

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28193 of 2015

Arising Out of PS.Case No. -1 Year- 2011 Thana -GOVERNMENT OFFICIAL COMP. District-
MUZAFFARPUR

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Nilu Singh, son of Shiv Kumar Singh, resident of Village-Nargada, P.S.-
Krishnagarh, Barhara, District- Bhojpur.

.... Petitioner

Versus

1. The Union of India
2. Shivendra Satyarthi, Intelligence Officer, Directorate of Revenue Intelligence
(DRI) Sub-Regional Unit (SRU), Muzaffarpur

.... Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Kumar Uday Singh, Advocate
For the Union of India	:	Mr. S.D. Sanjay, Addl. Solicitor General
For the State	:	Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 21-04-2016

In the present application preferred under Section 482 of the Code of Criminal Procedure, the petitioner has sought for quashing of the order dated 13.03.2015 passed by the learned 4th Additional Sessions Judge, Muzaffarpur in DRI Case No. 01 of 2011/Tr. No. 10 of 2014 whereby the petition dated 05.02.2014 filed by the petitioner for release of his truck bearing registration No. WB-23 B-1771, which was seized by the DRI Officer of the Muzaffarpur in connection with DRI (NDPS) Case No. 1 of 2011 has been rejected.

2. DRI (NDPS) Case No. 1 of 2011 was instituted on the basis of written complaint dated 25.08.2011 made by one

Shivendra Satyarthi, Intelligence Officer, DRI, SRV, Muzaffarpur, for the offences punishable under Section 20, 25 and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (For short “NDPS Act”).

3. According to the complainant, specific intelligence regarding smuggling of huge quantity of ganja concealed in bags containing raw turmeric (Haldi) being carried by truck bearing registration No. WB-23 B-1771, from Assam to Varanasi via Tajpur (Samastipur) was received at the DRI, Sub-Regional Unit, Muzaffarpur and this intelligence was passed to the Deputy Director, DRI, Patna on 25.02.2011. On the basis of the said intelligence, the said truck was intercepted at Tajpur Chowk on 26.02.2011 at about 4 p.m. On inquiry, the two occupants of the vehicles disclosed their names as Babloo Kumar (Khalasi) and Munna Kumar Singh (Driver) and further disclosed that turmeric was loaded on the truck and on further inquiry denied loading ganja in the said vehicle.

4. The complainant has further alleged that the Jute bags loaded on the truck was initially examined in presence of independent witnesses and it was found that some of the Jute bags containing raw turmeric also contained bundles which smelled like Narcotics. Thus, since the truck was fully loaded, the truck was brought to the DRI Office, Muzaffarpur and unloaded. There, in



presence of the two independent witnesses and the occupants of the truck, 186 Jute bags containing raw turmeric were found to contain one packet of ganja each, concealed inside it. On weightment of the 186 packets of ganja, it was found to be 2930 kg in weight valued at Rs.1,02,55,000/-. The turmeric on the other hand were found to weigh 10500 kgs., valued at Rs. 4,20,000/- and the truck was valued to be about Rs. 8,00,000/-.

5. The complainant has further alleged that the ganja, turmeric and the truck were seized under Section 43(a) of the NDPS Act as the same were found to be liable to confiscation under Section 60 of the NDPS Act in presence of the two independent witnesses and both the accused. Thereafter, samples from the seized ganja were duly sealed and the cabin of the truck was searched and from inside the cabin invoice, transportation documents showing consignment of turmeric and the ownership documents relating to the said truck were recovered.

6. Thereafter, statement of Babloo Kumar, a cousin of Nilu Singh (petitioner), was recorded under Section 67 of the NDPS Act, wherein he disclosed that one Nilu Singh was the owner of the truck and as per his direction, he along with the driver reached Garam Pani near Golaghat (Assam) where narcotic substance was loaded by one Pradeep Kumar Gogoi and it was consigned for M/S. Rajesh Trading Company, D-2, Visheshwar

Gaon, Varanasi, Uttar Pradesh.

7. The statement of the driver Munna Kumar Singh was also recorded under Section 67 of the NDPS Act and he too reiterated similar statement corroborating the statement of Babloo Kumar. Since both the accused had accepted their guilt and knowledge of the possession and transportation of ganja for lure of money, they were both arrested on 27.02.2011 under Section 43(b) of the Act by the officer of the DRI, Muzaffarpur on 28.02.2011. Both of them were produced before the Court, from where, they were remanded to judicial custody. The complainant has also alleged that the registering authority, Barrackpur, West Bengal confirmed that the vehicle was in the name of Nilu Singh.

8. According to the complainant, from the aforesaid facts, it is established that there is active and conscious involvement of Babloo Kumar and Munna Kumar Singh for smuggling activity, possession, transportation and carriage of ganja. In so far as the petitioner Nilu Singh is concerned, the complainant has alleged that he is the owner of the seized truck bearing registration No. WB-23B-1771. Thus, the complainant stated that the ganja, turmeric and truck seized are fit to be confiscated under Section 60 of the NDPS Act.

