Through e-mail

THE HIGH COURT OF ORISSA: CUTTACK

Letter No.: XXIX- 05/2020:15976/ Date: 26.09.2025

From:

Shri Biswajit Nayak,
Special Officer (Administration)

To:

1. **The District & Sessions Judge (All)**
2. **The Director,**
   Odisha Judicial Academy, Cuttack

Sub.: Circulation of Judgement dated 03.09.2025 of the Hon'ble High Court of Orissa, Cuttack passed in CRLMC No. 840 of 2023 (*Bedabyas Behera Vs State of Odisha*) – reg.

Madam/Sir,

With reference to the subject cited above, I am directed to forward herewith a copy of Judgement dated 03.09.2025 of the Hon'ble High Court of Orissa, Cuttack passed in CRLMC No. 840 of 2023 (*Bedabyas Behera Vs State of Odisha*), for your reference and guidance with a further request to circulate the same among the Judicial Officers working under your control, for their reference and guidance.

Yours faithfully,

Encl.: As above.

26/9/25

Special Officer (Admn.)

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 840 of 2023

Bedabyas Behera .... ***Petitioner***

Mr. Sujit Kumar Swain, Advocate

-versus-

State of Odisha .... ***Opposite Party***

Ms. S. Mohanty, Addl. P. P.

CORAM:

THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Judgment: 03.09.2025

Chittaranjan Dash, J.

1. By means of this application, the Petitioner seeks to set aside the order dated 16.08.2021 passed by the learned Addl. Sessions Judge, Deogarh in Criminal Revision No.8 of 2021 and 06 of 2021 as well as order dated 05.10.2020 passed by the learned J.M.F.C., Reamal in Crl. Misc. Case No.13 of 2020 arising out of 2(b) C.C. Case No.47 of 2019.

2. The background facts of the case, in brief, are that on 08.09.2019 at about 01:45 p.m., the Assistant Conservator of Forest, Deogarh Forest Division, on receipt of reliable information, proceeded on the allegation that a villager of Nuapada had hunted a wild boar by firing a gunshot which struck the animal on the chest causing its death. On the basis of the said report, proceedings were initiated under Section 51 of the Wild Life (Protection) Act, 1972, (hereinafter referred to as "WLPA") leading to seizure of properties

including a licensed firearm alleged to be owned by the Petitioner. It is alleged that the gun was seized from the house of the Petitioner. The Petitioner, however, has categorically denied any connection with the alleged offence and asserts that the firearm ought to have been released in his favour.

3. Mr. Swain, learned counsel for the Petitioner, submits that the Petitioner is the registered license holder of one 12 bore SBBL Gun bearing No. B/4-32701, Dass & Co., which has been seized in connection with 2(b) C.C. Case No. 47 of 2019 pending before the learned J.M.F.C., Reamal. It is urged that since the Petitioner is the lawful owner of the firearm, he is entitled to its release in interim custody under the provisions of Sections 451 and 457 of the Cr.P.C., subject to such conditions as the Court may impose. It is further contended that the gun has been lying in custody since the year 2019 and prolonged storage without proper upkeep will render the same irreparably damaged, which would amount to deprivation of the Petitioner's property rights. Learned counsel for the Petitioner further places reliance on the decision of this Court in ***Ratnakar Behera vs. State of Odisha*** passed in **CRLMC No. 985 of 2020**, decided on 05.08.2020, as well as the judgment of the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai vs. State of Gujarat*** reported in **(2002) 10 SCC 283**, wherein it has been consistently held that seized articles should not be allowed to lie exposed to decay and that the Court is empowered to release the same to the owner on appropriate terms. On the strength of the said ratio, it is urged that there is no distinction in principle between a seized vehicle and a licensed firearm, and the same approach ought to be adopted to prevent wastage. It is further submitted that the

rejection of the Petitioner's prayer by the learned J.M.F.C., Reamal, and its confirmation by the revisional Court, on the reasoning that the Court is not the competent authority to order release of a firearm, is misconceived. According to the Petitioner, the Criminal Court is vested with jurisdiction under the Cr.P.C. to direct interim custody, and the authority of the District Magistrate under the Arms Act does not exclude the jurisdiction of the Court to pass such orders. Learned counsel also draws attention to the fact that no confiscation proceeding, as contemplated under the Wild Life (Protection) Act, 1972 or the Arms Act, 1959, has been initiated in respect of the seized gun. In the absence of any such confiscation proceeding, the statutory bar cannot be invoked to deny release, and the refusal by the Courts below has resulted in serious prejudice to the Petitioner.

4. Ms. Mohanty, learned Additional Standing Counsel, submits that the weapon in question, having been seized in connection with a wildlife offence, squarely attracts the operation of Section 39(1)(d) of the Wild Life (Protection) Act, 1972, and is deemed to be the property of the State Government once shown to have been used in the commission of such offence. She argued that the legislative scheme places a higher duty on courts to ensure that such property is not casually released, lest the object of the Act be frustrated. Reliance is placed on the principle that wildlife offences are distinct in character, touching upon environmental and ecological interests of the public at large, and hence require strict application of statutory safeguards. It is therefore contended that interim release, if at all permissible, must be exercised sparingly

and only upon satisfaction that the statutory mandate has not been undermined.

