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**IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLREV No.393 of 2021**

Lulu Sahu

....

Petitioner

Mr. P.S.Das, Advocate

Versus

State of Odisha

....

Opp. Party

Mr.P.C.Das, ASC

CORAM:

JUSTICE SAVITRI RATHO

ORDER

29.04.2022

Order No.

07. 1. This matter was heard on hybrid mode.
2. In this CRLREV, the petitioner has challenged the order dated 09.08.2021 passed by the learned Sessions Judge-cum-Judge Special Court, Deogarh in Criminal Misc. Case No.06 of 2021 filed under Section 457 of Cr.P.C., rejecting the prayer for interim release of the vehicle - a red colour Bolero bearing registration No.OR-09Q-8754 seized in the case, registered against the petitioner and one Gunanidhi Garnayak for commission under section 20 (b) (ii) (B) and Section – 29 of the Narcotic Drugs and Psychotropic Substances Act (in short the “NDPS Act”).
3. The case of the prosecution in brief is that on 14.3.2021, the S.I. of police, Barkote P.S. getting reliable information that one person was transporting contraband Ganja from Deogarh side to village-Bahadposi side in a red colour Bolero, went with his staff to Bahadaposi Chhak and found one red colour Bolero bearing

Registration No.OR-09Q-8754 coming from Deogarh side. When they detained and searched the vehicle, they found 8 Kg 50 gms of ganja. As no document in support of possession of the ganja was produced, they seized the Ganja along with vehicle and arrested the present petitioner. After investigation, the I.O. submitted charge sheet against the petitioner and the co accused under Sections 20 (b) (ii) (B)/29 of N.D.P.S. Act.

4. The petitioner filed an application under Section 457 of the Cr.P.C praying for interim release of the vehicle. The learned Special Judge, Deogarh held that as the petitioner is the registered owner of the vehicle and the vehicle was seized in the presence of the petitioner, therefore the plea that any other person used the vehicle for transporting the ganja does not arise. Keeping in mind the mandate of Section 60 of the NDPS Act, he rejected the application vide the impugned order dated 09.08.2021.

5. Mr. P.S.Das, learned counsel for the petitioner has submitted that the prosecution has alleged that only 8 Kgs and 50 grams of ganja has been seized from the vehicle. He has also submitted that the petitioner had no knowledge regarding transportation of contraband ganja, which was being carried by the co accused Gunanidhi Garnayak of Village-Gunduiapalli, who fled from the spot when the police started chasing the vehicle. The petitioner has been released

on bail in this case but since the co accused in the case who had allegedly fled from the spot has not been arrested, the trial in the case cannot start. As a result, the vehicle is lying in the Police Station premises since the date of seizure i.e. 14.03.2021, under the open sky exposed to the sun and rain for which its value is deteriorating every day. His final submission is that he is the registered owner of the vehicle and is ready to abide with any condition which may be imposed by the Court for granting interim release of the vehicle.

6. Mr. P.C.Das, learned Addl. Standing Counsel opposes the prayer for interim release of the vehicle stating that the petitioner who is the owner cum driver of the vehicle is accused in the case and was present when the contraband was seized from the vehicle for which the vehicle is liable for confiscation in view of Section 60 of the N.D.P.S. Act. He has further submitted that if the vehicle is released, the petitioner may dispose of the vehicle before the final order regarding confiscation is passed.

7. The relevant provisions of the NDPS Act for considering this application for interim release are Section 36-C, Section 51, Section 60 and Section – 63 of the NDPS Act.

Section 36-C of the NDPS Act has inter alia made the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), (including the

provisions as to bail and bonds) applicable to the proceedings before a Special Court and this is of course subject to the specific exceptions contained in the Act.

Section – 51 provides that the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act.

Section 60 (3) of the NDPS Act provides for confiscation of illicit drugs, substances, plants, materials apparatus, utensils articles and conveyances in respect of which or by means of which such offence has been committed. The procedure for making confiscation under Section 60 has been provided in Section 63 of the NDPS Act. The provisions of Section – 60 (3) and Section-63 are extracted below.

