



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.179 of 2026

(In the matter of an application under Section 438 of the
BNSS, 2023)

Nilimamayee Chhotaray

....

Petitioner

-versus-

State of Odisha

....

Opposite Party

For Petitioner

:

Mr. R.N. Mohanty, Advocate

For Opposite Party

:

Mr. C.R. Swain, AGA

CORAM:

JUSTICE V. NARASINGH

DATE OF HEARING : 09.04.2026

DATE OF JUDGMENT: 06.05.2026

V. Narasingh, J.

Heard learned counsel for the Petitioner and
learned counsel for the state.

1. This Criminal Revision has been preferred
assailing the order dated 12.01.2026 passed by the
learned S.D.J.M., Bhubaneswar in CMC No.1427 of
2025 arising out of 2(a) CC Case No.279 of 2025,
whereby the prayer of the Petitioner for release of his
vehicle, namely BAJAJ RE E-TEC 9.0 AUTO bearing
Regd. No. OD-02-CY-5464 having its Chassis No.
MD2B94303RWG61224 and Engine No.



E30WRG42701, stated to be involved in an offence under Section 52(a)(i) Odisha Excise Act in 2(a) C.C. Case No.279 of 2025 arising out of Bhubaneswar P.R. No.221/2025-26 dated:19.08.2025, was rejected.

2. Referring to the P.R in question, it is submitted by the learned counsel that the Petitioner is the owner of the vehicle bearing registration number OD-02-CY-5464 and the offence in question was committed without his knowledge and he has not been arrayed as an accused. As such, he has no complicity.

3. On perusal of the impugned order, it is seen that learned Court in seisin rejected the application filed by the Petitioner for interim release of the vehicle in question primarily on the ground that in the meanwhile confiscation proceeding under Section 71 of the Odisha Excise Act, 2008 (hereinafter referred to as the "Act, 2008" has been initiated and also referring to the decision of this Court in the case of **Ghasana Mohapatra vs. State of Odisha, (2019) 73 OCR 663.**

4. Learned counsel for the Petitioner referring to the order of this Court dated 12.01.2026 in Criminal Revision No.1131 of 2025 (**Narayan Subudhi vs. State of Odisha**), submitted that this Court after referring to the corresponding provisions as contained in Section 451 and 457 Cr.P.C. (Sections 497 and 503 of BNSS) vis-à-vis Section 72 of the Act, 2008



directed for interim release of the vehicle. Hence, he prays for release of the vehicle in question.

5. Learned counsel for the State, on the other hand, opposes such release and submits that in view of the bar as contained in Section 72 of the Act, 2008 while dealing with the seized property under Section 71 of the Act, 2008 the vehicle ought not to be released and since there is no infirmity in the impugned order, the same does not warrant any interference.

6. Admittedly in the case at hand though the vehicle in question belongs to the Petitioner he has not been arrayed as an accused. On perusal of the R.C Book on record, it is seen that the vehicle is a hypothecated one. It is further stated that the Petitioner has no criminal antecedent.

It is submitted by the learned counsel for the Petitioner, on instruction, that though the vehicle is under seizure, he has been paying installments which is causing hardship to him. Hence, keeping in view the judgment of this Court in the case of **Narayan Subudhi (supra)**, the vehicle in question may be released in his favour subject to the outcome of the confiscation proceeding.

7. For convenience of reference, Sections 71(3) and 72 of the Act, 2008 are extracted hereunder;



"71. Seizure of property liable to confiscation - (1) & (2) xxx xxx xxx

(3) Where the Collector or the Authorized Officer seized any property under Sub-section (1) or where the property seized is produced before him under Sub-section (2) and he is satisfied that an offence under this Act has been committed in respect thereof, he shall, without prejudice to any other punishment to which the offender is liable under this Act, order confiscation of the property so seized or produced together with all other materials, articles, vehicles or conveyances used in committing such offence, whether or not a prosecution is instituted for the commission of such an offence. (Emphasized)

xxx

xxx

xxx

72. Bar of other proceedings during pendency of confiscation proceedings -

Notwithstanding anything contained in the Code of Criminal Procedure 2 of 1974, when the Collector or the Authorized Officer or the Appellate Authority is seized with the matter of confiscation of any seized property under Section 71, no Court shall entertain any application in respect of the same property and the jurisdiction of the Collector or the Authorized Officer or the Appellant Authority with regard to the disposal of the same shall be exclusive."

8. Considering the nature of allegation and the provisions of Sections 451 and 457 Cr.P.C. (Sections 497 and 503 of BNSS) and Sections 71(3) and 72 of the Act, 2008 and the decisions of this Court in the case of **Narayan Subudhi (supra)**, and also keeping in view the law laid down by the Apex Court in the



case of **Sunderbhai Ambalal Desai vrs. State of Gujarat, (2002) 10 SCC 290** to ensure that the vehicle under seizure is not further exposed to the vagaries of nature, this Court is of the considered view that the impugned order dated 12.01.2026 passed by the learned S.D.J.M., Bhubaneswar in CMC No.1427 of 2025 is liable to be set aside.

Accordingly, impugned order dated 12.01.2026 passed by the learned S.D.J.M., Bhubaneswar in CMC No.1427 of 2025 is set aside with a direction to the learned S.D.J.M., Bhubaneswar for interim release of the vehicle bearing registration OD-02-CY-5464 in favour of the Petitioner forthwith subject to verification of its ownership and by imposing such suitable conditions as deemed necessary including the conditions that the vehicle should not be altered in any manner nor its ownership shall be changed. And, such interim release shall be subject to the outcome of the confiscation proceeding.

9. The Criminal Revision is accordingly disposed of.

(V. NARASINGH)
Judge

*Orissa High Court, Cuttack,
Dated the 06th May, 2026/Soumya*