

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.214 of 2015

Arising Out of PS.Case No. -5 Year- 2014 Thana -SIMRI District- BUXAR

1. Sarfaraz Ansari son of Saiffuddin Ansari, Resident of Village- Majhbari, P.S.-
Simari, District- Buxar

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

with

Criminal Miscellaneous No. 327 of 2015

Arising Out of PS.Case No. -5 Year- 2014 Thana -SIMRI District- BUXAR

1. Mumtaz Ansari Son of Saiffuddin Ansari Resident of Village - Majhbari, P.S. -
Simari, District - Buxar.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

with

Criminal Miscellaneous No. 422 of 2015

Arising Out of PS.Case No. -5 Year- 2014 Thana -SIMRI District- BUXAR

1. Saiffuddin Ansari Son of Late Hanif Ansari Resident of village - Majhbari, P.S.
Simari, District - Buxar

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

with

Criminal Revision No. 1091 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- BUXAR

1. Sarfaraz Ansari Son of Saffudin Ansari, Resident of village- Majhawari, Police
Station- Simari, District- Buxar

.... Petitioner/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :
(In Cr.Misc. No. 214 of 2015)

For the Petitioner/s : Mr. N.K.Agrawal, Sr. Adv.

Mr. Sanjeev Kumar, Adv.

For the Opposite Party/s : Mr. Ramchandra Sahni, APP

(In Cr.Misc. No. 327 of 2015)

For the Petitioner/s : Mr. Mr. N.K.Agrawal, Sr. Adv.
Mr. Sanjeev Kumar, Adv.
Mr. Rajesh Kumar Singh, Adv.
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

(In Cr.Misc. No. 422 of 2015)

For the Petitioner/s : Mr. N.K.Agrawal, Sr. Adv.
Mr. Sanjeev Kumar, Adv.
For the Opposite Party/s : Mr. Ramchandra Sahni, APP

(In CR. REV. No. 1091 of 2014)

For the Petitioner/s : Mr. N.K.Agrawal, Sr. Adv.
Mr. Sanjeev Kumar, Adv.
For the Respondent/s : Mr. Aditya Narayan Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 04-08-2015

These applications under section 482 of the Code of Criminal Procedure have been preferred by the petitioners assailing the order dated 10.11.2014 passed by the learned 1st Additional Sessions Judge, Buxar in NDPS Case No. 01 of 2014 arising out of Simri P.S.Case No. 05 of 2014, whereby he has rejected the applications filed by the petitioners for release of the vehicles claimed by them.

2. One of the petitioners, namely, Sarfaraz Ansari has filed two applications vide Cr.Misc. No.214 of 2015 and Cr.Revision No. 1091 of 2014. In Cr.Misc. No.214 of 2015 he claims himself to be the owner of Hero Honda Motorcycle (Splendor Plus) bearing Registration No. BR-44C-0852. In Cr.Revision No.1091 of 2014, he claims himself to be the owner of Scorpio vehicle bearing Registration No. UP-53Z-7744. In Cr.Misc. No. 422 of 2015,

petitioner Saiffuddin Ansari claims himself to be the owner of Tata Sumo vehicle bearing Registration No. BR-44P-0089 and in Cr.Misc. No.327 of 2015, petitioner Mumtaz Ansari claims himself to be the owner of Hero Honda Motorcycle (Passion Pro) bearing Registration No. BR-03J-8804.

3. The prosecution case is that on 09.01.2014 at about 8.30 p.m. the Superintendent of Police, Buxar intimated the informant, SI Gorakh Ram that a truck loaded with Ganja is illegally passing through the area falling within his Police Station. On such information, a raiding team headed by Sub Divisional Police Officer, Dumraon was constituted and the team reached the Pulia near Purana Bhojpur Ara-Pakri Road at about 11.00 p.m. The raiding team started checking the vehicles passing through the Pulia. It was noticed by the raiding team that a black Scorpio was following a truck. On seeing the police party, two persons got down from the Scorpio and started running away. They were overpowered by the police and on query made from them, they disclosed their names as Maqsood Ansari and Sunil Kumar Chaurasia. The truck was also intercepted. The driver of the truck disclosed his name as Rakesh Kumar Mishra and another person, who was also found present in the truck, disclosed his name as Ashish Kumar Pathak. On search, from the truck bearing Registration No.HR-38L-9510, 54 packets of Ganja were recovered

and after measurement total weight of Ganja came to 708 kg. Further on search from the Scorpio, one packet of Ganja weighing 6 kg was recovered. The occupants of the Scorpio and truck failed to produce any paper relating to the vehicles or Ganja.

4. Thereafter, the raiding team along with the apprehended accused persons reached the house of accused Maqsood Ansari, who is closely related to the petitioners of these cases, and on search recovered documents of several vehicles. The raiding team also seized several vehicles from his house. Thereafter, the raiding team searched the house of accused Sunil Kumar Chaurasia and on search many articles including Ganja were found and seized from his house. Seizures of incriminating articles were also made from the house of one Md. Shahban.

