

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 421 of 2015**

Manoj Kumar Sharma S/o Shri S.D.Sharma Aged About 33
years R/o Kondagaon, D.N.Colony, District- Kondagaon,
Chhattisgarh

---- Petitioner

Versus

State Of Chhattisgarh S/o Through: Station House Officer,
Police Station Arjuni, District Rajnandgaon, Chhattisgarh

---- Respondent

For Petitioner:	Shri Surendra Kumar Dewangan, Advocate.
For Respondent/State:	Shri Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board By****26/06/2015**

Heard.

(1) Petitioner is a registered owner of four wheeler Bolero Jeep bearing registration No. CG-17-C-3226. The said vehicle was found involved in the offence punishable under the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985 (henceforth 'Act, 1985') and Special Criminal Case No. 10/2015 (State of Chhattisgarh Vs. Mahesh Das Manikpuri) is pending consideration in the Court of Special Judge (NDPS Act), Dhamtari.

(2) Petitioner, being the registered owner of the vehicle, made

an application for *supurdnama* under the provisions of Code of Criminal Procedure for custody of the said vehicle stating *inter alia* that the said vehicle is likely to be damaged on exposure of sun and rain and, as such, no useful purpose would be served by keeping the vehicle in the court's custody and, therefore, it be handed over to the petitioner during pendency of the criminal case.

(3) The Special Judge, by its impugned order dated 25.04.2015, rejected the said application finding force in the Objection of the State that the said vehicle is subject to confiscation proceeding pending before the Collector under the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985.

(4) Feeling aggrieved & dissatisfied with the order rejecting application for interim custody of the vehicle under Section 451 Cr.P.C., this revision has been filed stating that the order of Special Judge rejecting his application for the interim custody of the vehicle is unsustainable and bad in law.

(5) Mr. Surendra Kumar Dewangan, learned counsel appearing for the petitioner would submit that the applicant is the registered owner of the vehicle; and the vehicle was being used by the accused without his knowledge and, as such, no useful purpose would be served by keeping the vehicle in the custody of the Court, which is likely to be damaged standing unused and, therefore, the order of the learned Special Judge be set aside

and he be granted interim custody of the vehicle in question.

(6) On the other hand, learned counsel appearing for the State would submit that proceeding for confiscation has already been initiated before the Collector under Section 63 of the of the Act, 1985 and, therefore, granting custody of the vehicle would likely to interfere with the pending proceeding and, as such, refusal by the Special Judge is in accordance with law, which does not call for any interference by this Court in exercise of revisional jurisdiction.

(7) I have heard learned counsel for the parties and also given thoughtful consideration to the submissions made therein and perused the record available with utmost circumspection.

(8) The relevant provisions which provide for disposal and confiscation of the properties or the conveyance used for the purpose of committing any offence under the said Act are as follows:

“(3) Section 451 CrPC runs thus:

“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.”

“Section 60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation-

(1)

(2)

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance or any article liable to confiscation under sub-s. (1) or sub-s.(2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.”

Section 63. Procedure in making confiscations-

(1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under S. 60 or S.62 and, if it decides that the article is so liable, it may order confiscation accordingly.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under S. 60 or S.61 or S.62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, any may order confiscation accordingly;

Provided that no order of confiscation of any article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the

evidence, if any, which he produces in respect of this claim:

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance, the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the Court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.

(3) Any person not convicted who claims any right to property which has been confiscated under this section may appeal to the Court of Session against the order of confiscation.”

(9) A careful reading of the aforesaid provisions; it is quite vivid that all these provisions do not exclude the operation of Sections 451 or 457(1) of the Code of Criminal Procedure. Under sections 60 and 63 of the Act such an article or vehicle used for the purpose of commission of an offence under the Act, 1985 is liable for confiscation. In other words, the article or the vehicle must be available at the time of trial or at the end of trial for the purpose of confiscation. It does not debar the Court trying the offence to grant interim custody. There is no provision under the Act of 1985 prohibiting interim custody on the ground that confiscation proceedings has already been initiated Sections 451 & 457 of the Code of Criminal Procedure is not inconsistent with the provisions of the NDPS Act, as such, the Criminal Court has necessarily jurisdiction to pass an order for interim custody of vehicle so seized under Section 451 or 457(1) of the Cr.P.C. as the case

may be, subject to certain terms and conditions, the interim custody of the vehicle, pending the trial. Section 451 or Section 457(1) of the Cr.P.C. is attracted only after the vehicle is seized and brought into safe custody, as provided under Section 55 of the Act. If that is so, it cannot be said that Section 451 or Section 457(1) of the Criminal Procedure Code is in any way inconsistent with the scheme of the Act.

(10) Thus, it is held that application under Sections 451 or 457(1) of the Cr.P.C. is maintainable before the Special Judge and it has jurisdiction to consider the matter on its own merits and merely because the proceeding for confiscation has initiated before the competent authority, it cannot be held that such applicant is not maintainable.

(11) In **Ashok Kumar Vs. State of Bihar & others**¹, Their Lordships of the Supreme Court has held that it is not necessary to keep the vehicle in the compound of the court indefinitely for a very long time till the final disposal of the case.

(12) Following the decision of the Supreme Court and considering the fact that the applicant is the registered owner of the Bolero jeep and it is of no use to keep the seized Bolero jeep at the police station for a long time, it is directed that the Bolero bearing registration No.CG 17C 3226 shall be released to the applicant on the following conditions:-

¹ (2001) 9 SCC 718

(i) Petitioner shall execute a bond in a sum of ₹ 5,00,000/-(five lakhs) with two solvent sureties to the satisfaction of the Special Judge (NDPS Act, 1985), Dhamtari.

(ii) Petitioner must satisfy the court that he is the registered owner of the offending vehicle.

(iii) Petitioner shall not transfer or dispose of the offending vehicle to any one else and shall not make any change in its body, colour or engine. It is needless to say that make, colour, chassis number, and engine number of the offending vehicle shall be furnished by the petitioner before the trial Court with an undertaking that no damage shall be caused or no part of the vehicle be substituted.

(iv) the petitioner shall also file an undertaking before the trial Court that the offending vehicle shall not be used for commission of offence; and before giving interim custody of the offending vehicle to the petitioner, three coloured photographs of cabinet size from different angles clearly indicating registration number and other particulars of the vehicle shall be kept on file. The expenses for the photographs shall be borne by the petitioner.

(v) the petitioner shall produce vehicle either before this Court or before the Collector or such authorities as it may be directed, on his own expenses.

(13) Consequently, the impugned order is set aside. The revision is allowed accordingly.

Sd/-
(Sanjay K. Agrawal)

Judge

D/-