5. This Court finds it necessary, before proceeding to the merits of the case, to clarify the position of law with regard to the authority competent to order release of articles seized in connection with offences under the Wild Life (Protection) Act, 1972. The matter assumes importance inasmuch as there exists a recurrent confusion at the trial courts as to whether such power vests exclusively with the forest authorities or the District Magistrate under the regulatory statutes, or whether the Criminal Court, before whom the seizure report is mandatorily placed, retains the jurisdiction to order release of the property during pendency of inquiry or trial. Since the present application concerns the release of a licensed firearm seized in a proceeding under the Wild Life (Protection) Act, it is essential to undertake a careful examination of the statutory provisions of the said Act in their proper sequence, to appreciate their scope, effect and interplay with the general provisions of the Code of Criminal Procedure. The discussion shall therefore proceed section by section, beginning with Section 39 of the Wild Life (Protection) Act, 1972, and thereafter traversing through the other relevant provisions including Sections 50, 51 and 54, before examining the scheme of the Code of Criminal Procedure and the guidance available from judicial precedents.

> **39. Wild animals, etc., to be Government property**.—(1) Every—
> (a) wild animal, other than vermin, which is hunted under section 11 or sub-section (1) of section 29 or sub-section (6) of section 35 or kept or [bred in captivity or hunted] in contravention of any provision

of this Act or any rule or order made thereunder or found dead, or killed or by mistake; and

(b) animal article, trophy or uncured trophy or meat derived from any wild animal referred to in clause (a) in respect of which any offence against this Act or any rule or order made thereunder has been committed,

[(c) ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made thereunder has been committed;

(d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act.]

shall be the property of the State Government, and, wheresuch animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat [derived from such animal or any vehicle, vessel, weapon, trap or tool used in such hunting] shall be the property of the Central Government.

(2) Amy person who obtains, by any means, the possession of Government property, shall, within forty-eight hours from obtaining such possession, make a report as to the obtaining of such possession to the, nearest police station or the authorised officer and shall, if so required, hand over such property to the officer-in-charge of such police station or such authorised officer, as the case may be.

(3) No person shall, without the previous permission in writing of the Chief Wild Life Warden or the authorised officer—

(a) acquire or keep in his possession, custody or control, or

(b) transfer to any person, whether by way of gift, sale or otherwise, or

(c) destroy or damage, such Government property.

6. Section 39 of the Wild Life (Protection) Act, 1972, is the foundational provision that determines the ownership of property connected with the commission of offences under the Act. A plain reading of sub-section (1) makes it clear that the legislature, in order to protect wildlife resources and ensure accountability, has declared that not only wild animals and animal articles but also vehicles, vessels, weapons, traps or tools used in the commission of an offence under the Act, shall vest in the State Government, or in the Central Government if the hunting has taken place in a sanctuary or National Park declared by the Central Government. The significance of this provision lies in its twofold effect: *first*, it vests ownership of the seized property in the State, thereby preventing private claims or dealings contrary to the scheme of the Act; and *second*, it establishes the premise for further regulatory or judicial orders to be passed with respect to the custody, release or confiscation of such property. It is pertinent to note that the expression "weapon" in clause (d) specifically brings firearms within the purview of Section 39, thereby placing the licensed gun seized in the present case squarely within the category of "Government property" by operation of law.

Sub-section (2) casts a statutory obligation on any person who comes into possession of such Government property to report the same within forty-eight hours to the nearest police station or the authorised officer, and to hand it over if so directed. This procedural safeguard ensures that such property is immediately brought under the control of lawful authorities, avoiding its misuse or clandestine disposal. Further, sub-section (3) imposes a strict prohibition against any person acquiring, transferring, damaging or

destroying such Government property without the prior written permission of the Chief Wild Life Warden or an authorised officer. This reinforces the exclusive control of the State over such property and ensures that even temporary or bona fide dealings by private persons require authorisation.

7. Thus, the legislative intent underlying Section 39 is to firmly vest ownership of the weapon or other instrumentalities used in wildlife offences with the State, and to regulate their handling through authorised channels alone. However, it is equally important to underline that vesting of ownership in the State does not ipso facto determine the procedure for custody, release, or confiscation. For that, one has to look at the subsequent provisions of the Act, particularly Sections 50 and 51, and their interface with the Code of Criminal Procedure, read as follows:

> **50. Power of entry, search, arrest and detention**.—
> (1) Notwithstanding anything contained in any other law for the time being in force, the Director or any other officer authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer or any forest officer or any police officer not below the rank of a sub- inspector, may, if he has reasonable grounds for believing that any person has committed an offence against this Act,—
> (a) require any such person to produce for inspection any captive animal, wild animal, animal article, meat, trophy or [trophy, uncured trophy, specified plant or part or derivative thereof]in his control, custody or possession, or any licence, permit or other document granted to him or required to be kept by him under the provisions of this Act;
> (b) stop any vehicle or vessel in order to conduct search or inquiry or enter upon and search any premises, land, vehicle or vessel, in the occupation of

such person, and open and search any baggage or other things in his possession;

