

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 406 of 2021

An application under Sections 397 and 401 of the Code of Criminal Procedure.

Madhuri Pradhan ***Petitioner***

Versus

State of Orissa ***Opp. Party***

Advocates appeared in this case through Hybrid Mode :

For Petitioner : Mr. P. Chandra Sejpada, Advocate

For Opp. Party : Mr. Sibani Shankar Pradhan,
Addl. Govt. Advocate

CORAM:
JUSTICE SAVITRI RATHO

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Date of Judgment : 18.02.2022
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Savitri Ratho, J . I have heard Mr. P. Chandra Sejpada, learned counsel for the petitioner and Mr. Sibani Shankar Pradhan, learned Addl. Govt. Advocate for the State through hybrid mode.

2. This is an application under Section 401 read with Section 397 of Cr.P.C. challenging the order dated 20.08.2021 passed in Criminal Misc. Case No.9 of 2021 arising out of 2(a) C.C. Case No.12 of 2021 pending before the learned District and Sessions
CRL REV No. 406 of 2021

Judge -cum- Special Judge, Phulbani, rejecting the application of the petitioner filed under Section 457 of the Code of Criminal Procedure refusing to release the vehicle registered in her name which had been seized in 2(a) C.C. Case No.12 of 2021 registered for commission of offence punishable under Section 20(b)(ii)(C) of the N.D.P.S. Act.

3. The prosecution allegations in brief are that on 20.04.2021 at about 6.30 a.m., Inspector of Excise, Phulbani, Kandhamal and other excise staff while performing patrolling duty on the road in between Phulbani-Khajuripada, got information from reliable sources that the accused was transporting ganja in a white colour Mahindra Verito D-2 Diesel, K9K bearing registration No. OD-07-F-3599 and likely to pass through Khajuripada. The patrolling party rushed to the spot i.e. Khajuripada check gate and detained the vehicle. On being asked, the person in the vehicle disclosed his name as Manoj Kumar Pradhan. The vehicle was searched after observing formalities and a light yellow jerry bag containing 21 kgs of ganja was seized and the contraband ganja and the vehicle were seized. After completing investigation, the I.O submitted prosecution report against Manoj Kumar Pradhan.

4. Mr. Sejpada, learned counsel for the petitioner has submitted that the petitioner is the registered owner of the

Mahindra Verito D-2 Diesel, K9K bearing registration No. OD-07-F-3599 which has been seized on 20.04.2021 by the Inspector of Excise. He has further contended that the petitioner is not an accused in the case and it is true that the accused is her son but she was not aware about the involvement of the vehicle in the transportation of the alleged contraband article and the prosecution has also not found any incriminating material against her for which she is not an accused in the case. He also submits that since the date of seizure (which is almost one year back) the vehicle is lying in the open, exposed to sun and rain and is getting damaged. Therefore neither the State nor she will be benefitted if the vehicle is ultimately directed to be confiscated or released, as the case may be. He relies on the decisions in the case of ***Kishore Kumar Choudhury vs. State of Orissa*** reported in (2017) 66 OCR 1124 and ***Sunderbhai Ambala Desai -Vrs.- State of Gujarat*** reported in (2003) 24 OCR (SC) 444 in support of his submissions.

5. Mr. Sibani Shankar Pradhan, learned Addl. Govt. Advocate for the State has submitted that the decisions in case of ***Subas Chandra Panda vs. State of Orissa*** reported in (2009) 44 OCR 859, ***Basanta Kumar Behera vs. State of Orissa*** reported in (2013) 54 OCR 876 and ***Balabhadra Nayak vs. State of Orissa*** reported in (2013) 54 OCR 893 : 2012 SCC Online Ori 312 are also relevant

for a decision in this case. He has however not disputed the submission that the petitioner is not an accused in the case and in similar facts in other cases, this Court has directed for interim release of the vehicle.

6. 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.”*

This Court in the case of **Kishore Kumar Choudhury** (supra) 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 **Subas Chandra Panda** (supra), this Court after discussing the provisions of Section 34, 451, 452, 457 of the Code of Criminal procedure and the provisions of Section 60(3) and Section 63, Section 51 and Section 55 of the NDPS Act has held that:-

..... “8. Such being the position of law, the safe custody of the property in question can be given in the interim zima of the rightful owner if motion to that effect is made before the competent Court either under Section 451 Cr.P.C. or Section 457 Cr.P.C., as the case may be”....

In the case of **Basanta Kumar Behera** (supra), this court while analyzing Section 63 of the NDPS Act , 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."

This Court in the case of **Balabhadra Nayak** (supra) has observed as follows while allowing an application for release of a motorcycle of the petitioner who was not an accused.

...“8. Section 60(3) of the NDPS Act is no bar for interim release of the vehicle as the said provision is only substantive in nature and speaks of the liability of the vehicle to be confiscated where the owner fails to prove that

it was used without his knowledge or connivance or the knowledge and connivance of his agent in charge of the vehicle.”..

In view of the aforesaid discussion and the decisions of the Apex Court and this Court and considering the submissions of the learned counsel for the respective parties and the fact that the vehicle have been seized since 20.04.2021 and is lying in the campus of the Police Station being exposed to sun and rain, I am inclined to set aside the order dated 20.08.2021 passed by the learned District and Sessions Judge -cum- Special Judge, Phulbani and direct for interim release of the vehicle i.e. Mahindra Verito D-2 Diesel, K9K bearing registration No. OD-07-F-3599 in favour of the petitioner subject to the following conditions:-

- (i) the petitioner shall produce the original registration certificates, insurance papers 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 worth of Rs.2,00,000/- (rupees two lakh)

- (iii) the petitioner shall keep the vehicle insured at all times till the conclusion of the trial and produce the insurance certificates before the Trial Court as and when required;
- (iv) the petitioner shall not change the colour or any part of the engine and chasis numbers of the vehicles;
- (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 produce the vehicle before the Court as and when called upon;
- (viii) the petitioner shall not allow the vehicle to be used in the commission of any offence.

- 7. The CRLREV is accordingly disposed of.
- 8. Urgent certified copy of this order be granted on proper application.

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(Savitri Ratho)
Judge

Orissa High Court, Cuttack
Dated 18.02.2022 / Sukanta