5. It is contended by the learned counsel for the petitioners that the petitioners are the owners of the vehicles, which were seized in connection with Simri P.S.Case No.05 of 2014 registered under sections 414 and 420 of the Indian Penal Code and 20(B)(ii)(c), 22, 27(A), 29 of the NDPS Act and 47(a) of the Excise Act. It is further contended that the petitioners filed separate applications for release of their vehicles but the learned Additional Sessions Judge I, Buxar rejected those applications by a common order dated 10.11.2014.

6. Mr. N.K.Agrawal, learned senior counsel appearing for



the petitioners submitted that the vehicles in question are lying in the open sky for over one and a half years as a result of which the condition of the vehicles is deteriorating day by day on account of lack of maintenance and natural wear and tear. If the vehicles are kept at the Police Station compound, they would become junk due to heat of the sun and rain. He has submitted that the court below failed to appreciate the directions given by the Supreme Court in *Sunderbhai Ambalal Desai Vs. State of Gujarat* [2003(4) PLJR SC 244].

7. Mr. Aditya Narayan Singh No.1, learned counsel appearing on behalf of the State has submitted that one Maqsood Ansari is a renowned truck peddler. He is closely related to the petitioners. He is the leader of a gang dealing with narcotic drugs and psychotropic substances and the vehicles in question were purchased by him out of the illegal money earned through smuggling of Ganja. According to him, all the vehicles are used in illegal trade of Ganja and hence they are liable to be confiscated under section 60 of the NDPS Act.

8. It is an admitted position that though charge sheet has been submitted against four accused persons, namely, Md. Maqsood Ansari, Ashish Kumar Pathak, Rakesh Kumar Mishra and Sunil Kumar Chaurasia, further investigation of the case is still going on.

9. Now the crux for consideration before this Court is

whether the petitioners, who are not impleaded as accused in the case so far and who claim themselves to be the owners of the respective vehicles are entitled to receive the vehicles in their possession during the pendency of the trial.

10. It would be evident from perusal of the impugned order dated 10.11.2014 that the trial court rejected the applications for release of the vehicles in question primarily on the ground that there is allegation that these vehicles were being used for illegal trade of Ganja and are liable to be confiscated under section 60 of the NDPS Act.

11. As noted above, till date, the petitioners have not been made accused in the case. Barring the Scorpio vehicle bearing Registration No. UP-53Z-7744, no other vehicle was found carrying Ganja.

12. It is a settled legal position that Section 60 of the NDPS Act comes into play only after conclusion of the trial. In case the trial court comes to a conclusion that the accused persons are guilty of the offences under the NDPS Act, the vehicles used in the illegal trade of contraband articles can be confiscated.

13. I find substance in the argument advanced by the learned counsel for the petitioners that if the vehicles are kept in the Police Station for an indefinite period, they would become junk day by day.

Though charge sheet has been submitted against four persons, the further investigation of the case is going on. The FIR was instituted long back and it is not known as to when the trial would conclude.

14. The Court is empowered to order for custody and disposal of the property seized in connection with a criminal case. Sections 451 and 457 of the Code of Criminal Procedure give powers to the court to deal with the seized property pending trial in certain cases.

They read as under :-

“451. Order for custody and disposal of property pending trial in certain cases.

When any property is produced before any Criminal Court during an 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.

457. Procedure by police upon seizure of property.

(1) 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.

(2) 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.”

15. A bare reading of section 451 of the Code of Criminal Procedure makes it evident that it clearly empowers the court to pass appropriate orders with regard to property, such as (1) for the proper custody pending conclusion of enquiry or trial; (2) to order it to be sold or otherwise disposed of, after recording such evidence as it think necessary; and (3) if the property is subject to speedy and natural decay, to dispose of the same.

16. Keeping the provisions prescribed under sections 451 and 457 of the Code of Criminal Procedure in mind, the Supreme Court in *Sunderbhai Ambalal Desai* (Supra) observed in paragraph 17 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.”

17. It further observed “Similarly for the Narcotic drugs also, for its identification, procedure under Section 451 Cr.P.C. should be followed”.

18. Regard being had to the facts and circumstances of the present case, the order passed by the court below cannot be sustained, as while passing the order impugned, the court below has not considered the fact whether or not the petitioners are registered owners of the vehicles in question. It also failed to consider the law laid down by the Supreme Court in the matter of Sunderbhai Ambalal Desai (Supra).

19. Accordingly, the impugned order dated 10.11.2014 passed by the learned Additional Sessions Judge-I, Buxar in NDPS Case No. 01 of 2014 arising out of Simri P.S. Case No. 05 of 2014 is set aside and the matter is remanded to the learned Additional Sessions Judge-I, Buxar for fresh consideration.

20. I am of the opinion that in case the petitioners satisfy the court below that they are the registered owners of the vehicles in question, the court below shall release the vehicles in their favour with a condition that they shall not dispose of the same during pendency of the trial and they will produce the vehicles before the court or before such other authorities as the court may direct. While passing the order for release, the court below will be at liberty to take

appropriate sureties from the petitioners to its own satisfaction.

21. With these observations and directions, the applications are disposed of.

(Ashwani Kumar Singh, J)

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