[(c) seize any captive animal, wild animal, animal article, meat, trophy or uncured trophy, or any specified plant or part or derivative thereof, in respect of which an offence against this Act appears to have been committed, in the possession of any person together with any trap, tool, vehicle, vessel or weapon used for committing any such offence and, unless he is satisfied that such person will appear and answer any charge which may be preferred against him, arrest him without warrant, and detain him

Provided that where a fisherman, residing within ten kilometres of a sanctuary or National Park, inadvertently enters on a boat, not used for commercial fishing, in the territorial waters in that sanctuary or National Park, a fishing tackle or net on such boat shall not be seized.]

(3) It shall be lawful for any of the officers referred to in sub-section (1) to stop and detainany person, whom he sees doing any act for which a licence or permit is required under the provisions of this Act, for the purposes of requiring such person to produce the licence or permit and if such person fails to produce the licence or permit, as the case may be, he may be arrested without warrant, unless he furnishes his name and address, and otherwise satisfies the officer arresting him that he will duly answer any summons or other proceedings which may be taken against him.

[(3A) Any officer of a rank not inferior to that of an Assistant Director of Wild Life Preservation or [an Assistant Conservator of Forests] who, or whose subordinate, has seized any captive animal or wild animal under clause (c) of sub-section (1) may give the same for custody on the execution by any person of a bond for the production of such animal if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.]

(4) Any person detained, or things seized under the foregoing power, shall forthwith be taken before a Magistrate to be dealt with according to law [under intimation to the Chief Wild Life Warden or the officer authorised by him in this regard].

(5) Any person who, without reasonable cause, fails to produce anything, which he is required to produce under this section, shall be guilty of an offence against this Act.

[(6) Where any meat, uncured trophy, specified plant or part or derivative thereof is seized under the provisions of this section, the Assistant Director of Wild Life Preservation or any other officer of a gazetted rank authorised by him in this behalf or the Chief Wild Life Warden or the authorised officer may arrange for the disposal of the same in such manner as may be prescribed.]

(7) Whenever any person is approached by any of the officers referred to in sub-section (1) for assistance in the prevention or detection of an offence against this Act, or in apprehending persons charged with the violation of this Act, or for seizure in accordance with clause (c) of sub-section (1), it shall be the duty of such person or persons to render such assistance.

[(8) Notwithstanding anything contained in any other law for the time being in force, any officer not below the rank of an Assistant Director of Wild Life Preservation or [an officer not below the rank of Assistant Conservator of Forests authorised by the State Government in this behalf] shall have the powers, for purposes of making investigation into any offence against any provision of this Act—

(a) to issue a search warrant;

(b) to enforce the attendance of witnesses;

(c) to compel the discovery and production of documents and material objects; and

(d) to receive and record evidence.

(9) Any evidence recorded under clause (d) of sub-section (8) shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of the accused person.]

51. Penalties.—(1) Any person who 1[contravenes any provision of this Act [(except Chapter VA and section 38J)]]or any rule or order made thereunder or who commits a breach of any of the conditions of any licence or permit granted under this Act, shall be guilty of an offence against this Act, and shall, on conviction, be punishable with imprisonment for a term which may extend to [three years], or with fine which may extend to [twenty-five thousand rupees], or with both:

[Provided that where the offence committed is in relation to any animal specified in Schedule I or Part II of Schedule II or meat of any such animal or animal article, trophy or uncured trophy derived from such animal or where the offence relates to hunting in a sanctuary or a National Park or altering the boundaries of a sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than three years but may extend to seven years and also with fine which shall not be less than ten thousand rupees:

Provided further that in the case of a second or subsequent offence of the nature mentioned in this sub-section, the term of the imprisonment shall not be less than three years but may extend to seven years and also with fine which shall not be less than twenty-five thousand rupees.]

[(1A) Any person who contravenes any provisions of Chapter VA, shall be punishable with imprisonment for a term which shall not be less than [three years] but which may extend to seven years and also with fine which shall not be less than [ten thousand rupees].]

[(1B) Any person who contravenes the provisions of section 38J, shall be punishable with imprisonment for a term which may extend to six months, or with

fine which may extend to two thousand rupees, or with both: Provided that in the case of a second or subsequent offence the term of imprisonment may extend to one year or the fine may extend to five thousand rupees.]

(2) When any person is convicted of an offence against this Act, the Court trying the offence may order that any captive animal, wild animal, animal article, trophy, [uncured trophy, meat, ivory imported into India or an article made from such ivory, any specified plant, or part or derivative thereof]in respect of which the offence has been committed, and any trap, tool, vehicle, vessel or weapon, used in the commission of the said offence be forfeited to the State Government and that any licence or permit, held by such person under the provisions of this Act, be cancelled.

(3) Such cancellation of licence or permit or such forfeiture shall be in addition to any other punishment that may be awarded for such offence.

