

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2732 of 2021

*Sk. Wasim*

....

*Petitioner*

*Mr. Partha Sarathi Das, Advocate*

*Versus*

*State of Orissa*

....

*Opp. Party*

*Mr. P.K. Mohanty, Addl. Standing Counsel*

**CORAM:**

**JUSTICE SAVITRI RATHO**

**ORDER**

**Order No.**

**25.03.2022**

06. 1 I have heard Mr. Partha Sarathi Das, learned Senior Counsel for the petitioner and Mr. P.K. Mohanty, learned Addl. Standing Counsel through hybrid mode.
2. In this application under Section 482 Cr.P.C., the petitioner has challenged the order dated 06.12.2021 passed in Criminal Revision No.06 of 2021 by the learned Addl. Sessions Judge, Rairangpur (Annexure-4) confirming the order 22.11.2021 passed in C.M.C. No.103 of 2021 by the learned S.D.J.M., Rairangpur (Annexure-3) rejecting the application of the petitioner filed under Section 457 of Cr.P.C.
3. The case of the prosecution is that on 06.10.2021 one Sareiruddin purchased seven cattle from the nearest weekly market organized by Regulatory Marketing Committee, Rairangpur and the said cattle were being transported in the petitioner's vehicle bearing registration no.OD-11A-1454 from Rairangpur to Bisoi. On the way at Badampahar, the police seized the vehicle alongwith the cattle as the driver of the vehicle could not produce any documents in support of such transportation. On the basis of written report, FIR was registered vide Padampahar P.S. Case No.121 of 2021 under Sections 279/379/411/34 of IPC read with Section

11 (d) (e) (f) of Prevention of Cruelty Animals Act, 1960 (in short “PCA Act”).

4. Vide order dated 22.11.2021, the learned S.D.J.M., Rairangpur before going into the merits of the petition filed under Section 457 Cr.P.C., rejected the same on the ground that the petitioner has not filed the original documents, viz., the original Smart Card, the original Registration Certificate, particulars of which is required to know the ownership of the seized vehicle.

The learned SDJM should have granted opportunity to the petitioner to file such documents and thereafter proceeded to hear the case on merits but he rejected the application for which the petitioner challenged the order by filing a Criminal revision.

5. Before the revisional court, the petitioner produced the documents in support of ownership of the vehicle and learned Addl. Sessions Judge, Rairangpur rightly found fault with the learned SDJM for adopting a hypertechnical approach and not providing opportunity to produce documents in support of ownership of the vehicle . Thereafter the revisional court dealt with the matter on merits and after referring to the decision of this Court in the case of ***Jiba Bikash Parisad v. State of Odisha and another*** (CRLMC No.199 of 2021 and batch of cases) and other cases dismissed the Criminal Revision by order dated 21.10.2021 holding that the vehicle in question cannot be released in favour of the petitioner in his interim zima pending trial.

6. Mr. Partha Sarathi Das, learned counsel for the petitioner submits that there is no bar in the PCA Act for interim release of a vehicle and Rule-5 of Prevention of Cruelty to Animals (Case and Maintenance of Case Property Animals) Rules, 2017 (in short the “P.C.A. Rules) does not stand as a bar for interim release of the vehicle

seized in connection with a case registered under the PCA Act and the vehicle can be released after imposing certain conditions. He further submits that in view of Rule 5 (4) and 5 (5) of the P.C.A. Rules, the vehicle in question can be released in favour of the owner once the cost of transport, treatment and care of animal is realized/paid. So, he prays that the matter may be remitted back to the learned S.D.J.M., Rairangpur to determine such cost and release the vehicle in favour of the petitioner. He further submits that the vehicle is lying in open sky being exposed to sun and rain since 10.10.2021 and as per the mandate of Hon'ble Supreme Court in the case of **Sunderbha1 Ambalal Desai vs. State of Gujarat** reported in (2003) 24 OCR (SC) 444, the vehicle should be released in favour of the petitioner during trial.

7. Mr. P.K.Mohanty, learned Addl. Standing Counsel vehemently opposes the said submission stating that in view of Rule 5 of P.C.A. Rules and decision of this Court in **Jiba Bikash Parisad** (supra), the learned Revisional Court has rightly held that the vehicle in question cannot be released in favour of the petitioner in his interim zima pending trial. Therefore, he prays that this application under Section 482 Cr.P.C. being in the nature of a second revision, should be dismissed.

