

COURT OF 2ND ADDITIONAL SESSIONS JUDGE JAMMU.

File No. Cr. Rev. 80/2025

CNR No. JKJM01003804-2025

Date of Institution: 15.09.2025

Date of Order : 18.10.2025

Rahul Singh Bali S/o Raj Kumar R/o Bohri Udhewalla,
Jammu.

..Petitioner/Revisionist...

Through:- Mr. Vansha Sharma, Advocate

V/s

U.T of J & K TPL, Gulshan Ground, Jammu.

..Respondent.

Through:- Mr. Arvind Rathore APP.

In the matter of:

Revision petition u/s 438 BNSS seeking setting aside of order dated 18.8.2025 passed by Ld. Spl. Mobile Magistrate (T) Jammu in application bearing No. 06/Cr. Misc, titled Rahul Singh Bali vs. UT of J&K and consequent setting aside/modification of order dated 01.8.2025 passed by the said court in file no. 05/Cr. Misc. titled Rahul Singh Bali vs. I/C TPL Jammu with a further prayer to release the tyres (4 in number) of the vehicle in question which have been confiscated by the respondent in presence of the said order.

CORAM: Amit Sharma
JOC : JK00127

ORDER

1. Aggrieved of the order dated 18.08.2025, passed by Learned Special Mobile Magistrate (Traffic) Jammu, precisely based on the following grounds:-

- i. that the impugned order is wrong, improper and irregular on the ground that Ld. Trial Court vide order dated 01.8.2025 has

released the vehicle with the condition that tyres be removed and confiscated which probably is done on the assumption of alleged modification. It is settled principle of law that presumption of innocence operates in favour of the accused has to establish the guilt in the instant matter of having carried alleged modification of the vehicle. But by imposing such a condition at the very inception is violative of the basic criminal jurisprudence. The order of confiscation of the alleged modification can only be passed at the culmination of case/trial when it is established that the alleged offence has been committed and the accused is held guilty thereof.



- ii. that the traffic challan annexed with the petition clearly transpires that there is no supporting evidence in record of assertion/allegation of the modification carried in the vehicle. In the challan the name of two witness is mentioned who apparently are police personnel's subordinate to challenging officer. There is no expert opinion annexed with traffic challan which may suggest that the alleged modification has taken place has the challan is already presented before the court there is no scope of making any improvement vis a vis collection of expert opinion/evidence prosecution the alleged modification and even no penal provision

under M.V Act has been invoked for the alleged offence modification of the vehicle.

iii. that the order impugned is wrong, proper and irregular in view of the fact that when the petitioner filed the said application whereby he sought modification of order dated 01.8.2025, the court below sought objections from Ld. APP and the same was filed by Ld. APP, perusal whereof shall clearly reveal that the prosecution requested the court below to seek a report from JKSRTC Jammu with respect to modification of the wheels by the petitioner. So the petitioner fails to understand that how the court below without any evidence and expert opinion assumed that the petitioner had fixed the modified wheels in his vehicle and there was no occasion with the court below to impose such as harsh oblique illegal and arbitrary condition while releasing the vehicle in question. Hence testing the impugned order on the touch stone of law, the same cannot bear the judicial scrutiny of this court and the same is liable to be set aside on this count only.

iv. that due to the vehicle having remained under seizure for approximately 25 days, coupled with the applicant's unavoidable obligation to attend a family function/marriage ceremony, the vehicle was released from the custody of TPL

Jammu only after the removal of tyres, which continue to remain in confiscation with the police. Owing to the aforesaid circumstances and the urgency involved, the applicant was constrained to incur a considerable expenditure towards installation of new tyres on the said vehicle.

v. that impugned order is in violation of the due process of law, the provisions of criminal procedure, the applicant's fundamental right to personal liberty guaranteed under Article 21 of the Constitution and the principles of natural justice. The arbitrary action of the police, on account of their ignorance regarding the applicant's ownership of the vehicle has resulted in unnecessary harassment to the applicant. Further, it is also under the ambit of fundamental right for the applicant to own such segment of luxury vehicle of which police is not aware and has caused unnecessary harassment to the applicant.



2. In this regard the Ld. counsel of the revisionist has produced the following case law:-

i. **Latesh Kumar Ganeshbhai Patel**
V/S

State of Maharashtra .

2017 (4) Mh. L.J

ii. **M/s PRP Exports.**

V/s

The Chief Secretary, Govt. of Tamil Nadu & ors.

2012 SCC OnLine Mad 4267

3. Whereas learned APP for the state has vehemently opposed this set of arguments and submitted that there is no illegality in the order passed by the ld. trial court.
4. Taking into accounts the aforesaid grounds enumerated in this revision petition, there is only one short controversy involved in the matter and the said controversy is pertaining to the condition which was imposed by the Court of Learned Spl. Mobile Magistrate (Traffic) while providing ad-interim custody of the vehicle to the petitioner. Vide order dated 01.8.2025, the said condition is reproduced as under:-

Condition (5):

“The SHO concerned is further directed not to release without removing the modification of the vehicle and after removing the same, he shall keep the modified articles in safe custody at his own responsibility”.