(4) Where any person is convicted of an offence against this Act, the Court may direct that the licence, if any, granted to such person under the Arms Act, 1959 (54 of 1959), for possession of any arm with which an offence against this Act has been committed, shall be cancelled and that such person shall not be eligible for a licence under the Arms Act, 1959, for a period of five years from the date of conviction.

(5) Nothing contained in section 360 of the Code of Criminal Procedure, 1973 (2 of 1974), or in the Probation of Offenders Act, 1958 (20 of 1958), shall apply to a person convicted of an offence with respect to hunting in a sanctuary or a National Park or of an offence against any provision of Chapter VA unless such person is under eighteen years of age.

8. The powers conferred under Section 50 of the Wild Life (Protection) Act, 1972, are wide and plenary, designed to enable effective enforcement of the statute. Sub-section (1) authorises a

range of officers from the Chief Wild Life Warden down to any police officer not below the rank of Sub-Inspector to enter, search, seize, detain, and even arrest, upon having reasonable grounds to believe that an offence under the Act has been committed. Sub-section (1)(c) expressly includes within its ambit the seizure of "any vehicle, vessel, weapon, trap or tool" used in the commission of the offence. The legislative intent is, therefore, clear that not only the wildlife specimen but also every instrumentality of offence, including firearms, falls within the sweep of the seizure power.

9. However, the legislature did not leave the matter at the discretion of the seizing officer alone. Section 50(4) mandates that *where any person is detained or any animal, vehicle, vessel, weapon, trap or tool is seized, the officer making such seizure shall forthwith report the seizure to the Magistrate having jurisdiction over the case.* This clause serves a dual purpose. First, it ensures accountability of the seizing officer by requiring immediate judicial intimation. Second, and more importantly, it vests the Magistrate with supervisory control over the seized property, thereby bringing the matter into the judicial fold. This provision, therefore, bridges the executive act of seizure with the judicial process of trial.

10. The significance of this becomes clearer when Section 51 is read in conjunction with Section 50. Section 51 prescribes the penalties for contravention of the Act, ranging from imprisonment to fines, and contains the substantive provision under which offenders are tried and punished. Sub-section (1) declares that any person who contravenes any provision of the Act, or any rule or order made thereunder, shall be guilty of an offence and liable to

punishment. Importantly, Section 51 also lays down that the offences are triable by a Magistrate. This provision, therefore, completes the chain initiated by Section 50. The same Magistrate to whom the seizure is reported under Section 50(4) is also the authority who conducts the trial under Section 51 and imposes penalties.

It follows, then, that seizure and custody under Section 50 cannot be divorced from the penal process under Section 51. The two provisions form a continuum: the seizure is reported to the Magistrate, and the Magistrate then proceeds to try the offence under Section 51. During this continuum, the Magistrate's jurisdiction to regulate interim custody of the seized property flows naturally, and indeed necessarily, from the statutory design. To hold otherwise that the Magistrate may try the offence but cannot pass interim orders with respect to the very weapon that is an exhibit in the trial would be to create an artificial dichotomy which the legislature never intended.

11. The structure of Section 50 itself supports this interpretation. Sub-section (1) empowers seizure; sub-section (2) contemplates issuance of summons or warrants; sub-section (4) requires reporting to the Magistrate; and sub-section (8) even authorises the Magistrate to receive and consider evidence relating to the offence. The reporting obligation in sub-section (4), when read with the trial jurisdiction under Section 51, demonstrates that the Magistrate is the central authority to whom the seized property must be produced, and who thereafter has competence to pass all consequential orders, including those for interim custody or release.

12. In practical terms, this ensures that the weapon seized which simultaneously qualifies as (i) *Government property* under Section 39, and (ii) *material evidence* for the offence under Section 51 is not left languishing indefinitely without judicial oversight. The Magistrate, being the trial authority, is best placed to decide whether continued retention of the weapon is necessary for evidentiary purposes, or whether its release can be safely ordered subject to conditions. The Act itself provides no separate administrative mechanism for interim release, and therefore the judicial power under the Cr.P.C. fills this gap. Thus, a conjoint reading of Sections 50 and 51 establishes the following propositions:

(i) The seizure of a weapon under Section 50(1)(c) must be reported to the Magistrate forthwith under Section 50(4).

(ii) The same Magistrate is the trial court under Section 51, vested with jurisdiction to impose penalty and order confiscation on conviction.

(iii) By necessary implication, the Magistrate also retains incidental jurisdiction to regulate interim custody of the seized weapon during pendency of the trial, consistent with the provisions of the Code of Criminal Procedure.

(iv) The powers of forest officers and authorised officers are executive in nature; final adjudication, including confiscation, remains within the judicial domain of the Magistrate under Section 51 read with Section 50.

13. Accordingly, the statutory scheme itself places the Magistrate at the heart of the seizure-trial–confiscation continuum. Any interpretation that excludes the Magistrate from passing interim custody orders would not only undermine the design of Sections 50 and 51 but would also frustrate the object of judicial accountability in the handling of seized property.

