

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No.1341 of 2021

Gajadhar Toppo

.... ***Petitioner***
Mr.P.K.Satapathy, Adv.

-versus-

State of Odisha

.... ***Opposite Party***
Mr. K.Gaya, ASC

CORAM:
MR. JUSTICE S.K. PANIGRAHI

ORDER
01.02.2022

Order No.

01. 1. This matter is taken up by virtual mode.
2. The petitioner has filed this application challenging the order dated 19.07.2021 passed in Criminal Revision No.6 of 2021 by the learned Sessions Judge, Sundargarh wherein the petitioner's application for release of the vehicle has been rejected and the order dated 13.01.2021 passed by the learned S.D.J.M., Sundargarh in Misc. Case No.261 of 2020 corresponding to 2(a) CC Case No.659 of 2020 was confirmed.
3. Prosecution case, in short is that on 20.11.2020 while Hira Dalpati, OIC of Excise Station, Sundargarh was conducting patrol duty along with his staff near village Baiganbud, found the petitioner proceeding in a suspicious manner with a Yamaha Fescino Scooty keeping a motor tube at the leg space. When attempt was made to intercept, the petitioner tried to flee from the spot but however he was caught hold of. On search, the excise staff seized one motor tube containing fifteen litres of I.D. liquor from the possession of the petitioner. Since no liecnese or authority was with the petitioner regarding such

possession and transportation, the vehicle as well as the I.D. liquor were seized for the aforesaid offence and the petitioner was served with a notice under Section 41(A) Cr.P.C.

4. The petitioner moved an application under 457 Cr.P.C. before the learned lower court for release of the vehicle which was refused on the ground that confiscation proceeding has already been initiated against the vehicle. Being aggrieved by the order of the learned S.D.J.M., Sundargarh filed a petition vide Criminal Revision No.06 of 2021 under Section 397 and 399 of the Cr.P.C. before the learned Sessions Judge, Sundargarh which was also dismissed.

5. Learned counsel for the petitioner submits that no such confiscation proceeding was initiated at the time when he had filed a petition for release of the vehicle. It is further submitted that the detention of the vehicle of the petitioner is not required in the said case at all, as it is not a material object to be produced during trial of the case. But the learned trial court rejected the application under Section 457 Cr.P.C on the ground that confiscation proceeding has already been initiated and the same is pending before the Authorized Officer. But learned court below without going through the material available on record and without applying judicial mind has been pleased to reject the same.

6. Learned counsel for the State submits that in the event of release of the vehicle, some cash security/property security

should be imposed on the petitioner with some stringent terms and conditions.

7. Be that as it may, as the seized vehicle is subject to damage in case the same is left open and unattended for an indefinite period, this Court is of the view that pending disposal of 2(a) CC Case No. 659 of 2020 the petitioner, being entitled to possession thereof, should be in the interim custody of the seized vehicle. It appears that there shall be no impediment in the investigation in case the seized vehicle is kept in the interim custody of the petitioner subject to appropriate conditions.

Accordingly, the CRLMC is disposed of directing that the above said seized vehicle shall be released in the zima of the petitioner subject to the conditions that:

(I) the petitioner shall furnish a cash security of Rs.30,000/- (Rupees thirty thousand) in the F.D. in any nationalized bank pledged in the name of the court concerned and property security of Rs. 20,000/-(rupees twenty thousand) before the court concerned:

(II) the petitioner shall furnish an undertaking that (i) the vehicle shall not be used for commission of any offence; (ii) the petitioner shall not change the colour or appearance of the seized vehicle; and (iii) the petitioner shall produce the seized vehicle as and when required by the court.

8. As the restrictions due to resurgence of Covid-19 are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the Advocate concerned with his/her seal, in the manner prescribed vide Court's Office Order dated 7th January, 2022.

(S.K. Panigrahi)
Judge

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