8. The Supreme Court in **Sunderbhai Ambalal Desai** (supra) has laid down the parameters for considering an application for interim custody expeditiously so that the owner of the article would not suffer because of it lying unused or by its misappropriation and court or the police would not be required to keep the vehicle in safe custody. It has observed as under:-

“7. In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

- 1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;*
- 2. Court or the police would not be required to keep the vehicle in safe custody;*
- 3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and*
- 4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”*

In the case of **General Insurance** (supra), the petitioner therein had approached the Court with the submission that despite the directions passed by this Court in **Sunderbhai Ambalal Desai** (supra), as also in **W.P.(C) No. 282 of 2007 titled General Insurance Council and Others vs. State of Andhra Pradesh and Others, decided on 09.07.2007 reported in (2007) 12 SCC 354**, there has not been full and complete compliance of the same. Therefore, they had approached the Supreme Court for issuing further directions so that national waste with regard to the seized vehicles involved in commission of various offences may not become junk and their road worthiness be maintained, as by the time the recovered vehicles are released, the same are reduced to junk at the respective police stations. The Supreme Court held as follows:

“..15. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/ Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division/Commissioner of Police of the concerned cities/Superintendent of Police of the concerned district.”

In the case of **Subash Chandra Panda** (supra), this Court after analyzing Section – 60 of the N.D.P.S. Act and provisions under sections 451 and 457 of the Cr.P.C. has held as follows:-

"...4. Taking into consideration the stage of confiscation of a vehicle or conveyance and protection of an innocent owner in the provision of the Act itself, as discussed supra, the obvious question that arises for consideration is as to

whether an innocent owner of a vehicle or conveyance shall be made to suffer till an order for confiscation is passed or such an innocent owner is to be protected by taking resort to Section 451 or Section 457 of the Code.

5. Chapter-V of the Act provides for procedures relating to power to issue warrant and authorization, power of entry, search, seizure and arrest without warrant or authorization, power of seizure and arrest in public place and so on. Section 52 under Chapter-V of the Act provides for disposal of persons arrested and articles seized. Section 55 of the Act clearly mandates the police to take charge of articles seized and delivered. Section 51 of Act makes provisions for applicability of the provisions of the Code of Criminal Procedure in the manner provided in the Section which reads thus:- "51 Provisions of the Code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and seizures- The provisions of the Code of Criminal Procedure, 1973, shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act."...

This Court in ***Kishore Kumar Choudhury vs. State Of Orissa: (2017) 66 OCR 1124*** has held as follows: :-

....“A cursory reading of the aforesaid provision in Section 51 of the Act makes it clear that the provisions of the Cr.P.C. will not apply if they are inconsistent with the provision of the Act in respect of warrants issued, arrests,

searches and seizures made under the Act. There is provision in Section 55 of the Act interdicting an Officer-in-charge of a Police Station to take charge of and keep in Safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of the Police Station and which may be delivered to him. There is no express provision in the act for release of the property like vehicle or conveyance in interim custody of a rightful owner. Provision contained in Section 51 of the Act does not expressly bar operation of the provision of the Cr.P.C. if they are not inconsistent with the provision of the Act. Taking into consideration the stage of the confiscation proceeding in the scheme of the trial as provided under Section 60(3) of the Act, safe custody of the articles seized and delivered to a police officer under Section 55 of the Act pending order of the Magistrate, absence of any specific provision in the Act for release of valuable articles like vehicle etc. in the interim custody of the registered owner and especially in view of the mandate for confiscation of a vehicle or conveyance after the trial is concluded and further fact that the commercial price of such an article is to be protected in the interest of justice, I have no hesitation to hold that operation of Sections 451 and 457 Cr.P.C. is not specifically excluded by Section 51 of the Act. In my view, I am supported by the decisions rendered in the case of **B.S. Rawant vs. Shaikh Abdul Karim, 1989 Criminal Law Journal 1998; Madanlal vs. State NCT of Delhi, 2002 Criminal Law Journal 2605; and Sujeet Kumar Biswas vs. State of U.P. 2001 Criminal Law Journal 4431.**”...

In the case of ***Basanta Kumar Behera vs. State of Orissa*** reported in **(2013) 54 OCR 876**, granted interim release of a vehicle whose registered owner was an accused in the case. While analyzing Section 63 of the NDPS Act, this court has held as follows:-

*... "From the above provision, it is clear that a vehicle used in the commission of the offence is liable for confiscation, which means that on proof of commission of offence and that the vehicle was used in such commission, at the conclusion of trial, the vehicle in question shall be confiscated. The confiscation of a vehicle ensures to the benefit of the State. If not confiscated, the property in question has to be returned or released in favour of the rightful owner entitled for possession or to the person from whom it was seized. In case the property is not released and the trial continues for long time, its value gets diminished due to damage caused by exposure to sun and rain and in that even whether it is confiscated or not confiscated, no body gains anything and, on the contrary, in the event of confiscation, the State would stand to lose and in the event of no confiscation, the owner will be the loser. This is the reason for which in the case of **Sunderbhai Ambala Desai - Vrs.- State of Gujarat, (2003) 24 OCR (SC) 444**, the Hon'ble Supreme Court has stipulated guidelines for prompt interim release of the vehicle seized in connection with the commission of an offence.*

No provision in the N.D.P.S. Act has been brought to the notice of the Court which bars interim release of the vehicle where the owner has been implicated in the offence as one of the accused."

