

Court No. - 90

Case :- APPLICATION U/S 482 No. - 21560 of 2023

Applicant :- Pooja Dekate

Opposite Party :- N.C.B.

Counsel for Applicant :- Nikil Pathak

Counsel for Opposite Party :- Ashish Pandey

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the applicant, learned Standing Counsel for Narcotics Department and perused the record.
2. The applicant has invoked inherent jurisdiction of this Court under Section 482 CrPC beseeching setting aside of the impugned order dated 30.01.2023 passed by Special Judge NDPS Act/ Additional District Judge, Court No.5, Jhansi in Misc. Application No.614 of 2022 (State of U.P. vs. Satish Punjaram Helonde), under Section 207 M.V. Act and 8/20/29 of NDPS Act, Police Station Babina, District Jhansi, registered as Case Crime No.20 of 2022, of NCB Zonal Unit Lucknow, whereby learned court below rejected the release application.
3. Facts culled out from the record are that on the basis of the recovery made by the concerned authority of the Narcotics Department, complaint has been filed being N.C.B. Crime No.20 of 2022, levelling allegation of illegal transportation of the psychotropic substance namely Ganja weighing about 2330 Kg. through LPG Tanker bearing Registration No. MH 18 AA 8297. In his complaint as well as recovery memo, concerned authority/ Narcotics Department has given details of the psychotropic substance (Ganja) which has illegally been transported through the vehicle in question without any valid permission.
4. During pendency of the complaint, present applicant (owner of the vehicle) has moved an application for release of vehicle in question i.e. L.P.G. Tanker, registration No.MH 18 AA 8279, which has been registered as Misc. Application No.614 of 2022. Learned trial court after considering the case of the Narcotics Department and the submission on behalf of the applicant has rejected the released application, vide order dated 30.01.2023, on the ground that present applicant failed to prove that the psychotropic substance which has been found from the vehicle in

question was being transported with valid permission. Order dated 30.01.2023 rejecting the release application is under challenge before this Court.

5. It has been submitted by the learned counsel for the applicant that false and malicious prosecution has been instituted against the present applicant and the false recovery has been shown from the vehicle in question just to create a case under the NDPS Act. It is further submitted that the guilt of the present applicant and the involvement of vehicle in question in the crime under the NDPS Act is still subjudice before the court concerned and there is a likelihood of taking sufficient time in final judgement of the aforesaid matter. Learned counsel for the applicant further submitted that the vehicle in question, which is a case property, may be released in favour of the owner of the vehicle and if the case property i.e. vehicle in question is required for any enquiry, the present applicant will produce the same before the court competent. Ultimately, learned counsel submits that the applicant is ready to deposit the surety against the confiscated vehicle, which is the case property. In support of his contention, learned counsel for the applicant has relied upon the case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat reported in AIR 2003 Supreme Court 638.***

6. Learned Standing Counsel for Narcotics Department has vehemently opposed the submission as raised by the learned counsel for the applicant and supported the judgment passed by the Special Judge NDPS Act/ Additional District Judge, Court No.5, Jhansi. It is contended that, prima facie, the involvement of the vehicle in question in the commission of alleged crime cannot be ruled out. In support of his contention learned Standing Counsel has placed reliance on judgement dated 31.05.2022 passed by co-ordinate Bench of this Court in Application U/S 482 Cr.P.C. No.19621 of 2021 (Shivam Singh vs. State of U.P. and another).

7. Having considered the rival submissions advanced by the learned counsel for the parties and perusal the documents available on record, it reveals that no finding has been recorded by the court below questioning the ownership of the present applicant over the vehicle in question i.e. LPG Tanker bearing Registration No. MH 18 AA 8297 and also keeping in view the fact that since the date of confiscation of the aforesaid vehicle, same is lying exposed in open area in the custody of police station and the possibility of deterioration of the vehicle condition by the passage of time cannot be ruled out and also the ratio decided by the Hon'ble Supreme Court in the case of ***Sunderbhai Ambalal Desai (supra)***,

I am of the view that there is no justification to keep the vehicle in question in the police custody and the same is liable to be released in favour the applicant, which is the case property in the aforementioned case crime, particularly considering the fact that no other person namely insurance company or any third party came forward to claim ownership of the vehicle in question. At this juncture, I do not find any justification to compel the present applicant to resorts to on alternative remedy by moving any appropriate application in view of the judgement passed in case of **Shivam Singh (supra)**. The relevant paragraphs of the case of **Sunderbhai Ambalal Desai (supra)** is quoted herein below:

"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 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 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 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."

8. In this conspectus, as above, I am of the considered view that the present application is liable to be entertained and the release order is liable to be passed to secure the ends of justice. Accordingly, the application is allowed and the impugned order dated 30.01.2023 passed by Special Judge NDPS Act/ Additional District Judge, Court No.5, Jhansi in Misc. Application No.614 of 2022 (State of U.P. vs. Satish Punjaram Helonde), under Section 207 M.V. Act and 8/20/29 of NDPS Act, Police Station Babina, District Jhansi, registered as Case Crime No.20 of 2022 is hereby set aside and the vehicle in question i.e. Tanker No. MH 18 AA 8279 is hereby ordered to be released with following conditions:

(i) Applicant shall produce the original registration certificate, insurance paper before the concerned Police Station which shall be verified properly and true attested copies thereof.

(ii) Applicant shall execute a bond as per market value of the

vehicle with two solvent sureties to the satisfaction of the authorities/court concerned.

(iii) Applicant shall keep the vehicle insured at all times till the conclusion of the trial and produce the Insurance Certificate before the Trial Court as and when required; he must satisfy the Court that he is the registered owner of the vehicle.

(iv) Applicant shall not change the colour or any part of the engine and chassis number of the vehicle, without prior permission of the court concerned, however, he will keep the vehicle maintained in running condition.

(v) Applicant shall produce the vehicle either before the Court or before such other authorities as and when the Court may direct.

(vi) Applicant will not transfer the vehicle to anybody else nor possession of the same be parted with until disposal of the case.

(vii) Applicant shall not allow the vehicle to be used in the commission of any offence.

Order Date :- 1.11.2023

Jitendra