

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CrI A(D) No. 65/2022

Suhail Ramzan Aged 32 years
S/o Mohd. Ramzan
R/o Khanabal, Anantnag, Tehsil and Distt.
Anantnag.

.... Appellant(s)/Petitioner(s)

Through :- Mr. Bari Abdullah, Advocate.

V/s

Union of India
Through Joint Secretary, Ministry of
Home Affairs through NIA, Jammu,
Trikuta Nagar, Jammu.

....Respondent(s)

Through :- Mr. Vishal Sharma, DSGI.
Mr. Vipin Kalra, Public Prosecutor, National
Investigation Agency, Jammu.

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE**

**JUDGMENT (Oral)
18.10.2023.**

(Sanjeev Kumar J)

1. This appeal under Section 21 of the NIA Act is directed against order dated 16.09.2022 passed by the Court of 3rd Additional Session Judge, Jammu (the Special Judge under Section 22 NIA Act) as an appellate authority in an appeal under Section 25(6) of the Unlawful Activity (Prevention), Act, 1967 [**“the UA(P) Act”**] titled “Suhail Ramzan v. Joint Secretary, MHA through NIA.

2. The impugned order, of the appellate authority passed under Section 25(6) of the UA(P) Act, is assailed by the appellant primarily on the ground that the appellant was a bona fide purchaser of the seized vehicle i.e. Mahindra Scorpio

bearing registration No. JK0CE-1221 dated 30.11.2021 and, therefore, could not have been made subject matter of seizure being 'proceeds of terrorism.'

3. Mr. Vishal Sharma, learned DSGI appearing for the respondents submits that "the plea of bona fide purchaser" was not raised before the designated authority and, therefore, there was no occasion for either the designated authority or the appellate authority, who is to either confirm or reject the seizure, to deal with such question.

4. Mr. Vishal Sharma, learned DSGI further submits that the seizure of the vehicle is not the end of the game. The further proceedings for forfeiture of the seized vehicle are required to be initiated by the special Court in terms of Sections 26 and 27 of the UA(P) Act, 1967 and in case such proceedings are initiated, the appellant would be put on notice and will have an opportunity to plead and demonstrate that the seized vehicle which is sought to be confiscated/forfeited is bonafidely purchased by him.

5. Having heard learned counsel for the parties and perused the material on record, we are of the view that the order passed by the appellate authority in terms of Section 25(6) of the UA(P) Act is in consonance with law. We are saying so because the plea, that the appellant was bona fide purchaser of the seized vehicle supported by any documentary evidence, was never raised before the designated authority. The appellate authority, which was only to scan the order of the designated authority to find out as to whether it deserved to be confirmed or rejected, could not have gone into this factual question raised for the first time before the appellate authority.

6. Be that as it may, the fact remains that the seizure of the vehicle on the ground that it represents proceeds of terrorism is to be followed by forfeiture in

terms of Sections 26 and 27 of the UA(P) Act. Before we proceed further, we deem it appropriate to set **out the provisions of Sections 26 and 27 of the UAP Act, 1967**, below:

“26. Court to order forfeiture of proceeds of terrorism.—Where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the court confirms the order in this regard under sub-section (6) of section 25, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a court for an offence under Chapter IV or Chapter VI.

27. Issue of show cause notice before forfeiture of proceeds of terrorism.—(1) No order forfeiting any proceeds of terrorism shall be made under section 26 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.

(2) No order of forfeiture shall be made under sub-section (1), if such person establishes that he is a bona fide transferee of such proceeds for value without knowing that they represent proceeds of terrorism.

(3) It shall be competent for the court to make an order in respect of property seized or attached,—

(a) directing it to be sold if it is a perishable property and the provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) nominating any officer of the Central Government or the State Government, in the case of any other property, to perform the function of the Administrator of such property subject to such conditions as may be specified by the court.”

From a reading of Section 26 and 27, it clearly transpires that the Court initiating proceedings for forfeiture of the ‘proceeds of terrorism’ is under an obligation to issue a show-cause notice to the person holding or in possession of ‘proceeds of terrorism’ informing him of the grounds on which it is purposed to forfeit seized vehicle/goods and in such an eventually, the person concerned shall have an opportunity of making representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture.

Subsection 2 of Section 27 clearly provides that no order of forfeiture under Subsection 1 of Section 27 shall be passed by the Court if the person in possession establishes that he is a bona fide transferee of such proceeds for valid reasons without knowing that it represents ‘proceeds of terrorism’.

7. In view of the clear position emerging from reading of Section 26 and 27 of UAP Act, we are of the considered view that as and when the Court initiates proceedings for forfeiture of the seized vehicle, a notice of hearing shall be provided to the appellant. The appellant, who is served with a show-cause notice

under Section 27(1) of the UAP Act, shall be well within his rights to plead and establish before the Court that he is a bona fide transferee of the seized vehicle representing the proceeds of terrorism.

8. In view of the aforesaid, we do not find any merit in this appeal and the same is, accordingly, **dismissed** with liberty to the appellant to avail the benefit of provisions of Section 27(2) of the UA(P) Act and raise the plea of bona fide transferee of proceeds before the competent Court.

9. Needless to say that in case, such defense is taken by the appellant, the same shall be considered and disposed of in terms of Section 27 of the UAP Act, 1967.

10. We further make it clear that nothing said hereinabove in this order shall prejudice any of the parties in the proceedings for forfeiture before the Court concerned.



(Mohan Lal)
Judge

(Sanjeev Kumar)
Judge

Jammu:
18.10.2023.
Neha-1

Whether the order is reportable: Yes/No.