

THE HIGH COURT OF TRIPURA
AGARTALA

CRL. PETN. 17 of 2015

The State of Tripura,
To be represented by the Secretary,
Department of Home,
Government of Tripura, Agartala.

..... *Petitioner*

- *Vs* -

Sri Litan Debnath,
S/O Sri Rakhal Debnath of
Brajapur, Bishalgarh,
P.S. Bishalgarh,
District – Sephijala.

..... *Respondent*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the Petitioner : Mr. A. Ghosh, P.P.

For the respondent : Mr. N. Das, Advocate.

Date of hearing & : 30.09.2015.
delivery of
Judgment & order

Whether fit for : No.
reporting

JUDGMENT & ORDER (ORAL)

This petition under Section 482 Cr.P.C. by the State is directed against the order dated 4th February, 2015 passed by the learned Special Judge, Unakoti, Kailashahar whereby, he has granted bail to the petitioner.

2. This order was passed on 4th February, 2015 and more than 7 months have elapsed. There is no allegation that the accused have misused the bail granted to him. Therefore, I do not intend to quash the operative part of the order by which bail has been granted to the petitioner because of the subsequent events. However, the findings given by the Court while disposing of this bail application are totally against law and they have to be set aside. It appears that the learned Special Judge was under the impression that the inventory prepared by the investigating officer or any other police officer should have been certified by the Magistrate or should have been prepared before the Magistrate. He appears to be under the impression that Section 52A of the NDPS Act is applicable at the stage of seizure. This impression is totally wrong.

3. This Court in A.B. No.39 of 2015 decided on 9th July, 2015 has discussed the entire law of the subject and after discussing the entire law especially, Section 52A, it has been held as follows:-

[13] The next contention of learned senior counsel is that the prosecution has violated the provision of Section 52A of the NDPS Act in as much as the inventory has not been certified by the Magistrate on that day or subsequent thereto. Section 52A reads as follows:

"52A. Disposal of seized narcotic drugs and psychotropic substances.

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(1) The Central Government may, having regard to the hazardous nature of any narcotic drugs or psychotropic substances, their vulnerability to theft, substitution, constraints of proper storage space or any other relevant considerations, by notification published in the Official Gazette, specify such narcotic drugs or psychotropic substances or class of narcotic drugs or class of psychotropic substances which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drug or psychotropic substance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such narcotic drugs or psychotropic substances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the narcotic drugs or psychotropic substances in any proceedings under this Act and make an application, to any Magistrate for the purpose of—

***(a) certifying the correctness of the inventory so prepared;
or***

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence."

This section was inserted into the NDPS Act by the Amendment Act 2 of 1989 w.e.f 29.5.1989. The heading of the Section is "disposal of seized narcotic drugs and psychotropic substances." This section has nothing to do with search and seizure operations or the sealing of the contraband or drawing of samples at the time of search. Sub Section (1) of Section 52A empowers the Central Government to specify certain narcotic drugs, psychotropic substances, controlled substances etc. which should soon after the seizure be disposed of by such officer in a manner specified by the Government. Sub Section (2) of Section 52A clearly lays down that where any contraband substances i.e. narcotic drug, psychotropic substance, controlled substances or conveyances has been seized and forwarded to the Officer-in-charge of the nearest police station or to the officer empowered under Section 53, the officer referred to in Sub Section (1) of Section 52A is

required to prepare an inventory of such substance. The manner of preparation of the inventory is given. Thereafter an application can be made to the Magistrate for certifying the correctness of the inventory prepared by the officer. In the presence of the Magistrate photographs of such drugs, substances, conveyances can be taken and the Magistrate shall certify such photograph to be true. The Magistrate shall permit drawing of representative samples of such drugs and shall certify the correctness of the list of samples so drawn. Sub Section (4) of Section 52A overrides the provisions of the Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973 and where any trial under the NDPS Act is going on the Presiding Officer is to treat the inventory, the photographs and list of samples as certified by the Magistrate to be primary evidence of such offence.

[14] In the State of Tripura there is some misconception that the inventory has to be prepared by the Magistrate and that the entire sealing has to be done in presence of the Magistrate at the first instance. This is wholly incorrect.

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[32] Section 52A has nothing to do with search and seizure. The purpose of Section 52A is to ensure that the contraband substance is disposed of under the supervision of a Magistrate and if the Magistrate follows the mandate of Section 52A then the certificate issued by him is per se admissible in evidence and it is not necessary for the police or the investigating agency to produce the bulk seized material which is the case property before the Court. The intention behind Section 52A is to ensure destruction of such harmful material at the pre trial stage.

