

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3285 of 2022

Premananda Sahoo

Petitioner

Mr. A.K. Panda, Advocate

-Versus-

State of Odisha

.... Opposite Party

Mr. S.S. Mohapatra, ASC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

17.11.2022

Order
No.

01.

1. Heard learned counsel for the petitioner and learned counsel for the State.

2. Instant petition under Section 482 Cr.P.C. is filed by the petitioner challenging the impugned order dated 27th October, 2022 under Annexure-5 passed in Criminal Misc. Case No.202 of 2021 by the learned S.D.J.M., Puri whereby release of the seized scrap copper wires was allowed in his favour but subject to a condition to deposit cash security of Rs.21,50,580/- before the court to be kept in the shape of a long term fix deposit with a nationalized Bank renewable on yearly basis.

3. Learned counsel for the petitioner submits that the petitioner is the consigner and the item was seized at the railway station and according to the FIR, he is alleged of having prepared forged documents in the name of the firm M/s S.S. Metal Overseas for trading in copper waste and scrap so as to deprive the State in the payment of GST but then having allowed such a release, the learned court below imposed such a heavy condition which is unreasonable and bad in law. Mr. Mohapatra, learned counsel for the State on the other hand submits that the petitioner is alleged of having not paid GST with regard to seized item and in that respect,

created forged documents and therefore, the learned court below was well within its power and also justified in imposing such a condition directing the petitioner to deposit a cash security to the extent of unpaid GST.

4. No doubt the allegation is against the petitioner for having not paid GST in respect of the item which was under consignment. However, learned court below having directed release of the scrap copper item in favour of the petitioner imposed such a condition to deposit a cash security which, in the considered view of the Court, is unreasonable and onerous and therefore, it has to be substituted by a property security, as it is well aware of the settled position of law that any condition at the time of release which is onerous would amount to virtual denial of relief which should always to be avoided. Learned court below though was inclined to allow the application under Section 457 Cr.P.C. and release the seized article in favour of petitioner but not justified to impose a condition to deposit cash security of Rs.21,50,580/-. However, the Court is of the view that the condition should be replaced by a property security which would serve the purpose and meet the ends of justice.

5. Accordingly, it is ordered.

6. In the result, CRLMC stands partly allowed. Consequently, the impugned order under Annexure-5 is set aside to the extent indicated above with a direction that the learned S.D.J.M., Puri shall accept a property security for the like amount from the petitioner and ensure release of the seized article in his favour subject to any other conditions as deemed just and proper in the facts and circumstances of the case.

7. Urgent certified copy of this order be granted as per rules.

(R.K. Pattanaik)
Judge

TUDU