9. On 05.02.2014 the petitioner filed a petition before the learned 4th Additional Sessions Judge, Muzaffarpur for

release of his aforesaid truck, but the learned 4th Additional Sessions Judge, Muzaffarpur, rejected the petition by impugned order dated 13.03.2015 on the ground that huge quantity (2930 kg) of ganja was recovered from the truck involved in smuggling of the same and that the petitioner, the owner of the truck, is also an accused in the said case. The said order dated 13.03.2015 is under challenge in the present application.

10. Mr. Kumar Uday Singh, learned counsel for the petitioner, has contended that the petitioner admittedly is the owner of the truck bearing registration No. WB-23B 1771, which is alleged to have been carrying ganja and which has been seized by the DRI officials. The only material against the petitioner is that two accused Babloo Kumar and Munna Kumar Singh in their statements recorded under Section 67 of the NDPS Act have disclosed that the truck which belongs to the petitioner was taken to Garam Pani near Golaghat, Assam on the instruction of the petitioner wherein loaded narcotic substances on the truck and the same was consigned for M/s. Rajesh Trading Company, Varanasi and that the petitioner was in constant touch with Babloo Kumar & Munna Kumar Singh on their respective mobile phones.

11. Mr. Singh has further contended that the loading of the raw turmeric and ganja was not done with the consent or connivance of the petitioner. He had no knowledge of the same till

much after its seizure. He has further contended that the DRI officials have failed to collect any incriminating material against the petitioner, but they submitted an additional investigation report on 23.05.2012 alleging involvement of the petitioner in the alleged offence.

12. Mr. Singh has further contended that the petitioner being the owner of the truck had entrusted the same to the driver who managed the loadings and it is not possible for any truck owner to know exactly what his driver is carrying. That apart, it is unconceivable that any truck owner would himself be involved in such a crime, knowing very well that in case he is caught, his truck will also be confiscated. He has contended that the only material against the petitioner is confessional statements of co-accused before an officer of Revenue Intelligence, which is inadmissible in evidence.

13. Mr. Singh has further contended that the petitioner possesses all the documents in proof of his ownership of the truck, however, the original certificate of registration, insurance certificate etc. relating to the truck has been seized by the DRI officials. He has already granted bail by this Court vide order dated 06.01.2014 passed in Cr. Misc. No. 34306 of 2013.

14. Mr. Singh has nextly contended that merely because huge quantity of ganja has been recovered from the truck



and that the petitioner, who is the owner thereof is also an accused in the case, cannot by itself be a sufficient ground for rejecting the petition for release of the truck. He has contended that the condition of the truck which was seized on 26.02.2011 has deteriorated substantially since it is lying in an open space in the DRI premises in Muzaffarpur. Its condition is also deteriorating day by day and if it is left as it is, it will just be a piece of scrap after some time. He has contended that the non use of the truck for so many years after its seizure has already caused huge financial loss to the petitioner and even if the petitioner is finally acquitted in the case, such a huge financial loss to the petitioner cannot be compensated nor there is any provision for the same.

15. Mr. Singh has further contended that the petitioner is ready to give reasonable and sufficient security for the release of the truck and also undertakes to produce the same as and when required by the court.

16. He has also contended that the impugned order whereby the learned 4th Additional Sessions Judge, Muzaffarpur has rejected the prayer of the petitioner for release of the truck in favour of the petitioner is in clear violation of the law laid down by the Hon'ble Supreme Court in the matter of **Sunderbhai Ambalal Desai Vs. State of Gujarat**, since reported in (2002) 10 SCC 290.

17. Per contra, Mr. S.D. Sanjay, learned Additional



Solicitor General, appearing for the Union of India has contended that the petitioner Nilu Singh has been made an accused in the case not only on the basis of the statements by the two occupants of the truck, but also on the basis of other circumstantial and corroborative evidence, which goes to show that he was the main person under whose knowledge and direction the aforesaid Narcotics was being smuggled. It is further contended that in course of investigation the address shown on the registration paper of the seized truck was found to be fake by the DRI as well as Postal Authorities, Kolkata which goes to show that the petitioner had intentionally got registered his vehicle on fake address and used the same knowingly and consciously in trafficking of seized Narcotic substance.

18. Mr. Sanjay has further contended that the petitioner deliberately and consciously avoided several summons issued by the investigating authority and the trial court and finally appeared in pursuance of the order of this Court and he gave evasive statement before the DRI officers recorded under Section 67 of the NDPS Act with regard to his residence. He has contended that the seized truck is liable for confiscation under Section 60(3) of the NDPS Act as the vehicle was seized loaded with ganja and that too within the full knowledge and connivance of the owner himself.

19. On the basis of the aforesaid submissions, Mr. S.D. Sanjay, learned Additional Solicitor General has contended

that no fault can be found with the order passed by the trial court on facts of the case. However, he has submitted that in view of the judgment of the Supreme court in the matter of **Sunderbhai Ambalal Desai** (supra), if the truck in question is ordered to be released, the petitioner should be directed to furnish proper security.