[33] Even when Section 52A has been resorted to the inventory produced must be the inventory prepared by an officer empowered to do so under sub Section (1) of Section 52A. The duty of the Magistrate is to verify the inventory and in this regard we are clarifying the position further. In case section 52A is not complied with and the seized material is not destroyed then it is the duty of the prosecution to produce the same before the trial Court during trial.

[34] Section 52A is a very important provision. Narcotic Drugs and Psychotropic Substances are vulnerable to misuse. When huge quantities of contraband are seized it is not possible to keep them safely in the Malkhanas and there may be a chance of pilferage or the narcotic

substances falling in wrong hands. Therefore, the aforesaid Section was inserted in the NDPS Act. Under sub-section (2) of the aforesaid Section after the contraband has been produced before the empowered officer under Section 53 of the Act the said officer is required to prepare a inventory of the alleged Narcotic Drugs and Psychotropic Substances containing details relating to their description, quality, quantity, mode of packing, marks, numbers and other identifying particulars on the packing in which they are packed. The country of origin and other particulars as referred to in sub section (1) may also be considered relevant to identify the narcotic drugs. Thereafter, the empowered officer can apply to any Magistrate under Section 52A for the purpose of; certifying the correctness of the inventory so prepared; or taking in the presence of the Magistrate, photographs of such drugs or substances and certifying such photographs as true and lastly allowing to draw representative sample of such drugs or substances in the presence of the Magistrate and certifying the correctness of any list of samples so drawn. The Magistrate is required to deal with this application forthwith. Under sub section (4) the inventories, photographs and list of samples certified by the Magistrate are to be treated as primary evidence by the Court trying the offence.

4. Therefore, the findings of the learned Special Judge are against the law laid down by the Court and have to be set aside. The learned Special Judge has made the following observations while disposing of the bail application:-

"The C.D. is manifestly clear that the I.O. does not know ABC of investigating a case under NDPS Act."

5. Judges should avoid making such sweeping statements in their orders and judgments. It is not the duty of the Court to castigate police officials. If the police officials are at fault, the faults can be pointed out. If necessary, the matter can be referred to the higher authorities to take an action against the police officer or after giving notice to the police officer, the Court concerned if it

has the power can take action against him but to say that an investigating officer does not know the ABC of investigation is a very derogatory statement which should not be made in the order. In fact, in the present case, the Special Judge is left in a very unenviable position where his view point with regard to the application of Section 52A is contrary to the judgment passed by this Court. It may happen that the judgment of this Court is set aside by a higher Court. There can be different view points on issues of law and that is why each one of us learns every day in the profession. We have to be even more careful that we do not use such derogatory language against anybody. It is necessary to avoid using such derogatory language. Therefore, this portion of the judgment is deemed to be struck off from the record for all intents and purposes.

6. The next finding of the learned Special Judge is as follows:-

"Section 42 is very much clear that inventory has to be certified by a Magistrate. It is duty of the I.O. to produce seized articles before the nearest Magistrate and draw sample in presence of the Magistrate."

7. I fail to understand how Section 42 has anything to do with the certifying of an inventory by a Magistrate. Section 42 deals with the power of entry, search, seizure and arrest without warrant or authorization. It has nothing to do with the preparation

of the inventory or the certification of the inventory. Therefore, this portion of the order is illegal and is set aside.

8. The third direction given by the learned Special Judge is as follows:-

"In fact, the I.O has to do three things (1) prepare inventory and get it certified by the magistrate (2) draw sample in presence of the Magistrate and (3) take photographs of seized items and those photographs will again be certified by the Magistrate."

As held by this Court in ***A.B. No.39 of 2015***, it is no job of the part of the investigating officer to get the inventory certified by the Magistrate. It is also not requirement of law that the sample at the stage of seizure should be taken before the Magistrate. The photographs are also not to be taken at the stage of seizure. Section 52A comes into play only when an application is moved by the officer before the Magistrate seeking permission to destroy the seized material. The rest of the procedure has been clearly laid down in ***A.B. No.39 of 2015***. Therefore, the findings of the Court below are also set aside.

9. It has become necessary to set aside these findings because if these findings remain on record, the accused could take advantage of the same at the final hearing.

10. In this view of the matter, the findings of the learned Special Judge with regard to Sections 42 and 52 are quashed and set aside. It is, however, made clear that this Court has not expressed any opinion on the merits of the case and it will be open to the accused to raise all differences in the trial. It is made clear that only the findings have been quashed but the order granting bail shall remain in force.

CHIEF JUSTICE

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