A division bench of this Court in the case of ***Ashis Ranjan Mohanty vs State and others*** reported in ***(2022) 85 OCR 705 : 2022 SCC OnLine Ori 510*** , 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 that:

“as far as release of the vehicle is concerned, the directions issued in this order would prevail,”

And proceeded to issue directions for expeditious and effective disposal of applications for interim release and disposal of the vehicles seized in connection with different cases and directed that as far as vehicles are concerned, as follows :

“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....”

In the case of **Basudev Singh vs State of Odidha (CRLREV No.34 of 2022** decided on 31.03.2022), this Court has taken note of the decisions in **Subhas Chandra Panda** (supra) **Kishore Kumar Choudhury** (supra), **Sunderbhai Ambalal** (supra), **Basavva Kom Dyamangouda Patil vs. State of Mysore**, reported in (1977) 4 SCC 358, **Ram Parkash Sharma v. State of Haryana**, reported in (1978) 2 SCC 491, **General Insurance Council** (supra), **K.W. Ganapathy v. State of Karnataka** reported in 2002 SCC On Line Karnataka, and **Ashis Ranjan Mohanty** (supra) **Subash Chandra Panda** (supra) and directed for interim release of the vehicle involved in an NDPS case to

the registered owner subject to complying with conditions (I) to (VI) in the case of **Ashis Ranjan** (supra) and holding as follows:

“.....Since necessary infrastructural facilities have not been made available to the Courts in the State of Odisha as of now, the compliance of conditions under (I) (a) to (f) shall be followed as far as possible and practicable, however, condition under clause (i) to (vi) are required to be followed mandatorily in every case involving interim release of the vehicle seized”

9. As the provisions contained in Sections 451 and 457 of the Cr.P.C. providing for interim custody in so far as they relate to passing of order for custody of conveyance or property pending conclusion of trial, are not inconsistent with any of the provisions including Sections 60 (3) and 63 of the NDPS Act nor has their application been excluded by any of the provisions of the NDPS Act and as the question of confiscation will arise only at the end of the trial, I am therefore of the considered opinion that it will not be in the interest of the owner or the State to detain the motorcycle in the Police Station premises as because even if the vehicle is ultimately confiscated but is left lying idle and unattended to till then , then by that time its value will have gone down considerably due to exposure to the vagaries of the elements and possible purloining of its parts by miscreants. That apart, such vehicles unnecessarily take up space in the police station premises and due to lack of space in the police station compound often encroach on the road

side and are usually reduced to junk (as was brought to the notice of the Court in the case of **Ashis Ranjan** (supra) where this court observed as follows:

...“, sampling of the photographs of all kind of vehicles including two wheelers and three wheelers lying dumped outside the various police stations in Odisha have been enclosed with the petition's Annexure-1 series. It is stated that the seized vehicles dumped in police stations are causing encroachment on the public road adjoining the police stations and are also turning to junk on account of neglect over several years.

3. Apart from the vehicles, there are a range of other articles that have been seized in connection with various cases which are lying unattended to in the malkhanas of the various police stations. It is pointed out that despite the provisions in the Criminal Procedure Code, 1973 (Cr PC) and the decisions of the Court, including the Supreme Court of India, from time to time, the spirit of law has not been adhered to and this has led to an impossible situation where most police stations in Odisha are left with a large inventory of abandoned vehicles and other materials. Urgent directions are accordingly sought in the present petition.

4. In the reply filed to the petition, the Additional Superintendent of Police, CID, Crime Branch, Odisha has disclosed that apart from a large number of vehicles lying for years together in the police station premises, there are other seized items including liquor, arms and ammunitions etc. which are lying at the police malkhana awaiting disposal. It is disclosed by the police that 19,149 vehicles have been seized in

motor vehicle accident cases, dacoity cases, cases relating to the transportation of illicit narcotic drugs and psychotropic substances. Then there are vehicles that are abandoned.

