

**IN THE COURT OF THE II ADDL.DISTRICT AND SESSIONS
JUDGE AT CHIKMAGALUR**

**Present: Sri. Manjunath Sangreshi, B.A.LL.B.[HONS]
II Addl. District & Sessions Judge,
Chikkamagaluru.**

Dated this 31st day of December 2020

S.C.No.60/2019

Complainant: State by Sakarayapatna Police

(Represented by the Public Prosecutor,
Chikkamagaluru)

-V/s-

Accused: Basappa K.M @ Basavaraja

Applicant: K.M. Basappa @ Basavaraju
S/o Marulasiddappa,
Aged about 64 years,
Retired P.E. Teacher,
R/o. Kanchagaranahalli Village,
Kadur Taluk, Chikkamagaluru District.
By his SPA Holder Sri. B. Madhu,
S/o. K.M. Basappa @ Basavaraju,
aged about 37 years,
Teacher,
R/at. Pais compound,
Chikkamagaluru.

(Represented by Sri. S.B. Sathisha
Advocate)

ORDER ON APPLICATION U/S. 451 and 457 OF
Cr.P.C. FILED BY THE APPLICANT

The applicant by name Sri. K.M. Basappa @ Basavaraju has filed this application through his SPA holder Sri.B.Madhu under section 451 and 457 of Cr.P.C., praying to order the release of the seized Hero Honda bike bearing Registration No.KA/18-R-7758 under P.F.No.146/2018 dated 25/12/2018 seized in Crime No.200/2018 to his interim custody on such terms and conditions as this court deems fit.

2. The brief facts of the case are that on the complaint, the police have registered the above case against accused alleging the offences punishable under section 450, 302 of IPC., and Sec. 3, 25 of Indian Arms Act and submitted a charge sheet before the court and also seized Hero Honda bike bearing Registration No.KA/18-R-7758 under P.F.No.146/2018 dated 25/12/2018 during the investigation.

3. It is submitted by the applicant that the applicant is represented by his SPA holder and is the R.C.Owner of the above said motor cycle. The complainant police have seized the said vehicle and have parked the same in front of the police station. The police have

no proper place or garage to keep the seized vehicle in their safe custody. In case the said vehicle remains in the custody of the police, the value of the vehicle will be diminished due to rigors of weather such as sunshine and wind.

4. Further, it is contended that the police have already submitted final report before this Court, already the trial has begun and hence, the police do not require the seized vehicle for further investigation. Therefore, the applicant needs the said vehicle for his day to day use. Without the vehicle the applicant is facing difficulties. The applicant has also under takes to produce the said vehicle either before this court or before the I.O. as and when required to do so.

5. The learned Public Prosecutor has filed her objections stating that the trial has not concluded yet and the said vehicle is required for the purpose of identification during the trial. That there are also possibilities of the accused changing the nature of the vehicle and possibilities of not producing the vehicle at the time of evidence. Accordingly, she has sought for rejection of the application.

6. For disposal of this petition the following points arise for my consideration.

1. Whether the applicant has made out sufficient grounds to release the Hero Honda bike bearing Reg. No.KA/18-R-7758 seized under P.F.No.146/2018 dated 25/12/2018 to his interim custody ?

2. What order ?

7. Having heard the arguments of both side and on perusal of the material on records, my findings on the above points are as under:

Point No.1: In the Affirmative.

Point No.2: As per final order
for the following:

REASONS

8. **Point No.1:-** The complainant police have seized the Hero Honda bike bearing Reg. No.KA/18-R-7758 under P.F.No.146/2018 dated 25/12/2018 during the investigation at the instance of accused person. The applicant i.e. accused in the case is represented by his SPA holder by name B. Madhu is none other than his son and he has furnished copy of registration certificate and insurance copy. I have perused the same. The registration certificate reflects that said motor vehicle is registered in the name of this applicant. The insurance copy

produced is valid till 10.05.2021 midnight. Therefore, the applicant is entitle for interim custody of the said vehicle. Moreover, there are no other rival claimants to the said vehicle. Further said vehicle has been seized from the accused. The R.C. particulars of the vehicle clearly establish that this applicant is the registered owner of the vehicle in question.

9. It is pertinent to note that with respect to the interim custody of the seized vehicle, the ***Hon'ble Supreme Court*** in ***Sunderbhai Ambalal Desai v. State of Gujarat reported in AIR 2003 Supreme Court 638*** laid down certain principles primarily dealing with provisions of Sections 451 and 457 of the Cr.P.C. While quoting the aforesaid two provisions of the Act it was observed in para 7 as:

"7. In our view, the powers under Section 451 Cr PC 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 article in safe custody;*

3. if the proper panchnama before handing over possession of the 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."

At the same time to safeguard the interest of the prosecution it was held that seized articles be handed over to the claimant after: (1) preparing detailed proper panchnama of such articles; (2) Taking photographs of such articles and a bond that such articles would be produced if required at the time of trial and after taking proper security.

10. In view of the principles laid down in the above cited decision, the applicant being the registered owner of the vehicle shall be entitled to take possession of the same. The learned public prosecutor has submitted that the accused may not produce the seized motor bike during evidence if it is released to him. The *Hon'ble Supreme Court* in the decision reported in *AIR 2003 Supreme Court*

638 Sunderbhai Ambalal Desai v. State of Gujarat has clearly held that the production of the vehicle during trial is not necessary and the photographs of the vehicle would be sufficient to be proved in evidence. Therefore, there are no reasons to deny the release of said vehicle in favour of the applicant. Accordingly, I answered the point no.1 in *Affirmative*.

11. Point No.2: In the light of the above discussions, I proceed to pass the following;

ORDER

The application filed by the applicant under section 451 and 457 of Cr.P.C., is allowed.

The Hero Honda bike bearing Reg. No.KA/18-R-7758 seized under P.F.No.146/2018 dated 25/12/2018 seized in Crime No.200/2018 [S.C.No.60/2019] is ordered to be released in favour of the applicant/K.M. Basappa @ Basavaraju represented by his SPA holder by name B. Madhu, on execution of indemnity bond for a sum of Rs.25,000/- along with one surety for the like sum, subject to the following conditions.

1. The I.O. shall verify original R.C. book and copy of insurance policy and conduct a mahazar before releasing the vehicle to the possession of the applicant.

2. The I.O shall take colour photographs of the vehicle from all the four directions clear enough to identify the said vehicle at the cost of applicant.
3. The I.O shall submit the said photographs of vehicle along with mahazar report to this Court without fail on the next date of hearing.
4. The I.O. shall take two sets of notarized copies of documents of said vehicle from the applicant and one set of said documents shall be submitted to the court.
5. The applicant shall produce the said vehicle as and when so required by the I.O. or by the Court.
6. The applicant shall not change the identity and nature of the said vehicle during the pendency of this case.
7. The applicant shall not alienate or dispose of said vehicle without prior permission from this Court during the pendency of this case.

(Dictated to Typist on computer, typed by her, corrected and pronounced by me in open court on this 31st day of December 2020)

Sd/-

[Manjunath Sangreshi]
II Addl.District & Sessions Judge
Chikkamagaluru.

*Mk/-