14. Having set out the vesting and seizure scheme under the Wild Life (Protection) Act, 1972, it becomes essential to identify the judicial mechanism that regulates custody and, where appropriate, orders release of seized property (including weapons). That mechanism is provided by Chapter XXXIV of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."), which deals with "Disposal of Property" and places the Magistrate at the centre of custody and release decisions both during and after trial. Three provisions, read together, are decisive: Section 451, Section 452, and Section 457. Section 459 is ancillary (perishables) but completes the picture.

15. Section 451 Cr.P.C. empowers "any Criminal Court" before which property is produced during an inquiry or trial to make such order as it thinks fit for the proper custody of such property pending conclusion of the proceedings; if the property is perishable or "otherwise expedient," the Court may order its sale or disposal after recording such evidence as it thinks necessary. The section's explanation defines "property" widely. In the present context, a seized firearm though declared "Government property" by Section 39 WLPA nonetheless qualifies as "property" within Section 451 when produced before the Magistrate, and the Magistrate may, in

the exercise of judicial discretion, release it on suitable conditions as the court may think fit, if its continued retention is unnecessary for evidentiary purposes. The text of Section 451 leaves no carve-out for weapons; the discretion is on the case-to-case basis and the legal principle, not category-based.

16. Section 457 Cr.P.C. deals with the complementary situation precisely the one the WLPA creates through Section 50(4), namely, when a seizure is reported to the Magistrate but the property is not produced before any Criminal Court during inquiry or trial. In such cases, "the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof," or, if that person cannot be ascertained, make appropriate orders; subsection (2) provides for an order if necessary. This harmonises with WLPA Section 50(4), which obligates the seizing officer to "forthwith report the seizure to the Magistrate having jurisdiction." Read together, WLPA Section 50(4) places the weapon within the Magistrate's supervisory orbit, and Section 457 Cr.P.C. confers the very power to regulate its interim custody or delivery when it has not (or not yet) been produced in Court. The statutory architecture thus channels executive seizure into judicial control.

17. Section 452 Cr.P.C. then addresses the end-stage: once the inquiry or trial "is concluded," the Court "may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession" of the property. This is the final disposal power, exercised on adjudicative findings and consistent with any special statute (here, the WLPA). More

importantly, it confirms that disposing authority, confiscation, destruction, or delivery resides in the Criminal Court at the conclusion of proceedings, reinforcing that interim custody decisions earlier in time (under Sections 451/457) are also judicial.

18. Section 459 Cr.P.C. is supportive. Where the person entitled to possession is unknown/absent and the property is perishable or of such a nature that sale is expedient, the Magistrate may order sale and hold the proceeds subject to Sections 457 and 458. While weapons are typically not "perishable," Section 459 confirms the breadth of the Magistrate's custodial jurisdiction over seized articles and proceeds, underscoring the Code's policy that seized property is not to languish without judicially managed disposition.

19. Consolidated reading of these provisions together yields a coherent rule that is directly applicable to WLPA seizures of weapons:

(i) seizure of a weapon used in an alleged wildlife offence is reported forthwith to the jurisdictional Magistrate (Section 50(4), WLPA);

(ii) from that moment, the Magistrate exercises judicial supervision over its custody under Section 457 Cr.P.C., if it is not produced in Court, and under Section 451, if it is produced;

(iii) upon conclusion of the case, the Magistrate/Court finally disposes of the weapon under Section 452 Cr.P.C., consistent with the findings and with the provisions of WLPA; and

(iv) where circumstances so warrant (such as risk of deterioration in perishable items), Section 459 Cr.P.C. equips the Magistrate to prevent wastage.

20. In practice, therefore, the Magistrate is empowered to release a seized weapon, even though Section 39 WLPA vests ownership in the State, provided such release does not undermine evidentiary needs or statutory prohibitions, and adequate safeguards (bond/surety, photographic inventory, engraving/identification marks, prohibition on use except as permitted by law, production on call, deposit/verification of licence, etc.) are imposed. This reading is complicit to the letter and spirit of Chapter XXXIV Cr.P.C. and harmonises, rather than conflicts, with the WLPA's statutory framework.

21. Before this Court proceeds to finally crystallise the position of law, it is necessary to advert to judicial precedents of the Hon'ble Supreme Court, which have examined the precise issue of whether a Magistrate is empowered to regulate interim custody or order release of property seized under the Wild Life (Protection) Act, 1972. These authorities are of binding character, and any interpretation of the statutory scheme under Sections 39, 50, and 51 of the Act must be read in harmony with them. The decisions in ***State of U.P. & Anr. vs. Lalloo Singh*, (2007) 7 SCC 334** and ***The State of Madhya Pradesh Vs. Uday Singh*, (2019) 17 SCC 393** are particularly instructive.

22. The Apex Court in its decision in ***State of U.P. & Anr. vs. Lalloo Singh*, (2007) 7 SCC 334**, has held as follows:

10. In view of the clear language of sub-section (1) of Section 50, Section 457 of the Code has no application. But there is another provision which also is relevant i.e. Section 451 of the Code that relates to the order for custody and disposal of the property pending trial in certain cases. It provides that when any property is produced before any criminal Court, during any enquiry or trial, the Court may make such order as it thinks fit for proper custody of such property pending the conclusion of the enquiry or the trial. It also provides for action to be taken when the property is subject to speedy and natural decay. If the Court otherwise thinks it expedient to do so, the Court may after recording such evidence as it thinks fit may pass orders for sale of the property or disposal thereof.