20. I have considered the submissions of both the parties and perused the materials on record.

21. Chapter XXXIV CrPC deals with disposal of property. Of them, Sections 451 and 457 are relevant for the purpose of the present case. 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.”

22. A close reading of the provisions of Sections 451 and 457 CrPC would show that they comprehend the provisions for custody and disposal of property pending trial in certain cases. Section 457 CrPC gives power to the court to pass appropriate order

when the properties are not produced before the court.

23. The horrifying situation of the case property such as vehicles, machines etc. found lying in police station premises and Court premises and ultimately becoming junk and loosing their value engaged attention of the Supreme Court in **Sunderbhai Ambalal Desai (supra)**.

24. In the aforesaid case, after examining the scope of Sections 451 and 457 of the CrPC, the Supreme Court held that the powers under Section 451 CrPC should be exercised expeditiously and judiciously. In paras 5 & 7 of the aforesaid judgment, it observed as under:-

“5. Section 451 clearly empowers the Court to pass appropriate orders with regard to such property, such as-

- (1) for the proper custody pending conclusion of the inquiry or trial;
- (2) to order it to be sold or otherwise dispose of, after recording such evidence as it thinks necessary;
- (3) if the property is subject to speedy and natural decay to dispose of the same.

xxx xxx xxx

7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because

of its remaining unused or by its misappropriation;

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

25. It has further been held in the said judgment that whatever be the situation, it is of no use to keep seized vehicles at the police station for a long time. In this regard, in paragraph 17 it has been held 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.”

26. The provisions prescribed under Sections 451 and 457 CrPC were once again considered by the Supreme court in



General Insurance Council and Ors. vs. State of Andhra Pradesh & Ors. [(2010) 6 SCC 768]. After taking note of the directions given by the Supreme Court in **Sunderbhai Ambalal Desai** case (supra) in **General Insurance Council vs. State of Andhra Pradesh** (supra), the Supreme Court noticed that police, investigating as well as prosecuting agency were not taking adequate steps for compliance of the directions, which has resulted in loss of assets worth several hundred crore and recovered articles were reduced to junk by the time they are released. It gave further directions in this regard. The relevant portion of the judgment in para 13 is as under:-

“13. In our considered opinion, the aforesaid information is required to be utilized and followed scrupulously and has to be given positively as and when asked for any the Insurer. We also feel, it is necessary that in addition to the directions issued by this Court in **Sunderbhai Ambalal Desai** [(2002) 10 SCC 283] considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given:

“(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the Jurisdictional Court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs

may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.

(B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.

(C) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking into the corporate structure of the insurer.”

27. Coming back to the facts of the present case, it would be evident that in the FIR registered under Sections 22, 25 and 29 of the NDPS Act, it is clearly alleged that the petitioner is the owner of the truck bearing Registration No. WB-23B-1771. The registering authority, Barrackpur, West Bengal has also confirmed that the vehicle was registered in the name of the petitioner. When the petitioner filed a petition on 05.02.2014 before the learned 4th Additional Sessions Judge, Muzaffarpur for the release of his truck, the same was rejected vide impugned order dated 13.03.2015 on the ground that huge quantity (2930 kg) of ganja was recovered from the truck involved in smuggling of the same and that the petitioner,



the owner of the truck, is also an accused in the said case. In the opinion of this Court, while considering the application dated 05.02.2014, the learned 4th Additional Sessions Judge, Muzaffarpur was bound to follow the statutory provisions contained in Chapter XXXIV of the CrPC and the law laid down by the Supreme Court in **Sunderbhai Ambalal Desai** (supra) and **General Insurance Council & Ors. Vs. State of Andhra Pradesh & Ors** (supra). The non-compliance of the directions of the Supreme Court in the aforesaid decisions is not permissible.

28. So far as the power to confiscate the truck in question under Section 60 of the NDPS Act is concerned, it is a settled legal position that Section 60 would come 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 vehicle used in the illegal trade of contraband articles can be confiscated.

29. Learned counsel for the petitioner has rightly contended that in case the vehicle is not released and kept idle in an open space in the DRI premises at Muzaffarpur during pendency of the trial, it shall become a piece of scrap after some time.

30. Keeping in mind the discussions made hereinabove and the law laid down by the Supreme Court in the decisions noted above, the impugned order dated 13.03.2015 passed

by the learned 4th Additional Sessions Judge, Muzaffarpur cannot be sustained. Accordingly, it is set aside.

31. The court below is directed to release the vehicle in favour of the petitioner subject to the following conditions:-

- (i) That the petitioner shall furnish bank guarantee of Rs. 3 lacs to the satisfaction of the court;
- (ii) That the petitioner shall execute a bond for the return of the said vehicle if required by the court at any point of time;
- (iii) That the petitioner shall also give an undertaking on oath that he shall not alter or part with the ownership of the vehicle during pendency of the trial; and
- (iv) While passing the order for release the court below shall be at liberty to take any other reasonable sureties from the petitioner to its own satisfaction.

32. With these observations and directions, the application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	
CAV DATE	
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