5. It is pointed out that although in accordance with the provisions of Section 457 Cr PC read with Section 452 Cr PC, some of the vehicles do get released during the pendency of the case, there are still a large number of vehicles which are awaiting disposal pursuant to the orders to be passed by the Courts. Annexure-A/3 to the counter affidavit gives a list of a number of vehicles i.e. two, three and four wheelers, involved in cases in each of the Districts and offices of the Special Forces in different cities. This table indicates that there are a total of 19,149 vehicles of which 1,536 are unclaimed vehicles spread over as many as 37 police stations/offices of the police ”...

10. The impugned order dated 09.08.2021 passed in Criminal Misc. Case No.06 of 2021 by the learned Sessions Judge-cum-Judge Special Court, Deogarh in Criminal Misc. Case No.06 of 2021 rejecting the application of the petitioner filed under Section 457 of Cr.P.C. for interim release of vehicle - a red colour Bolero bearing registration No.OR-09Q-8754 is set aside. The red colour Bolero bearing registration No.OR-09Q-8754 be released in the interim custody of the petitioner who is its registered owner during pendency of the trial subject to the additional conditions to be imposed by the learned Court below keeping in mind the decisions of this Court in **Kishore Kumar Choudhury (supra)**,

Ashis Ranjan (Supra) and **Basudev Singh** (supra) apart from the following conditions :-

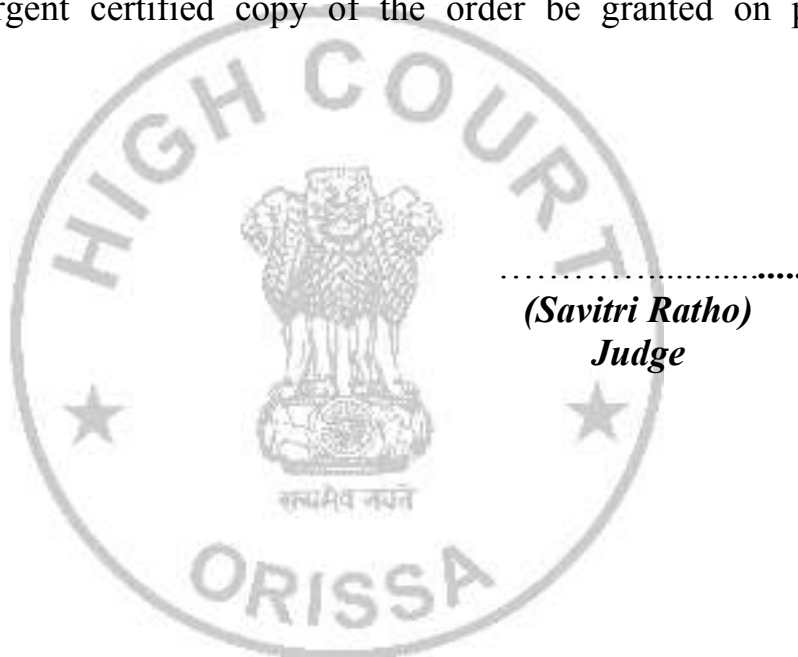
- (i) the petitioner shall produce the original registration certificate, insurance paper before the concerned Police Station which shall be verified properly and true attested copies thereof shall be retained by the investigating officer/I.I.C. of the Police Station;
- (ii) the petitioner shall furnish property security/ bank guarantee of the value to be fixed by the learned Special Judge based on the valuation of the Motorcycle;
- (iii) the petitioner shall keep the vehicle insured at all times till the conclusion of the trial and produce the insurance certificate before the Trial Court as and when required;
- (iv) the petitioner shall not change the colour or any part of the engine and chassis number of the vehicle;
- (v) the petitioner shall furnish two photographs of the vehicle before taking delivery of the same;
- (vi) the petitioner shall not transfer the ownership of the vehicle in favour of any other person;
- (vii) the petitioner shall not allow the vehicle to be used in the commission of any offence;
- (viii) the petitioner will produce the vehicle before the Court if and when directed to do so by the Court;
- (ix) the interim release of the vehicle will be subject to the final decision regarding confiscation.

11. As per the direction in the case of **Asish Ranjan** (supra), in the event the vehicle in question is insured, and the registered owner (in this case the petitioner) does not furnish property security or bank guarantee to take the interim release of the vehicle, instead of allowing the vehicle to suffer further damage, the learned trial Court shall issue notice to the owner and the insurance company to take custody of the

vehicle. If there is no response and there is delay in conclusion of the trial, the learned trial Court may consider sale of the vehicle in public auction and keep the proceeds in fixed deposit which will abide by the final decision regarding confiscation. While doing so, necessary precautions be taken so that disposal of the vehicle will not affect the trial.

12. The Criminal revision is accordingly allowed.

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



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