11. The real complexity of the issue arises as to what is the effect of the expression "to be dealt with according to law", as appearing in sub-section (4) of Section 50 of the Act.

12. Learned counsel for the appellant-State has submitted that when the property on seizure becomes the property of the Government, the Magistrate cannot pass any order for release thereof or interim custody thereof.

13. For appreciating this contention reference is necessary to Section 39 of the Act. Clause (d) of sub-section (1) of Section 39 deals with a situation when any vehicle, vessel, weapon, trap or tool has been used for committing an offence and has been seized under the provisions of the Act. The twin conditions are that the vehicle etc. must have been used for committing an offence and has been seized. Mere seizure of the property without any material to show that the same has been used for committing an offence does not make the seized property, the property of the Government. At this juncture, it is also to be noted that under sub-section (1) of Section 50 action can be taken if the concerned official has reasonable grounds for believing that any person has committed an offence under the Act. In other words, there has to be a reasonable ground for belief that an offence has been committed. When any person is detained, or things seized are taken before the

magistrate, he has the power to deal with the same "in accordance with law". There is a significant addition in sub-section (4) by Act 16 of 2003 i.e. requirement of intimation to the Chief Wild Life Wardon or the officer authorized in this regard as to the action to be taken by the Magistrate when the seized property is taken before a Magistrate. A combined reading of the omitted sub-section (2) and the substituted sub-section (3A) of the Section 50 makes the position clear that prior to the omission, the officials under the Act had the power to direct release of the seized article. Under sub-section (1), the power for giving temporary custody subject to the condition that the same shall be produced if and when required by the magistrate is indicative of the fact that the Magistrate can pass appropriate orders in respect of the purported seized property which is taken before him. While dealing with an application for temporary release of custody, there cannot be a complete adjudication of the issues involved as the same is a matter for trial. While dealing with the application the Magistrate has to take into account the statutory mandate that the seized property becomes the property of the State Government when the same has been used for commission of an offence under the Act and has been seized. It appears that insertion in sub-section (4) relating to the intimation to the Chief Wild Life officer or the officer authorized by him is intended to give concerned official an opportunity of placing relevant materials on record before the Magistrate passes any order relating to release or custody. In appropriate cases on consideration of materials placed before him, prayer for such release or custody can be rejected.

14. It is to be noted that under sub-section (1) of Section 50 for the purpose of entry, seizure, arrest and detention the official has to form the belief on reasonable grounds that the person has committed an offence under the Act. The Magistrate is, therefore, required to consider these aspects while dealing with the application as noted above. It cannot be a routine exercise. As noted above, the High Court is not justified in holding that Section 457 of the Code has application.

23. In ***Lalloo Singh*** *(Supra)*, the issue arose in the context of a tractor trolley seized by forest officials on the allegation that it had been used for illegal excavation of sand from a river bed falling within a notified sanctuary. The Magistrate, exercising powers under Section 457 of the Code of Criminal Procedure, ordered its release on furnishing of security. The revisional court overturned this order, holding that by operation of Section 39 of the Wild Life (Protection) Act, the tractor had become Government property and therefore could not be released by the Magistrate. The High Court, however, restored the Magistrate's order. When the matter reached the Supreme Court, the Court undertook a careful analysis of the amendments introduced into the Act by Act 44 of 1991 and Act 16 of 2003, especially the deletion of Section 50(2) (which earlier permitted forest officials themselves to release seized articles), the insertion of clauses (c) and (d) into Section 39(1), and the substitution of Section 50(3A) requiring intimation to the Chief Wild Life Warden. Against this statutory background, the Court posed the central question: whether the Magistrate retained jurisdiction to order release of seized property under the Act.

24. The Hon'ble Apex Court observed that mere seizure does not, in and of itself, vest ownership irrevocably in the Government under Section 39(1)(d). For vesting to take place, two conditions must be satisfied, namely, that the property was used in the commission of an offence and that it was seized. A mere act of seizure, untested by adjudication, cannot extinguish all rights and foreclose judicial scrutiny. Section 50(1) itself predicates action on "reasonable grounds for belief" that an offence has been committed,

thereby reinforcing that a prima facie satisfaction, not conclusive proof, underlies the seizure.

Most importantly, the Court explained the true import of Section 50(4), which requires that seizures be reported to the Magistrate "to be dealt with according to law." The phrase was held to be of wide import, empowering the Magistrate to consider applications for interim custody or release. While dealing with such an application, the Magistrate is not expected to conduct a full trial or make final determinations as those belong to the adjudicatory stage under Section 51 of the WLPA. Nevertheless, the Magistrate is obliged to apply judicial mind to whether continued retention is justified, having due regard to the statutory presumption that seized property may vest in the Government if proven to have been used in the offence.

