

GAHC010205422022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1031/2022

UNION OF INDIA
THROUGH DIRECTOR OF REVENUE INTELLIGENCE, REPRESENTED BY
SHRI DICKEN PEGU, IO, MAINAK TOWER, G.S. ROAD, GUWAHATI-5.

VERSUS

TEJINDER SINGH
S/O- SHRI INDERJEET SINGH, R/O- BABA FAREED NAGAR, SEHORA, P.O.
DARAP, P.S. GANGYAL, DIST. JAMMU, JAMMU AND KASHMIR-181132.

Advocate for the Petitioner : MR. S C KEYAL

Advocate for the Respondent : B K SINGHA

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

JUDGEMENT AND ORDER (CAV)

Date : 02-03-2023

Heard Mr. S.C. Keyal, learned Standing Counsel for the Directorate of Revenue Intelligence. Also heard Mr. N. Sharma, learned counsel for the respondent.

2. The petitioner has filed an application under Section 482 Cr.P.C., 1973, against the order dated 13.06.2022 passed by the learned Sessions Judge, Kamrup(M), Guwahati in Misc. Case No. 67/2022, whereby the learned Sessions Judge has allowed the zimma of TATA truck bearing Regd. No. JK-02-BL-8199 to the owner of the vehicle which was seized in connection with DRI Case No. 02/CL/NDPS/GANJA/DRI/GZU/2022-23 dated 08.04.2022.

3. The brief fact of the case is that a specific intelligence was received from the Directorate of Revenue Intelligence(DRI), Lucknow on 07.04.2022 to the effect that a truck bearing Regd. No. JK-02-BL-8199 was transporting huge quantity of cannabis(ganja) hidden beneath the cover load of rubber and the said truck was proceeding from Tripura. On receipt of the information, a team of DRI officers started keeping surveillance and vigil in the said truck which was coming from Jorabat side. On the next date i.e. on 08.04.2022, the DRI officers spotted a truck bearing Regd. No. JK-02-BL-8199 coming from Jorabat side and when the truck approached, DRI officers asked the said driver of the truck to stop the vehicle on the road side near Khanapara Flyover, Guwahati. The person sitting on the driver seat of the truck introduced himself as Vikram Singh and further informed that he was coming from Agartala and going to Jalandhar, Punjab. Initially, the driver of the truck denied carrying any contraband in his truck, however, on repeated enquiry by the DRI officers about cannabis(ganja), the driver confessed that ganja was loaded in the truck between the rubber load.

4. Since the place of interception was a busy National Highway and not conducive for thorough examination of the truck load and further seizure formalities, the DRI officers decided to take the said truck to the DRI office. Thereafter, the driver Vikram Singh along with truck was taken to DRI office at

Christian Basti, Guwahati. Then, the driver disclosed that the packet containing cannabis(ganja) were kept in the middle of the bedload of the truck and covered on top with packages containing rubber sheets. A total of 80 packets of cannabis(ganja) wrapped with brown adhesive tapes found in the said truck. The collective weight of the recovered ganja was found to be at 1218.250 kg. which is a commercial quantity in terms of Section 2 of the NDPS Act. The driver of the truck could not produce any valid document in respect of legal possession/transportation or carrying or recovery of 80 packets of ganja and confessed his guilt for illegal possession of cannabis(ganja).

5. Thereafter, necessary formalities were undergone and contraband including the said truck were seized as per seizure memo on the same date and after complying with all the mandatory provisions of the Act, the driver namely, Vikram Singh was arrested and produced before the CJM, Kamrup(M) on 09.04.2022 and then he was sent to judicial custody. Thereafter, the inventory of the seized goods was certified by the Judicial Magistrate First Class, Guwahati.

6. On 18.04.2022, one Ranbir Singh, the Controlling Manager of TCI Freight filed a petition before the Sessions Judge, Kamrup(M) praying for zimma of natural rubber. On 19.04.2022, a report was called for from the investigating officer as to whether the goods can be released. The investigating officer on receipt of the order, submitted a report by stating that no linkage was found between the owner of the rubber and syndicate who are involved in transportation of cannabis(ganja) and further stated that in case of release of seized rubber, investigation may not hamper. Thereafter, on the basis of the report of the I/O, the learned Sessions Judge, allowed the prayer of the applicant and gave zimma of the seized goods.

7. Subsequently, on 13.06.2022, the Sessions Judge, Kamrup(M) passed an order in Misc. Case (crl.) No. 67/2022 releasing the seized TATA truck bearing Regd. JK-02-BL-8199 in favour of the registered owner on furnishing a bond of Rs.30,00,000/- to the satisfaction of the investigating officer. It was alleged that the order was passed ex-parte as none on behalf of the department were present at the time of hearing of the case.

