuation of the vehicle done and provide an opportunity to the registered owner to furnish cash security equal to the said amount. In case of failure of the petitioner to furnish the said amount , the vehicle should be put to auction and the proceeds deposited in the Court so that it can be adjusted towards the compensation awarded to the victim or the families of the victim or returned to the owner as the case may be . The process of valuation be completed within four weeks from receipt of this order or production of the certified copy , whichever

is earlier . Adequate opportunity should be afforded to the petitioner to deposit the said amount ( which should not be less than three weeks ) and on his failure to do so , the vehicle should be put to auction promptly .

12. With the said observations , this Criminal revision is disposed of .

13. Urgent certified copy of the order be supplied on proper application .

A copy of this order be sent to the learned JMFC , Pipili for compliance.



**…………………..**
***(Savitri Ratho)***
***Judge***

*Orissa High Court, Cuttack*
*Dated 25th March, 2022 / puspa*