

Neutral Citation No. - 2025:AHC:115446

Judgement Reserved on 09.07.2025

Judgement delivered on 16.07.2025

Court No. - 80

Case :- CRIMINAL REVISION No. - 4303 of 2023

Revisionist :- Asha Devi

Opposite Party :- Union Of India And Another

Counsel for Revisionist :- Vishwanath Mishra

Counsel for Opposite Party :- Ashish Pandey

Hon'ble Rajeev Misra,J.

1. This Criminal Revision has been filed challenging the order dated 24.5.2023 passed by Additional Sessions Judge, Court No. 5/Special Judge (N.D.P.S. Act), Gorakhpur in Criminal Misc. Case No. 123 of 2023 (State Vs. Asha Devi) arising out of Case Crime No. 26 of 2021. under Section 8 (C)/20/25/29 NDPS Act, Police Station NCB Lucknow, District Gorakhpur, whereby the release application filed by revisionist in terms of Section 451 Cr. P. C. has been rejected.

2. Perused the record.

3. I have heard Mr. Vishwanath Mishra, the learned counsel for revisionist and Mr. Vipul Pandey, Advocate, holding brief of Mr. Ashish Pandey, the learned counsel representing opposite parties 1 and 2.

3. After the judgement was reserved, the learned counsel representing opposite parties 1 and 2 has placed before Court the photo copies of certain documents, which are taken on record.

4. It transpires from record that on 28.6.2021 an information was received by the Narcotic Control Bureau that a truck is illegally transporting contraband drugs GANJA i.e. cannabis leaves. Accordingly, a trap was laid at Barhalganj. District Gorakhpur. Truck No. UPHT 2971 was nabbed and upon search, the contraband narcotic ganja i.e. cannabis leaves which were concealed in four plastic packets, each packet weighing 10 Kg. was recovered.

5. On the same day a recovery memo (*panchnama*) dated 26.6.2021 was prepared.

6. On the same day, the house of the accused was searched and certain articles were also seized. The same is evident from the inventory attached to the *panchnama*, which is at page 51 of the paper book. For ready, the same is reproduced herein below:-

“Inventory

अपराध संख्या 26/2021 में follow up के दौरान गृह तलाशी में जब्त पदार्थ की सूची निम्न प्रकार है

S.N.	नगद बरामद	नोटों का वर्गीकरण
1.	241110	1. 50 X 301 = 15050 2. 2000 X 29 = 58000 3. 100 X 542 = 54200 4. 200 X 170 = 85000 5. 500 X 52 = 26000 6. 20 X 68 = 1360 7. 10 X 150 = 1500 = 241110 दो लाख एकतालिस हजार एक सौ दस रुपये
2.	पीली धातु	440 gram

3. अन्य पीली धातु 520 **gram**
4. सफेद धातु ' चांदी जैसी' 2.980 **gram**
5. तोड़ा गया ताला 1''

7. The Intelligence Officer Narcotics Control Bureau issued summons dated 28.6.2021 to Sumit Pal in terms of Section 67 of the N.D.P.S. Act. As the accused Sumit Pal failed to respond to the summons so issued, therefore, again summons were issued to the aforesaid accused on 11.12.2021 and 2.9.2022.

8. Subsequently, an application dated 15.9.2022 was filed by the present revisionist before the Intelligence Officer Narcotics Control Bureau, Lucknow seeking 15 days' time to submit her reply.

9. Thereafter, a complaint dated 20.12.2021 came to be lodged by the Narcotics Control Bureau through Pankaj Dubey Intelligence Officer against six persons namely Sumit Pal, Mohan Yadav, Santosh Chauhan, Shivam Jaiswal and Gopal Jaiswal under Section 8 (c) 20, 25 and 29 N.D.P.S. Act 1985. The same was registered as N.C.B./L.Z. U/Seize/Janch/26/2021.

10. During the pendency of aforementioned complaint, revisionist filed a release application dated 22.2..2023 in terms of Section 451 Cr. P. C. before Court below seeking release of jewellery and cash seized on 26.06.2021. Aforesaid release application was duly supported by an affidavit. The said release application came to be registered as Criminal Misc. Case No. 123 of 2023, arising out of Case Crime No. 26 of 2021. under Section 8 (C)/20/25/29 NDPS Act, Police Station NCB

Lucknow, District Gorakhpur in the court of the Additional Sessions Judge, Court No. 5/Special Judge (NDPS Act) Gorakhpur.

11. The Intelligence Officer filed his objection dated 7.3.2023 in aforementioned Criminal Misc. Case stating therein that since the accused are not participating in the investigation and investigation has, therefore, not yet been completed. As such, the release application filed by revisionist be rejected.

12. Ultimately, the release application filed by revisionist came to be rejected by Court below i.e. Additional Sessions Judge Court No. 5/Special Judge (N.D.P.S. Act) Gorakhpur, vide order dated 24.5.2023 on the finding that the documents filed by revisionist i.e. Asha Devi wife of Gopal Jaiswal accused do not fall in the category of receipt but are only estimates. No document evidencing the payment of tax on the same has been filed, nor any document regarding the cash recovered has been filed either.