8. The learned Standing counsel for the petitioner Mr. S.C. Keyal has submitted that the learned Sessions Judge has no jurisdiction to release the vehicle seized under Section NDPS Act, which is a self-contained statute and as such, the order dated 13.06.2022 passed by the learned Sessions Judge, Kamrup(M), is without jurisdiction and is liable to be set aside.

9. It is also submitted by the learned Standing counsel for the petitioner that the provisions of Section 451 Cr.P.C. will not come into operation in the instant case when NDPS Act provides for disposal of goods seized, the learned Sessions Judge, erroneously invoked the provisions of Cr.P.C. and misconstrued the law while passing the order. It is also submitted that giving zimma of the vehicle to the respondent is contrary to the law and consequently is liable to be set aside.

10. The learned Standing counsel for the petitioner further alleged that the impugned order was passed ex-parte without affording any opportunity of hearing or placing the necessary materials before the learned Special Court. It is also submitted that the driver of the alleged vehicle was caught red handed carrying 1218.250 kg of cannabis(ganja) which was commercial quantity and in the knowledge of driver and the same make it sufficient to confiscate. The learned Special Judge fails to consider this aspect of the matter and as such, the impugned order is liable to be interfered.

11. On the other hand, the learned counsel for the respondent has submitted that the respondent is the registered owner of the said vehicle allegedly involved in the case but he being a owner of the vehicle has no knowledge regarding carrying of cannabis(ganja) in his vehicle from Agartala towards Jalandhar, Punjab.

12. It is also contended that the provision of Code of Criminal Procedure including Sections 451 and 457 have been expressly made applicable by virtue of Section 36-C of the NDPS Act and there is no express bar contained in the NDPS Act for grant of interim custody of the vehicle. There is no proposition of law that once the vehicle is seized for commission of the offence under NDPS Act, the interim custody cannot be allowed, rather it should be disposed of expeditiously and judiciously so that the owner of the vehicle would not suffer. In support of his submission learned counsel for the respondent has cited the following case laws- (i) (2021)(i)GLR 396 (*Swarup Dutta vs The Union of India.*) (ii) MCRC No. 4636 of 2022 (*Kapil Jha vs The State of Madhya Pradesh*).

13. I have considered the submissions made by the learned counsel for the parties and I have also perused the order passed by the learned Sessions Judge, Kamrup(M) vide dated 13.06.2022.

14. Section 451 of the Cr.P.C., which empowers the Court to pass order for custody and disposal of property pending trial, reads as under:-

"When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the

proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.- For the purposes of this section, "property" includes--

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence."

15. Section 452 of the Cr.P.C., which empowers the Court to pass order for disposal of property at conclusion of trial, reads as under:-

"(i) When an inquiry or trial in any Criminal Court 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 thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(ii) An order may be made under sub-section (1) for the delivery of

any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(iii) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in [Sections 457, 458 and 459](#).

(iv) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(v) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise."

16. [Section 457](#) of the Cr.P.C., which lays down the procedure to be followed

by police upon seizure of property, provides as under:-

"(i) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, 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 such person cannot be ascertained, respecting the custody and production of such property.

(ii) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

17. While dealing with the seized vehicles from time to time by the police either in commission of various offences or abandoned vehicles or vehicles which are recovered during investigation of complaint of thefts etc., Hon'ble Supreme Court observed in *Sunderbhai Ambalal Desai Vs. State of Gujarat* reported in 2002 vol. 10 SCC 283 as under :-

"17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the

Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

18. In case of *General Insurance Council Vs. State of Andhra Pradesh (SC)* reported in 2010 vol. 6 SCC 768 in view of the mandate of [Section 451](#) read with [Section 457](#) of the Cr.P.C., Hon'ble Supreme Court considered it necessary that in addition to the directions issued in *Sunderbhai Ambalal Desai's Case* (supra) the following further directions with regard to seized vehicles are also required to be given:-

"(A) Insurer may be permitted to move a separate application for

release of the recovered vehicle as soon as it is informed of such recovery before the Jurisdictional Court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.

(B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.

(C) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer."

19. While giving the additional directions reproduced above, Hon'ble Supreme Court also observed as under:-

"It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions.

Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division/Commissioner of Police of the concerned cities/Superintendent of Police of the concerned district."