25. It is true that in ***Lalloo Singh*** *(Supra)*, as also observed in the impugned judgment, the Hon'ble Supreme Court expressly observed that "the High Court is not justified in holding that Section 457 of the Code has application." This sentence, however, cannot be read in isolation. The Court's reasoning, when read in a comprehensive manner, makes it clear that the objection was directed not against the Magistrate's power to regulate custody, but against a mechanical transposition of Section 457 Cr.P.C. to a statutory scheme where seizure is carried out not by a "police officer" but by officials under the WLPA. The ratio of ***Lalloo Singh*** *(Supra)* is not that the Magistrate lacks jurisdiction, but rather that jurisdiction does not arise from a precise application of Section 457 in isolation. It arises from the combined reading of Section 50

WLPA with the general powers of the Magistrate under the Cr.P.C. to regulate seized property. Indeed, the Court itself held that when property is taken before a Magistrate, he "can pass appropriate orders in respect of the purported seized property." The doctrinal takeaway is thus: while Section 457 Cr.P.C. may not apply textually to WLPA seizures, the Magistrate nevertheless retains the jurisdiction to make custody orders because Section 50(4) expressly contemplates judicial oversight, and such oversight necessarily operates through the procedural machinery of the Cr.P.C.

26. At this juncture, it is also enlightening to note the observations made by the Hon'ble Supreme Court in ***Abdul Vahab vs. State of Madhya Pradesh,*** reported in **2022 LiveLaw (SC) 243**. We are conscious that the said decision dealt with confiscation proceedings under the Madhya Pradesh Prohibition of Cow Slaughter Act, 2004, and not directly under the Wild Life (Protection) Act, 1972. The ratio in ***Abdul Vahab*** *(Supra)* is therefore not being relied upon for its ultimate holding regarding confiscation, but only for the reaffirmation of an earlier principle laid down in ***State of M.P. Vs. Madhukar Rao*** reported in **(2008) 14 SCC 624**, which is squarely relevant for our present interpretative exercise. The relevant paragraphs in ***Abdul Vahab vs. State of Madhya Pradesh,*** reported in **2022 LiveLaw (SC) 243**, are as follows –

> **15**. We find support for the above view, from the ratio in the ***State of M.P Vs. Madhukar Rao, 2008 (14) SCC 624*** wherein this Court while adverting to the provisions of another legislation i.e. the Wild Life (Protection) Act, 1972 opined that the power of the Magistrate to order interim release of confiscated vehicle under Section 451 CrPC, is not affected. The

Court reasoned that withdrawal of the power of interim release conferred on the Authorities under Section 50(2), cannot be construed to mean a bar on the powers of the Magistrate under Section 451 of the Code of Criminal Procedure. It was next noted that a clear intention to the contrary can be found in the Act in Section 50(4) under which, any person detained, or things seized shall be taken before a Magistrate to be dealt with according to law (and not according to the provisions of the Act).

16. Pertinently, ***State of M.P. Vs. Madhukar Rao, 2008 (14) SCC 624*** affirmed the decision of the High Court in ***Madhukar Rao v. State of MP, (2000) 1 MP LJ 289 (FB)*** wherein Justice D.M Dharmadhikari, writing for the Full Bench, opined that the provision of Section 39(1)(d) of the Wildlife (Protection) Act, 1972, providing for absolute vesting of seized property with State Government, without a finding by the Competent Court that the property was being used for the commission of an offence, runs afoul of the Constitutional provisions. It is succinctly observed in Para 18,

> "18… If the argument on behalf of the State is accepted a property seized on accusation would become the property of the State and can never be released even on the compounding of the offence. The provisions of Clause (d) of section 39 have to be reasonably and harmoniously construed with other provisions of the Act and the Code which together provide a detailed procedure for the trial of the offences. If, as contended on behalf of the State, seizure of property merely on accusation would make the property to be of the Government, it would have the result of depriving an accused of his property without proof of his guilt. On such interpretation Clause (d) of section 39(1) of the Act would suffer from the vice of unconstitutionality. The interpretation placed by the State would mean that a specified officer under the Act merely by seizure of property of an accused would deprive him of his property which he might be using for his trade, profession or occupation. This would be serious

> encroachment on the fundamental right of a citizen under Article 19(1)(g) of the Constitution to carry on his trade, occupation or business."

27. In ***Abdul Vahab*** *(Supra)*, while striking down the confiscation of the appellant's vehicle despite his acquittal in the connected prosecution, the Court reiterated that in ***Madhukar Rao*** *(Supra)*, it was unequivocally held that the power of the Magistrate under Section 451 Cr.P.C. to order interim release of a seized vehicle is not affected by the amendments to Section 50 of the WLPA. Importantly, it was emphasised that the withdrawal of powers earlier conferred on forest officials by Section 50(2) cannot be construed to mean a parallel withdrawal of the Magistrate's judicial powers under the Code. Rather, Section 50(4) of the WLPA expressly mandates that seized property and detained persons must be placed before the Magistrate "to be dealt with according to law," thereby preserving judicial supervision. Furthermore, ***Madhukar Rao*** *(Supra)*, as noticed in ***Abdul Vahab*** *(Supra)*, clarified that a mere seizure cannot ipso facto vest ownership of the vehicle or weapon in the State under Section 39(1)(d) of the WLPA. To interpret otherwise would mean depriving a citizen of property merely on accusation, without adjudication, which would render the provision unconstitutional as violative of Article 19(1)(g) and Article 300A of the Constitution. The Full Bench of the Madhya Pradesh High Court in ***Madhukar Rao*** *(Supra)* had already stressed that such an interpretation would result in serious encroachment on fundamental and constitutional rights, and the Supreme Court, in affirming that view, underscored that "confiscation" or "vesting" must follow a judicial finding, not precede it.