8. Rule 5 of the PCA Rules is extracted below :

*“5. Execution of bond.—(1) The magistrate when handing over the custody of animal to an infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala shall determine an amount which is sufficient to cover all reasonable cost incurred and anticipated to be incurred for transport, maintenance and treatment of the animal based on the input provided by the jurisdictional veterinary officer and shall direct the accused and the owner to execute a bond of the determined value with sureties within three days and if the accused and owner do not execute the bond, the animal shall be forfeited to infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala.*

*(2) The infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala having the custody of the animal may draw on from the bond on a fortnightly basis the actual reasonable cost incurred in caring for the animal from the date it received custody till the date of final disposal of the animal.*

*(3) The magistrate shall call for the accused and the owner to execute additional bond with sureties once eighty per cent, of the initial bond amount has been exhausted as cost for caring for the animal.*

*(4) Where a vehicle has been involved in an offence, the magistrate shall direct that the vehicle be held as a security.*

*(5) In case of offence relating to transport of animals, the vehicle owner, consignor, consignee, transporter, agents and any other parties involved shall be jointly and severally liable for the cost of transport, treatment and care of animals.*

*(6) In cases where a body corporate owns the animal, the Chief Executive Officer, President or highest-ranking employee of the body corporate, the body corporate and the accused shall be jointly and severally liable for the cost of transport, treatment and care of the animal.*

*(7) In cases where the Government owns the animal, the Head of the Department and the accused shall be jointly and severally liable for the cost of transport, treatment and care of the animal.*

*(8) If the owner and the accused do not have the means to furnish the bond, the magistrate shall direct the local authority to undertake the costs involved and recover the same as arrears of land revenue.”*

A reading of the provisions reveals that there is no bar or prohibition for interim release of vehicles although there is a provision for holding such a vehicle as security.

9. 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 the 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.”*

In ***Jiba Bikash Parisad*** (supra) this Court has held that the provisions of the PCA Act and the PCA Rules have to be kept in mind while deciding an application for interim release and set aside the orders directing for release which had been passed without considering the relevant provisions. The relevant portions of the judgement are extracted below :

*...“11. The Hon'ble Supreme Court of India in its order dated 7th May, 2014 passed in Civil Appeal No.5387 of 2014 have observed that,*

*"PCA Act is a welfare legislation which has to be construed bearing in mind the purpose and object of the Act and the Directive Principles of State Policy. It is trite law that, in the matters of welfare legislation, the provisions of law should be liberally construed in favour of the weak and infirm. Courts also should be vigilant to see that benefits conferred by such remedial and welfare legislation are not defeated by subtle*

*devices. Court has got the duty that, in every case, where ingenuity is expanded to avoid welfare legislations, to get behind the smoke-screen and discover the true state affairs. Court can go behind the form and see the substance of the devise for which it has to pierce the veil and examine whether the guideline or the regulations are framed so as to achieve some other purpose than the welfare of the animals. Regulations or guidelines, whether statutory or otherwise, if they purport to dilute or defeat the welfare legislation and the constitutional principles, Court should not hesitate to strike them down so as to achieve the ultimate object and purpose of the welfare legislation. Court has also a duty under the doctrine of **parents patriae** to take care of the rights of animals, since they are unable to take care of themselves as against human beings."*

*12. In another case, where one claimant, namely, Sayed Samim Quadari approached this Court in Criminal Revision No.333 of 2019 praying for interim release of the vehicle that was transporting the cattle illegally in a similar manner involving offences under the PCA Act, this Court by order dated 29th May, 2019 directed the learned S.D.J.M., Angul to consider the matter afresh for release of the vehicle. The same was challenged by the complainant before the Hon'ble Supreme Court of India. The Supreme Court in its order dated 5th July, 2019 passed in Special Leave Petition (Criminal) No.6472 of 2019 observed that,*

*".....xxxxx.....We have gone through the order passed by the High Court. The High Court remitted the matter to the Court below to consider application under Section 457 of the Cr.P.C. filed by the petitioners for release of truck afresh on its own merits. We have no doubt that while considering the application, the Magistrate shall also take into consideration the provisions of the Prevention of Cruelty to Animals (Case and Maintenance of Case Property Animals) Rules, 2017. We do not find it a fit case to entertain the special leave petition.*

