

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 431 of 2021

Rakesh Kumar Panda

....

Petitioner

*Mr. A. Das,
Advocate*

-Versus -

State of Odisha

....

Opposite Party

*Mr. A Pradhan,
Addl. Standing Counsel*

CORAM:

JUSTICE SASHIKANTA MISHRA

ORDER

25.01.2022

Order No.

1.

1. This matter is taken up through virtual mode.
2. The petitioner has filed this revision challenging the order dated 14th September, 2021 passed by learned Sessions Judge, Puri in Criminal Misc. Case No. 13 of 2021, whereby his application under Section 457 of Cr.P.C. for interim release of his Mobile Phone was rejected.
3. The brief facts of the case are that a case under Section 20(b)(ii)(C) of the NDPS Act has been registered in the court below in Special G.R. Case No. 126 of 2020. In course of investigation, six Mobile Phones, which were allegedly used for committing the offence by the accused persons were seized and produced before the learned Special Judge. The petitioner, though not an accused in the case claims to be the owner of one of the Mobile Phones so seized and as such, filed an application for release of the said Phone. Learned Sessions Judge after noting the facts of the case and the relevant provisions under the NDPS Act, held that since the alleged

Mobile Phones were seized from the possession of the accused person along with the contraband articles, the prayer of the petitioner cannot be allowed.

4. It is contended by Mr. A. Das, learned counsel for the petitioner that the impugned order cannot be sustained in the eye of law, since the power under Section 457 of Cr.P.C. is available to the learned Special Judge as there is no provision in the NDPS Act for directing interim release of the property seized in the case. It is further submitted that the investigation having been concluded, the Mobile Phones are presently lying in the District Court Malkhana being subject to constant wear and tear and therefore, the impugned order in not allowing the prayer of the petitioner runs contrary to the ratio laid down by the Apex court in the case of ***Sunderbhai Ambalal Desai vs. State of Gujarat***, reported in (2002) 10 SCC 283.

5. Mr. A. Pradhan, learned Additional Standing Counsel contends that the petitioner is not an accused in the case, but there is prima facie evidence that the Mobile Phones in question were used by the accused persons for committing the offence and therefore, releasing them may cause prejudice to the prosecution.

6. There is no dispute with regard to the legal position that in the absence of any provision under the NDPS Act for directing interim release of the property, the provisions under Section 457 of Cr.P.C. can be invoked by the concerned Court. In the present case, six Mobile Phones were seized during investigation, which were said to have been used for commission of the alleged offences. Learned Sessions Judge

has rejected the application of the petitioner for release of the Mobile Phone only on the ground that the same was seized from the possession of accused persons along with the contraband articles.

7. Having regard to the ratio laid down in ***Sunderbhai Ambalal Desai*** (*supra*), this Court is of the considered view that no fruitful purpose would be served by keeping the Mobile Phone in the District Court Malkhana pending conclusion of the trial. As regards the apprehension that the prosecution may be prejudiced, the provisions under Section 63 of the NDPS Act adequately takes care of the same. Therefore, in the interim, the Mobile Phone in question can be released.

8. For the foregoing reasons therefore, the prayer of the petitioner is allowed. The impugned order is quashed. Learned court below is directed to pass necessary orders for release of the Mobile Phone in question in favour of the petitioner after being satisfied with regard to the question of ownership thereof and by observing the necessary formalities and on imposing such conditions as it may deem fit and proper in the facts and circumstances of the case.

9. The CRLREV is accordingly disposed of.

10. As the restrictions due to resurgence of COVID-19 situation 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 concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020, modified by Notice

No.4798, dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos. 514 and 515 dated 7th January, 2022.

(Sashikanta Mishra)
Judge

B.C. Tudu