28. To sum up, the issue requires a careful, holistic reading of the Wild Life (Protection) Act, 1972 together with the Code of Criminal Procedure, 1973. Section 39 of the WLPA declares that animals and articles used in wildlife offences (including "vehicle, vessel, weapon, trap or tool") are, on proof of use in an offence and on seizure, deemed to be the property of the State, but that declaration cannot be read so literally at the seizure stage as to effect an automatic and irrevocable elimination of the accused's proprietary or possessory rights without adjudication; such a reading would permit deprivation of property on mere accusation and would raise serious constitutional concerns.

29. Section 50 confers wide powers of entry, search and seizure on authorised forest and police officers and, importantly, Section 50(4) requires that any seizure be reported forthwith to the Magistrate "to be dealt with according to law," thereby bringing seized material within the ambit of judicial supervision; Section 51 provides the penal forum for trial of the substantive offence and completes the statutory chain between seizure and adjudication. Read together, Sections 50 and 51 constitute a continuum: the executive seizes on reasonable grounds, the seizure is reported to the Magistrate, and the Magistrate, who is also the trial authority under the Act is vested with the duty and the power to regulate interim custody of the seized property until final disposal.

In the parallel, framework of the Cr.P.C., Chapter XXXIV, particularly Sections 451, 457, and 452 vests criminal courts with broad, remedial powers to safeguard, preserve, deliver or otherwise dispose of produced or reported property; while Section 457's

literal text refers to police seizures, its rationale and effect must be harmonised with Section 50(4) WLPA so that the Magistrate's custodial and supervisory role is not nullified by a technical construction. The jurisprudence supports this synthesis in ***State of U.P. vs. Lalloo Singh*** *(Supra)* and in ***State of M.P vs. Madhukar Rao*** *(Supra).*

30. Practically, therefore, the following legal and procedural propositions can be emerged as the settled approach which trial courts could follow when asked to consider interim release of weapons seized in WLPA matters:

(i) verify the licence/permit and its genuineness;

(ii) obtain an up-to-date report from the seizing officer and permit the Chief Wild Life Warden / authorised officer to place relevant material before the court;

(iii) ascertain whether confiscation proceedings under any special statute have been initiated and whether those proceedings, by express statutory language, exclude judicial relief;

(iv) refuse release where prima facie material indicates that the weapon was used in the commission of the offence or where there is a real risk of misuse;

(v) where release is considered appropriate, record reasons in writing and impose robust conditions (such as deposit or verification of licence/permit; furnishing of personal bond and adequate sureties; an undertaking not to use or transfer the weapon and to produce it whenever called; photographic

inventory and verification of serial/identification marks; engraving/marking and forwarding of a copy of such record to the seizing agency and the licensing authority)

(vi) safe custody arrangements in accordance with law

31. Finally, and emphatically, any interim release under judicial supervision is without prejudice to the prosecution's evidentiary needs and to the authority of the Court (or competent authority under the statute where applicable) to order final confiscation, destruction or delivery at the conclusion of trial or in accordance with the special statute but until such adjudication is complete, judicial supervision and the remedial powers of the Magistrate remain available to prevent unnecessary and irreversible loss to the accused while preserving the Public interest and the integrity of wildlife protection laws.

32. It is pertinent to note that, as of now, there is no instructions received as to any independent confiscation proceedings having been initiated under the Wild Life (Protection) Act, 1972, by the authorised officers. In the absence of such proceedings, the only jurisdictional framework presently available is that under Section 50(4) of the Act, read together with Chapter XXXIV of the Code of Criminal Procedure, 1973. Consequently, the property in question, having been seized and duly reported, is to be dealt with by the Magistrate "in accordance with law," and the general powers conferred under Sections 451 and 457 Cr.P.C. stand attracted. To assume otherwise would amount to reading into the statute a bar which the legislature has not expressly enacted.

33. At the same time, it is made clear that the present adjudication is confined strictly to a clarification of the position of law and not to the merits of the case at hand. If, subsequent to this order, the authorised officer initiates confiscation proceedings under the Wild Life (Protection) Act, 1972, in accordance with law, nothing stated herein shall prejudice or limit the jurisdiction of such authority to proceed in the matter.

34. The CRLMC is accordingly disposed of.

Sd/-
Chittaranjan Dash
Judge

AKPradhan

True copy attested
Sr. Steno