*Subject to the above observations, the special leave petition is disposed of."*

*13. In the instant case, the revisional courts while directing the interim release of the vehicles have not taken into consideration the provisions enshrined in the PCA Act and 2017 Rules. The revisional courts appear to be ignorant of the provisions in the Act and Rules. Such provisions enshrined under the PCA Act and Rules are mandatory to be considered, specifically Rule 5 of the 2017 Rules, before deciding the prayer for interim release of the vehicle involved in offences under the PCA Act. The revisional courts have neither considered those relevant provisions nor the cost incurred by the petitioner for maintenance and care of the rescued animals. The learned revisional courts have also not considered the report of the MVI in respect of the seized vehicle which reveals some discrepancy in the chassis number of the vehicle. The petitioner, who is a registered SPCA, has categorically submitted that he has incurred expenses while keeping those cattle for their maintenance and care as well as health examination. This has also not been considered by the revisional courts before directing for release of the vehicles"*

Recently , in the case of ***Ashis Ranjan Mohanty vs State and others*** reported in **(2022) 85 OCR 705** - a PIL filed by a practicing Advocate concerned about the ever-growing stock of seized vehicles and other properties in the various police stations in the State of Odisha a division bench of this Court, after referring to and discussing the decisions of the Supreme Court in ***Basavva Kom Dyamangouda Patil v. State of Mysore: (1977) 4 SCC 358; Sunderbhai Ambalal Desai v.***

***State of Gujarat : (2002) 10 SCC 283, and General Insurance Council v. State of A.P. : (2010) 6 SCC 768 and the Delhi High Court in Manjit Singh v. State decided on 10th September 2014 in CRLMC No.4485 of 2013), has held as follows :***

*“...13. It is clarified that hereafter as far as release of the vehicle is concerned, the directions issued in this order would prevail.*

*14. In light of the decisions of the Supreme Court referred to hereinbefore, and the directions issued in Manjit Singh v. State (supra), the following specific directions are issued:*

***Articles/properties in general***

*15. (i) Within one week of their seizure, properties seized by the police during investigation or trial are to be produced before the Court concerned;*

*(ii) the concerned Court shall expeditiously, and not later than two weeks thereafter, pass an order for its custody in terms of the directions of the Supreme Court in Basavva Kom Dyamangouda Patil v. State of Mysore (1977) 4 SCC 358; Sunderbhai Ambalal Desai v. State of Gujarat (2002) 10 SCC 283, and General Insurance Council v. State of A.P. (2010) 6 SCC 768.*

*(iii) In any event, no property will be retained in the malkhana of the Court or in the police station longer than a period absolutely necessary for the purposes of the case; if it has to be longer than three months, the Court concerned will record the reasons in an order but on no account will the period of retention exceed six months.*

*(iv) In the event the property seized is perishable in nature, or subject to natural decay, or if cannot for any reason be retained, the Court concerned may, after recording such evidence as it thinks necessary, order the said property to be disposed of by way of sale, as the Court considers proper, and the proceeds thereof be kept in a separate account in a nationalized bank subject to orders of the concerned court.*

***Vehicles***

*16. As regards the vehicles, the following directions are issued:*

*(I) Vehicles involved in an offence may be released either to the rightful owner or any person authorised by the rightful owner after*

*(a) preparing a detailed panchnama;*

*(b) taking digital photographs and a video clip of not more than 1 minute duration of the vehicle from all angles;*

*(c) encrypting both the digital photograph and the video clip with a hashtag with date and time stamp with the hash value being noted in the order passed by the concerned court;*

*(d) preserving the encrypted digital photograph and video clip on a pen drive to be kept in a secure cover in the file and preferably also uploading it simultaneously on a server kept either in the concerned Court premises or in the server of the jurisdictional District Court*

*(e) preparing a valuation report of the vehicle by an approved valuer;*

*(f) obtaining a security bond.*

*(II) the concerned court will record the statements of the complainant, the accused as well as the person to whom the custody of the vehicle is handed over affirming that the above steps have taken place in their presence.*

*(III) Subject to compliance with (I) and (II) above, no party shall insist on the production of the vehicle at any subsequent stage of the case. The panchnama, the encrypted digital photograph and video clip along with the valuation report should suffice for the purposes of evidence.*

*(IV) The Courts should invariably pass orders for return of vehicles and/or accord permission for sale thereof and if in a rare instance such request is refused, then reasons thereof to be recorded in writing should be the general norm rather than the exception.*

