

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.480 of 2021

Birupakhya Sahu

....

Petitioner

Mr.Prahallad Sahu, Advocate

-versus-

State of Odisha

....

Opposite Party

Mr. M.K. Mohanty, ASC

CORAM:

JUSTICE S.K. PANIGRAHI

ORDER

24.01.2022

Order No.

01.

1. The matter is taken up through video conferencing mode.
2. Heard learned counsel for the parties.
3. The petitioner by way of this criminal revision challenges the order dated 09.09.2021 passed by the learned Special Judge, Phulbani in Criminal Miscellaneous Case No.15 of 2021 arising out of 2(a) C.C. Case No.06 of 2021 whereby his petition for interim release of his APE Auto Rickshaw D35 bearing Registration No OD-12-A-5835 has been rejected.
3. The petitioner had filed an application under Section 457 of the Cr.P.C. before the learned Special Judge, Phulbani with a prayer to release his vehicle, which was seized in connection with 2(a) CC case No.6 of 2021 under Section 20(b)(ii)(B) of the NDPS Act. The offending vehicle was alleged to have transported contraband ganja 12 Kgs of contraband ganja packed in a white colour jerry basta which was recovered from

the offending vehicle. The present petitioner was booked under Section 20(b)(ii)(B) of the NDPS Act. The learned Special Judge, Phulbani after hearing the parties rejected his prayer for release of the vehicle on 09.09.2021. The petitioner has challenged the said order in the present criminal revision.

4. Learned counsel for the petitioner submits that the vehicle, which has been confiscated, is likely to be damaged in the premises of the police station being exposed to sun and rain for which its condition has been deteriorating. Further, there is no maintenance to the vehicle, which automatically rests deterioration. However, he relies upon the judgment/order passed by this Court in the cases of *Kishore Kumar Choudhury vs. State of Orissa*¹ and *Balabhadra Nayak vs. State of Orissa*².

He relies upon paragraph-5 of the judgment passed in *Kishore Kumar Choudhury vs. State of Orissa*, which reads as follows:-

“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

¹ 2017 66 OCR 114

² 2013 54 OCR 893

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."

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 v. Shaikh Abdul Karim, 1989 Criminal Law Journal 1998;

Madanlal v. State NCT of Delhi, 2002 Criminal Law Journal 2605; and Sujeet Kumar Biswas v. State of U.P.

2001 Criminal Law Journal 4431.

Section 60(3) of the Act by making provision for-protecting the interest of an innocent owner before confiscating his vehicle also lends support to my aforesaid view that an innocent owner till an order of confiscation is passed is entitled to interim custody of the vehicle pending trial of the case.”

5. In the case of *Balabhadra Nayak vs. State of Orissa* (supra), which is relied upon by learned counsel for the petitioner, this Court has held as follows:

“ Section 60(3) of the N.D.P.S. 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.”

6. Considering the aforesaid facts and the guided precedence of this Court, I am inclined to allow the prayer of the petitioner.

7. It is directed that the vehicle i.e. APE Auto Rickshaw D35 bearing Registration No OD-12-A-5835 shall be released in favour of the petitioner immediately subject to the following conditions:-

7.1. 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 I.O./IIC of the concerned police station;

7.2. 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;

7.3. the petitioner shall not change the colour or any part of the engine and chasis number of the vehicle;

7.4. the petitioner shall furnish two photographs of the vehicle before taking delivery of the same;

7.5. the petitioner shall not transfer the ownership of the vehicle in favour of any other person;

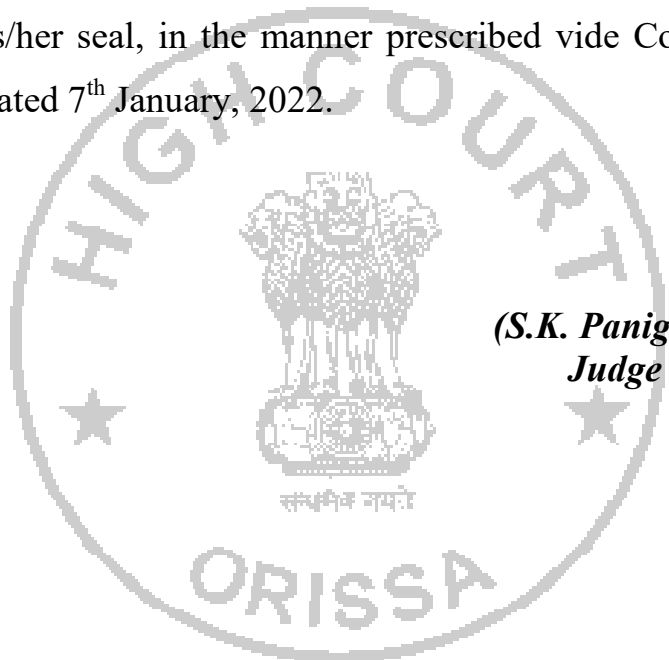
7.6. the petitioner shall produce the vehicle before the court as and when called upon.

7.7. the petitioner shall not allow the vehicle to be used in the commission of any offence.

8. The revision application is accordingly disposed of.

9. As the restrictions due to resurgence of Covid-19 are continuing, learned counsel for the parties may utilize a print out of the order available in the High Court's website, at par with certified copy, subject to attestation by the Advocate concerned with his/her seal, in the manner prescribed vide Court's Office Order dated 7th January, 2022.

LB



(S.K. Panigrahi)
Judge