

12.09.2022

The record is put up today. Ld. Counsel has filed one Valuation certificate issued by one Narayan Chandra Nayak vide his lisencc No.IRDA/IND/SLA/70319 & same is attached with the case record. Ld. Counsels for both the parties are present. Heard on the petition from both the sides. Put up on 26.09.2022 for order.

Dictated

S.D.J.M., Keonjhar

26.09.2022

This order arises out of the petition u/s.457 of Cr.P.C filed by the petitioner namely Balakrushna Sahoo, S/o-Late Sukuti @ Sukuta Sahoo, Vill-Mochinda, P.S-Anandapur, Dist-Keonjhar with a prayer to release the seized vehicle bearing regd. No.OR-02-BC-5637 having its Chassis No.M1ZP2GAA91M69805 and Engine No.GA91M30310 in his favour. As per the petitioner, he has filed the original documents i.e. Registration certificate, smart card and insurance certificate in respect of the seized vehicle.

This Court has already heard on such petition from both sides.

It is submitted by the learned counsel for the petitioner that the said vehicle bearing Regd. No.OR-02-BC-5637 has been seized by the Police personnels of Ghatagaon P.S., Keonjhar in connection to Ghatagaon P.S. Case No.146 dtd.23.07.2022 corresponding to G.R. Case No.1369/2022 of this court, where the present petitioner is the registered owner to said vehicle. The petitioner has filed documents to establish his ownership. The vehicle is detained illegally and the same is lying in the office premises of said P.S. premises exposed to sun and shower. No confiscation proceeding has been initiated against the said vehicle. So it is prayed the said vehicle be released in favour of the petitioner with any terms and conditions. On the contrary, learned A.P.P has raised objection to such prayer of the petitioner.

On perusal of the Misc Case along with connected G.R. Case i.e. G.R. Case No. 1369/2022 as well as report of the I.O., it reveals that the vehicle bearing Regd. No. OR-02-BC-5637 in question has

been seized by the Police officials of Ghatagaon P.S. in connection to Ghatagaon P.S case No.146/2022 U/s.279/337/338 of I.P.C. corresponding to the G.R case No.1369/2022 of this court, alleging that said vehicle has been used by the accused while committing the offence. However, it is reported by the I.O that the said vehicle is no more required for investigation and no confiscation proceeding has been initiated against the vehicle, which suggest this court that if at all the vehicle will be released the same will not hamper the investigation.

Law is well settled with respect to disposal of property seized in a criminal proceeding. To said disposal, **Section 457 Cr.P.C of the Cr.P.C** says “ *whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this code and such property is not produced before a criminal court before an inquiry or trial, the Magistrate may make such order as it thinks fit respecting the disposal of such property or delivery of such property to the person entitled to the possession thereof or if such person can not be ascertained respecting the custody and production of such property*”.

In the present case the documents available in the case record reveals that the present petitioner namely Balakrushna Sahoo, S/o-Late Sukuti @ Sukuta Sahoo, Vill-Mochinda, P.S-Anandapur, Dist-Keonjhar is the registered owner of the seized vehicle. Further, this court finds no evidence on record that there is any rival claimant to said vehicle. From the above discussion it is convinced that the present petitioner has entitlement to take possession of seized vehicle.

Moreover from the insurance certificate submitted by the petitioner shows that the period of insurance starts from 24 Jul, 2022, 00:01 hrs to 23 Jul, 2023 Midnight of the HDFC ERGO General Insurance and the date of occurrence is 23.07.2022 which reveals the vehicle has not been insured to the alleged date and time of occurrence.

Further in the Para-16 of **CRLMC No.2163 of 2021** passed by the Hon'ble High Court of Orissa speaks that :-

From conspectus of the analysis made above and on reference to the specific language employed in Rule-6, it would be evident that giving effect to the latter part of Sub-Rule-1 of Rule-6 entails the following steps:

(i) The Court concerned is to quantify an amount to be furnished as security which, in its opinion would be adequate to cover the compensation that may be awarded in a claim case arising out of such accident. In the event the Court is unable to quantify such security it may call upon the owners to at least furnish security to the extent of the present market value of the vehicle.

(ii) Upon furnishing such security, the vehicle can be directed to be released by imposing such other conditions as it may deem fit and proper in the facts and circumstances of the case.

Further in this case Ld. counsel for the petitioner filed a valuation certificate obtained from one Narayan Chandra Nayak vide his liscence No.IRDA/IND/SLA/70319 and the approximate commercial value of the vehicle is Rs.1,00,000/-(One lakh rupees).

So far release of vehicle is concerned, under the above circumstances and in view of the direction of Hon'ble Supreme Court of India in case of **Sundarbhai Ambala Desai Vrs. State of Gujarat reported in O.C.R 2003 Vol.24, page 444 &** direction of Hon'ble High Court of Orissa in **W.P(C) No.31622 OF 2021 in Ashis Ranjan Mahanty Vrs. State of Odisha & others** and in obedience to the order passed by Hon'ble High Court of Orissa in **CRLMC No.2163 of 2021** this court is inclined to release the seized vehicle bearing Regd. No.OR-02-BC-5637 having its Chassis No.M1ZP2GAA91M69805 and Engine No. GA91M30310 in interim zima of the present petitioner namely Narayan Chandra Nayak vide his liscence No.IRDA/IND/SLA/70319 subject to the following conditions:-

1. The petitioner shall furnish property security of Rs.1,00,000/- (one lakh) to cover the compensation which may be awarded in a claim case arising out of such accident.

2. The petitioner shall produce a detail panchnama of the vehicle along with digital photographs and a video clip of not more than 1 minute duration highlighting its registration number, engine number and chassis number saved in a pendrive in a secured cover with hash value of the video and the photographs.
3. The petitioner/I.O. shall procure the attendance of complainant, the accused and the petitioner at the Court for recording of their statements affirming that the above steps have taken place in their presence.
4. The petitioner shall execute an indemnity bond of Rs.1,00,000/-(Rupees one lakh) with one solvent surety for the like amount.
5. The petitioner shall produce the said vehicle & its documents before this court as and when required during the trial.
6. The petitioner shall not engage the said vehicle in any unlawful activities.
7. The petitioner shall not change the model, nature and colour of the said vehicle in any manner till disposal of the case.
8. The petitioner shall not transfer the said vehicle in any manner by way exchange, sale, mortgage, gift or lease till of disposal of the case, unless prior permission of the Court.

Further C/393 Sri Parsuram Mahanta is hereby delegated by this Court to monitor the taking of the digital photographs and the recording of the video and to furnish a certificate to that effect.

Intimate the above facts to the concerned I.I.C/I.O. with a direction to co-operate the procedure as mentioned above.

Put up on dtd.30.09.2022 or on the date when the petitioner fulfilled all the above conditions which ever is earlier.

Dictated

S.D.J.M, Keonjhar.