*(V) In the event of the vehicle in question being insured, the concerned Court shall issue notice to the owner and the insurance company prior to disposal of the vehicle. If there is no response or the owner declines to take the vehicle or informs that he has claimed insurance/released his right in the vehicle to the insurance company and the insurance company fails to take possession of the vehicle, the vehicle may be ordered to be sold in public auction.*

*(VI) If a vehicle is not claimed by the accused, owner, or the insurance company or by a third person, it may be ordered to be sold by public auction.*

**General directions**

*17. The following general directions shall also be adhered to:*

*(i) The concerned Court may impose any other appropriate conditions which it may consider necessary in the facts and circumstances of each case.*

*(ii) The Court shall hear all the concerned parties including the accused, complainant, Public Prosecutor and/or any third party concerned before passing the order. The Court shall also take into consideration the objections, if any, of the accused.*

*(iii) If the Court is of the view that evidence in relation to the condition of the vehicle is necessary to be recorded even before its disposal in terms of the directions in paras 9 and 10 above, then such evidence be recorded, in the presence of the parties, forthwith and prior to disposal of the property.*

*(iv) Special features of the property in question could be noted in the Court's order itself in the presence of parties or their counsel.*

*Besides, a mahazar clearly describing the features and dimensions of the movable properties which are the subject matter of trial could be drawn up.*

*(v) If a person to whom the interim custody of the property/vehicle is granted is ultimately found not entitled to it, and is unable to return it, its value shall be recovered by enforcing the bonds and the security taken from such person or recovering the monetary value from him as arrears of land revenue.*

*(vi) As regards the directions issued in 16 (I)(c) and (d) is concerned, the Registry of the High Court will communicate to each of the District Judges the detailed Standard Operating Procedure (SoP) that is required to be followed. The directions issued in 16(I) (c) and (d) will become operational as soon as the said SoP is received by the concerned District Judge.*

*(vii) Similar directions concerning the encryption of digital photographs and video clips will become effective on receipt of the SOP by District Judge from the registry of the High Court."...*

10. In view of the aforesaid discussion and the directions contained in the decisions of the Apex Court and this Court referred to above , it is apparent that there is no bar for interim release of the vehicle involved in an offence under Section PCA Act and no useful purpose will be served

by allowing the vehicle to lie in the open exposed to the elements . In fact an application under Section – 457 of the CrI.P.C for interim release of the vehicle should be considered as soon as possible , but keeping in mind the provisions of the PCA Act and Rule 5 of the PCA Rules as it has been seized in connection with a case where one of the offences is under the PCA Act . For proper adjudication of the application , the learned Magistrate should call for a report regarding the expenses incurred and to be incurred for looking after the cattle and after directing for payment of such expenses which have been incurred and will be necessary for their upkeep and other conditions direct for release of the vehicle in the custody of the registered owner . In case of failure of the registered owner or the insurer in coming forward to take custody of the vehicle , the vehicle should be put to auction and the proceeds kept in fixed deposit and made subject to decision in the trial .

Therefore, considering the submissions of the learned counsel for the respective parties and the fact that the vehicle is lying being exposed to sun and rain for which its value is going down everyday , I am inclined to set aside the order dated order dated 06.12.2021 passed in Criminal Revision No.06 of 2021 by the learned Addl. Sessions Judge, Rairangpur (Annexure-4) and the order 22.11.2021 passed in C.M.C. No.103 of 2021 by the learned S.D.J.M., Rairangpur (Annexure-3) and remand the matter to the learned SDJM with a direction to hear the application for interim release of the vehicle, i.e., Bolero Pick up bearing Registration No.OD-11A-1454, afresh keeping in view the discussion and decisions of the Supreme Court and this Court referred to above referred to above and the provisions of Rule-5 of the P.C.A. Rules and the PCA Act and affording a chance of hearing to the parties concerned. The petitioner should file the documents in support of

ownership of the vehicle before learned SDJM. The learned Magistrate should endeavour to complete the entire exercise within a period of three weeks from receipt of a copy of this order or production of the certified copy of this order (whichever is earlier) after giving opportunity of hearing to the parties.

11. The CRLMC is accordingly disposed of.

12. Urgent certified copy of this order be granted as per rules. Copy of this order be sent to the learned SDJM Rairangpur for compliance .

*Bichi*

