

THE HIGH COURT OF SIKKIM: GANGTOK

(Criminal Extraordinary Jurisdiction)

SINGLE BENCH: HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (Crl.) No. 02 of 2022

Pema Temphe Bhutia,
S/o Shri Sonam Tshering Bhutia,
R/o Near Kabi Tingda,
P/o Kabi and P.S. Mangan,
North Sikkim.

..... **Petitioner**

Versus

State of Sikkim,

..... **Respondent**

**Application under Article 226 read with 227 of the
Constitution of India.**

*(Quashing and/or setting aside the order dated 30.05.2022
passed by the learned Special Judge (POCSO) Act, 2012 Gangtok
East Sikkim in Criminal Misc. Case (POCSO) No.18 of 2022, Pema
Temphe Bhutia vs. State of Sikkim).*

Appearance:

Ms. Gita Bista and Mr. Pratikcha Gurung, Advocates for
the Petitioner.

Mr. Thinley Dorjee Bhutia, Additional Public Prosecutor for
the State-Respondent.

ORDER (ORAL)

06.07.2022

Bhaskar Raj Pradhan, J.

1. The present petition has been preferred by the
petitioner challenging the order dated 30.05.2022 passed by
the learned Special Judge, (POCSO) Act, 2012 in Criminal

Misc. Case (POCSO) No.18 of 2022. The issue involved pertains to a bus bearing registration No.SK-03-B-0104 (the vehicle) seized on 25.03.2022 by the Sadar Police in connection with Sadar Police Station (PS) Case No.41/2022 dated 22.03.2022 under Sections 363/376 of the Indian Penal Code, 1860 (IPC) and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act, 2012). A release petition had been preferred by the petitioner for release of the vehicle which had been seized. It was stated that the same was a commercial vehicle and the only source of income of the petitioner which had been given on hire to a pharmaceutical company on monthly basis. It was also stated that the vehicle had been taken on loan and the petitioner was required to repay the same through monthly instalment of Rs.49,000/-. It was the petitioner's case that due to the seizure and the fact that it could not be utilised, he was unable to pay the instalment. The learned Additional Public Prosecutor had raised no objection for the release of the vehicle. However, the learned Special Judge on consideration of the facts of the case came to the conclusion that the vehicle was a vital piece of evidence and would be required for identification during the trial in the same condition. Accordingly, the release petition was rejected.

2. Heard Ms. Gita Bista, learned counsel for the petitioner and Mr. Thinlay Dorjee Bhutia, learned Additional Public Prosecutor for the State-respondent. The respondent has filed an affidavit before this court stating that the various steps which had been taken by them. It is stated that the property seizure memo of all the items seized including the vehicle has been duly prepared in the presence of witnesses and photographs taken by the Investigating Officer (I.O.). It is stated that the I.O. has also taken photographs of the interior and the exterior of the bus as well as the alleged place where the alleged offence had been committed. It is stated that the I.O. has also recorded the statement of all the seizure witnesses. As the vehicle was recovered by the I.O. in front of the gate of Sun Pharma Company at Jalipool, photographs of the place of occurrence is also part of the charge-sheet. It was further stated that during the course of the investigation the vehicle was forwarded to the RFSL Saramsa for forensic examination and presently the bus is at RFSL, Saramsa Ranipool. It is stated that the investigation is complete and charge-sheet filed on 06.06.2022.

3. However, in view of the unclear stand with regard to the forensic examination of the bus as mentioned in

paragraph 8 of the affidavit an opportunity was granted to the State respondent to clarify the same. Mr. Thinlay Dorjee Bhutia on instruction submits that the forensic examination of the vehicle has been completed and the forensic report received by the police. In view of the same, it is submitted that they have no objection to the release of the vehicle to its owner.

4. The only concern of the learned Special Judge was that it would be required for identification during the trial. That can be achieved by directing the petitioner not to dispose the vehicle or to modify or change the colour of the vehicle to ensure that the identification of the vehicle during the trial is not hampered with until the completion of trial and without obtaining the specific direction of the learned Special Judge. The investigation having been completed with regard to the vehicle the balance of convenience would be to allow the release of the vehicle to the registered owner in terms of Section 451 of the Code of Criminal Procedure, 1973 (Cr.P.C.). It is settled that the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. The object is that where the vehicle (the property) which has been the subject matter of an offence is seized by the police it ought not to be retained in the

custody of the court or of the police for any time longer than what is absolutely necessary. As the seizure of the vehicle by the police amounts to its entrustment to a government servant, the idea is that the vehicle should be restored to the original owner after the necessity to retain it ceases. This would serve dual purpose. The owner of the vehicle would not suffer because of its remaining unused and the court or the police would not be required to keep the vehicle in safe custody. It is directed that a proper *panchanama* be prepared before handing over possession of the vehicle which can be used as evidence instead of its production before the court during trial. If necessary, the learned Special Judge could also record promptly evidence describing the nature of the vehicle in detail. (See ***Sunderbhai Ambalal Desai vs. State of Gujarat with C.M. Mudaliar vs. State of Gujarat***¹ and ***Basavva Kom Dyamangouda Patil vs. State of Mysore***²). In the facts and circumstances noted above, the petition is allowed accordingly.

(**Bhaskar Raj Pradhan**)
Judge

Approved for reporting: **Yes/No**
Internet : **Yes/No**

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¹ (2002) 10 SCC 283

² (1977) 4 SCC 358