

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2924 of 2022

Lipu@ Pravat Kumar Swain

....

Petitioner

Mr. Samir Ku.Mishra, Advocate

-Versus-

State of Odisha

....

Opposite Parties

Mr. Tapas Kumar Praharaj, SC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

23.11.2022

Order No.

04.

1. Heard Mr. Mishra learned counsel for the petitioner and Mr. Praharaj, learned counsel for the State.

2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner challenging the correctness, legality and judicial propriety of the impugned order dated 29th September, 2022 passed in CMC No. 07 of 2022 by the learned Additional Sessions Judge-cum-Special Judge, Nimapara, whereby, an application for release in terms of Section 451 Cr.P.C. was declined on the grounds inter alia that the same is not tenable in law and thus, liable to be interfered with and set aside.

3. Mr. Mishra, learned counsel for the petitioner submits that the learned court below rejected an application moved under Section 451 Cr.P.C. for release of the seized vehicle bearing registration No.OD-02-BJ-2402. It is submitted that without any reason

assigned and in absence of any bar against release of the seized vehicle, the learned court below could not have rejected the application moved under Section 451 Cr.P.C. when the law is well settled that vehicle seized should not be kept within the P.S. premises exposed to sun and rain whose condition and value is liable to deteriorate and diminish with passage of time.

4. Mr. Mishra, learned counsel for the petitioner further submits that the law does not create any bar against release of the vehicle seized in connection with transportation of contraband substance and it can only be confiscated by the Court in terms of Section 63 of the NDPS Act. Under the above circumstances, Mr. Mishra learned counsel for the petitioner lastly submits that it is a fit case where the seized vehicle should be released in the custody of the petitioner, who is its owner subject to any conditions imposed by the Court.

5. Mr. Praharaj, learned counsel for the State on the other hand submits that in respect of the seized vehicle, there is a confiscation proceeding pending before the learned Collector-cum-District Magistrate, Puri morefully evident from the impugned order under Annexure-4 which is based on an information and report submitted by the OIC, Balanga P.S. to the court concerned. Hence, it is submitted that when there is a confiscation proceeding stated to have been initiated in respect of the vehicle seized in connection with the transportation of the contraband substance, the learned court below did not err or commit any illegality in denying its release and therefore, the impugned order under Annexure-4 cannot be held as unjustified.

6. A copy of the F.I.R. is at Annexure-1 and the same is perused by the Court. In fact, after report being lodged, Balanga P.S. Case No. 112 was registered on 16th June, 2022 under Sections 21(b) and 29 of the NDPS Act. In connection with the case registered, the vehicle was seized by the local police which was found to be used and utilized for the purpose of illicit transportation of the contraband substance at the relevant point of time.

7. The petitioner approached the learned Sessions court by filing an application under Section 451 Cr.P.C. which was entertained in CMC No. 07 of 2022 and finally, the impugned order under Annexure-4 was passed rejecting release of the same in favour of the petitioner on the ground that the seized vehicle is already a subject of confiscation proceeding as reported by the OIC Balanga P.S.

8. A strong objection is received from Mr. Praharaj, learned counsel for the State that since such was the ground for declining to release the vehicle awaiting decision in the confiscation proceeding by the Collector-cum-District Magistrate, Puri, its release in terms of Section 451 Cr.P.C. could not be directed and while contending so, he refers to Section 60 of the NDPS Act which deals with all the articles besides the conveyances which are subject to confiscation.

9. In response to the above, Mr. Mishra, learned counsel for the petitioner submits that Section 60 of the NDPS Act does not create any bar and that apart, Section 63 of the NDPS Act merely prescribes that the confiscation and orders in respect thereof shall be directed by the court itself either at the end of the trial. While contending so, the relevant provisions of Section 63 under NDPS

Act are referred to by Mr. Mishra. That apart, Mr. Mishra learned counsel for the petitioner cites the following decisions, such as, **Basudev Singh v. State of Odisha (2022) 87 OCR 161**; **Kalim Khan v. State of Odisha (2022) 87 OCR(SC) 188**; and **Ramakrushna Panda v. State of Odisha (2022) 87 OCR-196** which are in respect of release of the vehicles seized in connection with offences committed under the NDPS Act.

10. In **Basudev Singh** (supra), this Court directed release of vehicle which was found carrying contraband substance of commercial quantity in terms of Section 457 Cr.P.C. and has taken reference of Section 60(3) of the NDPS Act. The other two decisions in **Kalim Khan** and **Ramakrushna Panda** also deal with disposal of vehicles as against the objection being the subject of confiscation by taking cue of Section 60 of the NDPS Act. In so far as Section 60 of the NDPS Act is concerned, it specifies as to the substances and all other items which are seized in connection with transportation of the contraband substance to be liable to confiscation. As to Section 63(1) of the said Act, it stipulates that the Court either at the end of trial or when at the stage of framing of charge while discharging the accused direct confiscation of articles including conveyances. In fact, sub-section (2) of Section 63 of the NDPS Act deals and includes all the articles including conveyances as there is a reference therein to Section 60 of the NDPS Act. In fact, the Court does not find any bar in Section 63 from releasing a vehicle involved in the illicit transportation of contraband substance. Indeed, Section 60 and Section 63 of the NDPS Act reflect upon and envisage that the articles as well as the conveyances to be liable to confiscation but subject to orders of the court.

11. Mr. Paraharaj, learned counsel for the State though objected release of the alleged vehicle on the ground that a confiscation proceeding is initiated in respect thereof but could not submit any authority or citation or for that matter cite any provision of the NDPS Act to satisfy the Court that any such release to be prohibited under law. Rather, from the decisions (supra), the Court finds that time and again vehicles seized for having been utilized in the transportation of contraband substance have been released under the provisions of Section 451 and 457 Cr.P.C. In fact, **Ramakrushna Panda** (supra), this Court held that Section 60 of the NDPS Act provides for confiscation of the conveyances and other articles and as such provisions of Cr.P.C. are not inconsistent with any of the provisions including Sections 60(3) and 63 of the NDPS Act nor its application has been excluded by any of the provisions of the NDPS Act.

12. Having gone through the citations relied upon by Mr. Mishra and considering the provisions of NDPS Act and recording the objection of Mr. Paraharaj, learned counsel for the State, the Court is of the view that the vehicle which has been seized in connection with transportation of contraband substance in respect of which release was declined by the learned Sessions court cannot be sustained. In other words, it is a fit case where the vehicle seized and pending in the premises of the P.S. exposed to sun and rain and vagaries of climate should immediately be released in favour of the petitioner subject to conditions as would be imposed by the learned court below.

13. Accordingly, it is ordered.

14. In the result, CRLMC stands allowed. Consequently, the impugned order under Annexure-4 passed by the learned Additional Sessions Judge-Cum-Special Judge, Nimapara in CMC No. 07 of 2022 is hereby set aside with the consequential direction for release of the seized vehicle bearing registration No. OD-02-BJ-2402 in favour of the petitioner subject to satisfaction as to its ownership on verification of documents and while releasing the vehicle it shall impose conditions as would be found to be just and proper in the facts and circumstances of the case.