20. In cases of *Raghubir Singh alias Beera Vs. State of Punjab, 2006 (4) RCR (Criminal) 343*; *Rajesh Kumar Vs. State of Haryana, 2007(2) RCR (Criminal) 561* and *Iqbal Singh Vs. State of Punjab, 2013(2) RCR (Criminal) 612*, the vehicles seized under the [NDPS Act](#) case were ordered to be released. However contrary view was taken by the court in case of *Kirandeep Vs. State of Punjab* in connection with CRR No. 3231 of 2014 that in view of liability to confiscation, the vehicle seized under the [NDPS Act](#) case could not be released. In view of the conflict, reference was made to Division Bench in CRR No.1765 of 2015 titled as *Gurbinder Singh @ Shinder Vs. State of Punjab* and it was held that the vehicle used for transporting the narcotic drugs and psychotropic substances can also be released on invoking the provision under [Section 451](#) of the Cr.P.C.

21. Now, the question that arises for determination of [Section 451 Cr.P.C.](#) can be applied while considering the plea for interim custody of the vehicle seized under the [NDPS Act. Section 51](#) of the NDPS Act which has a bearing on this issue reads as follows:-

"51. Provisions of the code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and Seizures.- The provisions of the [Code of Criminal Procedure, 1973 \(2 of 1974\)](#) shall apply, in so far they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act."

22. As regards the seizure of any article or thing, the provisions of [Cr.P.C.](#) shall apply if it is not inconsistent with the provisions of [NDPS Act](#).

23. On a thorough perusal of the various provisions under the [NDPS Act](#), it appears that there is no specific provision debarring the release of the vehicle seized under the Act. When the provision under [Section 451 Cr.P.C.](#) is not inconsistent with any specific provision under [NDPS Act](#), the same will have to be applied as mandated under [Section 51](#) of the said Act.

24. Reverting back to the present case, learned Sessions Judge, has passed an order releasing the alleged vehicle to its owner, on the basis of the case of *Sunderbhai Ambalal Desai(supra)*. A vehicle used for committing rape and murder is being released in the grab of [Section 451 Cr.P.C.](#) as interpreted by the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai(supra)*. When the vehicles seized in such heinous crimes are released for interim custody, there is no logic

in denying interim custody of the vehicle seized under the [NDPS Act](#). Neither the State nor the owner of the vehicle is going to be benefited if the vehicle in the premises of the police station occupies a larger space posing inconvenience to the Police Department. Further, it is an open secret that when a vehicle is parked unattended, the valuable parts of the vehicle are casually taken away or stolen. Finally, when the Court comes to a conclusion that the vehicle was used for committing the crime, the vehicle which was kept in the open would have substantially deteriorated. Likewise, if the Courts take a final decision that the vehicle was not at all used for commission of the crime or the vehicle was used without the knowledge of the owner thereof, the owner will have to collect only the scrap of the vehicle. In other words, nobody is going to be benefited out of idle parking of vehicle totally unattended in the premises of the police station.

25. [Sections 60\(3\)](#) and [63](#) of NDPS Act also have relevance to the issue involved in this case for determination. [Section 60\(3\)](#) and [section 63](#) of the NDPS Act reads as follows:-

"60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.-

(1) xxxxx xxxxx

(2) xxxxx xxxxx

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance, or any article liable to confiscation under sub-

section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

63. Procedure in making confiscation.- (1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharge, the court shall decide whether any article or thing seized under this Act is liable to confiscation under [section 60](#) or [section 61](#) or [section 62](#), and, if it decides that the article is so liable, it may order, confiscation accordingly.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under [section 60](#) or [section 61](#) or [section 62](#), but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of an article or thing shall be made until the expiry of one month, from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance [or controlled substance] the opium

poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub- section shall, as nearly as may be practicable, apply to the net proceeds of the sale."

26. A conveyance seized under the [NDPS Act](#) shall be liable to confiscation only when the owner of the conveyance who was given an opportunity by the Court could not prove that the conveyance was used without his knowledge or connivance. The Court will have to decide whether a vehicle seized under the [NDPS Act](#) is liable to confiscation only on conclusion of trial. The trial Court has to take independent decision on the question of confiscation irrespective of the conviction or acquittal or discharge recorded by it. But, at any rate, the trial Court is not supposed to pass any order of confiscation before expiry of one month from the date of seizure or without affording opportunity to the claimant.

27. In the case in hand, there is no dispute that the petitioner is the owner of the vehicle in question having all the documents with regard to his vehicle. It is claimed by the petitioner that his vehicle be released as per provision of Cr.P.C. 451 and 457, in the light of the judgment of Sunderbhai Ambalal Desai's case (supra). If we go through the general provisions in this regard, in the [Cr.P.C.](#), the seized vehicle can be released as per [Sections 451](#) and [457](#) of Cr.P.C. but here in the instant case, the vehicle has been seized under the provisions of [NDPS Act](#) and [NDPS Act](#) admittedly is a special act which prescribes a procedure for dealing in specified case and [NDPS Act](#) being a special statute, the provisions of special statute has to be followed by the Court.