13. Thereafter, the Intelligence Officer N.C.B. Lucknow passed an order dated 9.10.2023 (reasons to believe) in compliance of Section 65 E (i) of the N.D.P.S. Act.

14. This was followed by the freezing order dated 9.10.2023 passed by the Competent Authority & Administrator SAFEM (forfeiture of property)A, 1076 & N.D.P.S. Act, 1985, Delhi.

15. Subsequent to above, a notice dated 13.10.2023 was issued by the Adjudicating Authority asking them to avail an opportunity of personal hearing before the Competent Authority,

who has to pass the order in terms of Section 68 F (2) of the N.D.P.S. Act 1985.

16. Thus feeling aggrieved by the order dated 24.5.2023 passed by Court below whereby the release application filed by revisionist has been rejected, the revisionist has now approached this Court by means of present criminal revision.

17. Mr. Vishwanath Mishra, the learned counsel for revisionist submits that the order impugned in present criminal revision is manifestly illegal and in excess of jurisdiction. Consequently, the same is liable to be set aside by this Court.

18. According to the learned counsel for revisionist, the issue regarding release of goods during pendency of a criminal case is no longer res-integra and has been settled by the judgement of the Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat, 2002 (10) SCC 283**. The Court in aforementioned judgement has dealt with seizure made under different enactments including the NDPS and therefore provided the guidelines after compliance of which, the seized goods can be recovered.

19. Learned counsel for revisionist has then referred to paragraphs 9, 10 and 20 of the aforesaid judgement in support of his submission as noted above. For ready reference, paragraphs 9, 10 and 20 of the aforementioned judgement are reproduced herein below:-

“(9)The Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate

may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

(10) To avoid such a situation, in our view, powers under Section 451 Cr.P.C. should be exercised promptly and at the earliest.

Valuable Articles and Currency Notes

(20) Similarly for the Narcotic drugs also, for its identification, procedure under Section 451 Cr.P.C. should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same.”

20. On the above conspectus, it was thus urged by the learned counsel for revisionist that the reasons assigned by Court below for rejecting the release application filed by the revisionist do not commensurate with the observations made by the Apex Court in aforementioned judgement. He, therefore, concluded by contending that the order impugned is thus liable to be quashed by this Court and the release application filed by revisionist is thus liable to be allowed.

21. Per contra, Mr. Vipul Pandey, the learned counsel representing opposite parties 1 and 2 has vehemently opposed the present criminal revision. According to the learned counsel for opposite parties, the present criminal revision is misconceived inasmuch as subsequent to the order impugned dated 28.6.2021 passed by Court below, the freezing order dated 09.10.2023 has been passed by the Competent Authority in terms of Section 68 F (2) of N.D.P.S. Act. On the above premise, he, therefore, submits that once the freezing order has come into existence and as long as the freezing order subsists, no release of the seized goods can be directed by this Court.

22. It was next contended that against the freezing order, the revisionist has remedy of filing an appeal before the Competent Authority in terms of Section 68 (F) (2) of N.D.P.S. Act. However, there is nothing on record to show that any appeal has been filed by accused/revisionist against the said order.

23. Learned counsel representing opposite parties 1 and 2 then invited the attention of Court to the provisions contained in Section 4 (2) Cr. P. C. which read as under:-

“Section 4 (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.”

24. With reference to above, the learned counsel representing opposite parties contended that since offence complained of is triable by a special Act, therefore, the provisions contained in the special act, which in this case is the Narcotic Drugs and Psychotropic Substances Act 1985, shall alone be applicable. Remedy of revisionist is to seek release of the seized goods by availing such remedy as is available under the N.D.P.S. Act itself. He, therefore, contended that in view of above, the release application filed by revisionist before Court below is now not maintainable. As such, no interference is warranted by this Court and, therefore, the present criminal revision is liable to be dismissed.

25. When confronted with above, the learned counsel for revisionist could not overcome the same.

26. Having heard the learned counsel for revisionist, the learned counsel representing opposite parties and upon perusal of record, this Court finds that the disputed articles in respect of which the release application was filed under Section 451 C r. P. C. before Court below is already the subject matter of proceedings under the N.D.P.S. Act.

27. The freezing order in respect of the same has already been passed by the Competent Authority on 9.10.2023, therefore, during the subsistence of the freezing order as noted above, no release of some of the seized goods can be directed by this Court. Remedy of revisionist is to challenge the freezing order by way of an appeal in terms of Section 68 (F) of the N.D.P.S. Act.

28. In view of discussion made above, this Court finds that there is no scope for interference in present criminal revision. As such, the present criminal revision fails and is liable to be dismissed.

29. It is, accordingly, **dismissed.**

Order Date :- 16.07.2025

HSM