5. It is because of this very condition, the Ld. Counsel of the revisionist has been aggrieved and made this submission that the removal of the modifications, which in the present case were the modified tyres fixed in the offending vehicle bearing registration no. PB13AU-3181. Meaning thereby the very purpose of providing the ad-interim custody of the vehicle gets defeated if the same has been provided to the petitioner without any tyres. Infact, by way of this condition what is appears that the Ld. Trial Court act as on Executive side rather than on judicial side. Because by the removal of modified tyres, it clearly manifest that the offence under which the applicant has been booked has been proved without any trial.

6. Taking into consideration the aforesaid set of argument. At the first instance, it is proper to state herein that the **"Court of law can never be the mouth piece of the police"**. And whenever any matter presented before the Court for judicial determination. The "judicial propriety" demands that the same has to be dealt by the Court as per the mandate of law.

7. In the present revision petition, the applicant/petitioner has been booked for the commission of an offence u/s 207 of M.V. Act and the violation which has been cited in the challan is pertaining to the plying of the vehicle with modification. No doubt that the challan is pending disposal before the Ld. Trial Court. But in between, the Learned Trial Court provides the ad-interim custody of the vehicle to the applicant/petitioner. However, the very imposition of condition no. 5 by the Ld. Trial Court appears to be not in the consonance of law, simply because of this reason that whatever has been alleged in the challan the same is the subject matter of the trial. It is only after the conclusion of the trial, the Ld. Trial Court can frame final opinion with regard to the modification made in the vehicle by the applicant/petitioner and prior to its disposal, if the said modifications removed, the same on the one hand defeats the rights of the petitioner and on the other hand without any summary trial, the offence has been found proved against the applicant/petitioner.

8. The Ld. Trial Court while providing the ad-interim custody of the vehicle imposed such condition which creates a stumbling block for the applicant that how he will be able ply the vehicle on road without tyres. In other

word, while imposing such conditions, the practicability of the legal aspect has to be kept in mind.

9. On the other hand, whatever be the modification which have been made in the vehicle, the same amounts to the violation with regard to the registration certificate and it is the case of the petitioner that such types of vehicles which has been purchased by the applicant is considered as the "Luxury off road" vehicle throughout the World and is not a vehicle that can be ply on the streets of the ordinary city roads.

10. Therefore, the Traffic Police Officials, while implicating the petitioner under the offence of Motor Vehicle Act u/s 207 of M.V. Act failed to state anywhere in the challan that what kind of vehicle the applicant was plying whether it was a Thar or Jeep Wrangler. And without taking into account the nature of the vehicle straightway issued the challan against the applicant only and only reflects one thing that they are above law and if they booked the applicant u/s 207 of M.V. Act, it was also obligatory on the part of the Traffic officials to specifically highlighted the nature of the vehicle which has been seized in the matter.

11. In other words, if the nature of the vehicle as stated in the revision by the petitioner is an "off road vehicle". Then in such circumstances whether such types of vehicles required any specific permission for its plying in the city road. Whereas, this aspect has not been touched anywhere by the concerned traffic officials and at the time of hearing of this revision, the said traffic official namely SI Ravi Dutt, EXJ-875529 (SO) failed to explain anything as has been observed by this court that

whether he observed such thing from the document of this vehicle before its seizure as well as at the time of implicating the petitioner under the head of section 207 of M.V. Act. It has also been observed that whatever be the exercise made by the traffic official with regard to the removal of the modification of the vehicle at the time of its release is nothing but an arbitrary use of power and that too when the same has been further supported by the order of the Court.

12. For which the right of hearing must be given to the petitioner/applicant to defend his case that the modification which has been made in the offending vehicle is as per the terms and conditions of the registration certificate or not. And if the same is not permissible under the particular clause of the registration certificate. Then the registration certificate of the vehicle shall accordingly being suspended/cancelled by the RTO concerned unless and until the violator remove the said modification or in otherwise the RTO after obtaining further fees issued the fresh registration certificate with modifications thereby taking into consideration the nature of the vehicle.

13. In both these situations neither it empower the police to remove the modification at the time of release nor it empowers the Court to impose any such condition which is against the principles of law.

14. On the basis of aforesaid analogy, the Court has arrived at this conclusion that impugned order dated 01.8.2025 passed by the Learned Trial Court is not in consonance with law especially vis-à-vis to the

imposition of condition no. 5 stated at supra in the impugned order. Accordingly, the same is set aside to the extent of condition no. 5 with this direction to the respondent to release the four tyres of the vehicle in question which have been confiscated and the petitioner is also directed to obtain the valid registration certificate regarding use of these modifications with the offending vehicle as per the rules and norms of the M.V. Act applicable in the given facts and circumstances.

15. Revision is allowed accordingly. Any observation made in this order is limited only to the extent of disposal of this revision and it no manner constitute to be the general observation/comments on any other related matter or also the Ld. Trial Court is at liberty to decide the challan u/s 207 of M.V. Act as per its own wisdom and knowledge without being influenced by any such observation.

Announced
18/10/2025


2nd Additional Sessions Judge
Jammu