28. [Section 63](#) of the NDPS Act provides a procedure for making confiscation. Admittedly the vehicle in question has not been confiscated yet. [Section 52-A](#) of NDPS Act provides for the seizure and disposal of seized narcotic drug, psychotropic substances and the conveyances. Before the amendment of [Section 52-A](#) of the Act in 1989, the word 'Conveyance' was not included as item which could be disposed of under [Section 52-A](#) of NDPS Act. The very fact that word 'Conveyance' had been incorporated, the amendment itself indicates that the Government intended to provide a special procedure to deal with the disposal of such conveyances. While taking into account the fact that most of the transportation are done in conveyance which itself is defined under [Section 2 \(viii\)](#) as meaning "a conveyance of any description whatsoever and includes any aircraft, vehicle or vessel". Therefore, if any, vehicle is involved in transportation of narcotic drug, psychotropic substance or controlled substance, such vehicle also could be seized and disposed of in terms of Section 52 A(1) of the Act as stated by the learned counsel for the petitioner.

29. In the case of *Union of India Vs. Mohanlal and another* reported in (2016) 3 SCC 379, the Apex Court held that when any narcotic drug, psychotropic and controlled substances and conveyances are seized, shall be forwarded to the officer in-charge of the police station, who shall approach the magistrate concerned and with his permission the sampling shall be done under the supervision of the magistrate. Further, it is directed by the Apex Court that Central Government and its agencies and so also the State Governments shall within six months take appropriate steps to set up storage facilities for the exclusive storage of seized Narcotic Drugs and Psychotropic and controlled Substances and Conveyances. The Central Government and the State

Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures.

30. The question to be decided in the instant case, whether the learned magistrate/ special court has the authority under the provisions of [Sections 451](#) and [457](#) Cr.P.C., to consider the application for interim custody of the vehicle/conveyance. The same questions were decided by the Division Bench of the Karnataka High Court in Criminal Petition No.3571/2021 (Rathnamma Vs. State represented by PSI Channagiri Police Station Davanagere). As per decision of the High Court, the provisions of [Section 451](#) of Cr.P.C. are not inconsistent with the provisions of [NDPS Act](#), and the paragraphs- 47 and 50 of the judgment read as follows:-

*"47. In the peculiar facts and circumstances of the present case, we are of the considered opinion, that we have no hesitation in holding that there is no provision under the [NDPS Act](#) debarring release of the vehicle for interim custody. The provisions of [Section 451](#) of Cr.P.C., as already stated supra, is found not inconsistent with the provisions of the [NDPS Act](#) and is applicable to the vehicle seized under the [NDPS Act](#) as well. Thereby, the law laid down by the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai's*(supra) will apply to the vehicles seized under the [NDPS Act](#) as well. Any contrary view taken by the Courts of law would be against the interest of the owner of the vehicles, the public at large and the State.*

50. Since the provisions of the [Code of Criminal Procedure](#)

including [Section 451/457](#) have been expressly made applicable by virtue of [Sections 36-C and 51](#) of the NDPS Act to the proceedings before the Special Court and there is no express bar contained in the [NDPS Act](#) for grant of interim custody as contained in [Section 52C](#) of the Indian Forest Act, 1927, therefore, merely on the ground that the vehicle is liable to confiscation under [Section 60](#) of the NDPS Act, it cannot be held that once the vehicle is seized for commission of offence under the [NDPS Act](#), interim custody cannot be granted, as jurisdiction of criminal court has to be construed strictly unless expressly excluded."

31. Admittedly, in the present case also, the petitioner has not produced any procedure prescribed by the Central Government as directed by the Hon'ble Supreme Court in Union of India Vs. Mohanlal and another (supra) regarding confiscation proceeding of the vehicle.

32. A perusal of [Section 36-C and 51](#) of the [NDPS Act](#) indicates that the provisions of [Cr.P.C.](#), so far as, they are not in contradictions with the special [Act i.e. NDPS Act](#), shall be applicable to the [NDPS Act](#) and as in the [NDPS Act](#), no procedure for interim custody of the vehicle is prescribed, [Sections 451 and 457](#) of [Cr.P.C.](#) specifically deal with the custody and disposal of property pending trial and the procedure to be followed by the police upon seizure of property.

33. On the basis of above discussion, this Court is of the view that the law laid down by the Apex Court in Sunderbhai Ambalal Desai (supra) will apply to the

vehicle seized under the [NDPS Act](#) as well. Thus, the Magistrate/Special Judge, NDPS Act shall have the power to consider the application for the interim custody of the conveyance/vehicle under the provision of Section 451 and 457 of Cr.P.C.

34. In the result, the present petition is dismissed and disposed of accordingly.

JUDGE

Comparing Assistant