

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1233 OF 2021

Raghunath Bindhani

..... Petitioner

Mr. B.K.Nayak, Advocate

-versus-

State of Odisha & another

..... Opposite Party

Mr. D.Mund, AGA

CORAM:

JUSTICE V. NARASINGH

ORDER

11.05.2022

Order No.

01.

1. This matter is taken up through Hybrid Mode.
2. Heard learned counsel for the parties.
3. Being aggrieved by order dated 11.06.2021 passed by the learned Sessions Judge, Baleswar in Criminal Revision No.12 of 2021 thereby affirming the order passed by the learned J.M.F.C., Jaleswar in Misc. Case No. 93 of 2020 (arising out of 2(a) CC No. 86 of 2020) rejecting the prayer of the petitioner under Section 457 Cr.P.C. for release of the vehicle, i.e., Hero HF Deluxe motorcycle bearing Registration Number- OD-11R-4176, the present CRLMC has been filed.
4. Admittedly, the petitioner is the owner of the vehicle and has not been arrayed as an accused.
5. It is submitted by the learned counsel for the petitioner that the bar under Section 72 of the Orissa Excise Act shall not come into play in the case at hand as held by this Court in the case

of **Ratnakar Behera Vrs. State of Odisha**, reported in 2020 (III) OLR-767.

6. On perusal of the judgment of this Court in Ratnakar Behera (supra), it can be seen that in paragraph-9 of the said judgment this Court had specifically dealt with the bar under Section 72 of the Orissa Excise Act, which impelled the revisional authority to reject the prayer for release of the vehicle, though the judgment in Ratnakar (supra) was cited before the learned court below.

7. Learned counsel for the State submits that there is no infirmity in the order of the revisional court warranting interference under Section 482 Cr.P.C. and it is submitted with vehemence that on plain reading of Section 72 of the Orissa Excise Act, because of the bar, the vehicle cannot be released in favour of the petitioner though, he may not be an accused.

8. On a conspectus of materials on record, this Court is of the considered view that on an erroneous appreciation of the judgment of this Court in Ratnakar Behera (supra) prayer for release of the vehicle was rejected and that interest of justice would be sub-served, if the vehicle in question be released in favour of the petitioner in terms of the direction of this Court in the case of Ratnakar Behera (supra). The impugned order is accordingly set aside and it is directed that the vehicle in question shall be released in favour of the petitioner subject to the following conditions:

1) The petitioner is directed to make the vehicle available as and when required.

2) The petitioner is directed not to make any changes or any variation to the vehicle during the pendency of the trial in the court concerned.

3) Not to create any third party interest.

9. Accordingly, the CRLMC stands disposed of.

10. Urgent certified copy of this order be granted as per rules.

Dhal

