

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No.1044 of 2015**

Fayyaz Ahmed, S/o. Saky Imam, aged about 33 years, R/o. Pratappur, Police Station Manjha, Post URK Bgrza, District Gopalganj (Bihar)

---- Petitioner

Versus

State of Chhattisgarh through District Magistrate, Kabirdham, district Kabirdham (CG)

---- Respondent

Shri Shivendu Pandya, counsel for the petitioner.
Shri Lav Sharma, Panel Lawyer for the State/respondent.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****08.3.2016.**

Heard.

2. Brief facts required for the disposal of the instant petition is that vehicle No.BR-28/G/4130 Bolero has been seized in connection with Crime No.188/14 at Police Station Bodla. As per the allegation, in the said Bolero, narcotic substance i.e. ganja was being transported. The police after due investigation filed charge sheet against three accused namely Mastar Sahni, Mohd. Hussain and Satish Kumar. The Special Judge under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act), Kabeerdham (Kawardha) after the trial in Special Case No.51/15 vide judgment 146.6.2015 acquitted the accused by granting them the benefit of doubt for the offence charged against them and also vide para 14 of the judgment held that as the owner of the vehicle has not claimed for the title right over the

said seized Bolero, same be confiscated as per law after the period of appeal. As per the Limitation Act, 1963, Article 115(b)(i), the period of appeal in the matter is 60 days and before the expiry of 60 days i.e. on 07.7.2015, the applicant/ alleged owner of the vehicle has filed an application under Section 452(1) of the Code read with Section 60 and 63 of the NDPS Act. The Court below after hearing the said application in Misc. Criminal Case No.21/15, vide order dated 24.7.2015 dismissed the said application. Against the said dismissal the applicant has invoked the jurisdiction of this Court under Section 482 of the Code praying that the order impugned may be set aside and the property may be given on supurdnama to the applicant in the interest of justice.

3. Learned counsel for the applicant supported the entire ground taken in the petition and prayed that the petition may be allowed and relief as prayed may be granted.

4. A perusal of the para 40 of the judgment impugned dated 16.6.15 goes to show that after the period of appeal i.e. 60 days as per the provisions of Limitation Act, 1963 the proceeding as required under the provision of Section 60 of the NDPC Act onwards are to be initiated. Indisputably, the application was filed on behalf of the petitioner before the expiry of the period of appeal, though the application was premature but the court below while deciding the said application not observed the said facts, the Court below also failed to appreciate that after expiry of period of appeal the Court itself has to initiate the proceedings regarding

the confiscation of the said seized vehicle under the provisions of Section 60 onwards of the NDPS Act. On perusal of the entire order dated 24.7.2015 goes to show that the order suffers ambiguity regarding the period of appeal and proceedings after expiry of the period of appeal. Also the prayer made on behalf of the petitioner to give the vehicle on permanent supurdnama was also not as per the provisions of law. After the impugned judgment, the Court has to initiate the proceedings and after following the procedure as mentioned under Section 63 of NDPS Act either the court has to order for the confiscation followed by sale of the said vehicle, deposit of the sale proceed with the State treasury or to held that the vehicle in question is not liable for confiscation and thereby to release the said vehicle as no other option is left before the Court as per the law.

5. On due consideration, as the period of appeal is already expired and as per the material in the record goes to show that the Court below perhaps not initiated any proceedings for the confiscation after expiry of period of appeal. If the proceedings are not yet started or concluded then only the petitioner has a right to appear before the said court and to plead his case regarding the fact that the vehicle in question is not a subject matter of confiscation and the Court below after hearing both the parties, if any evidence adduced at the trial, and as per the enquiry provided under Section 63(1) of the NDPS Act the Court has to pass order accordingly regarding finality of the confiscation.

6. With the above observation, the instant petition is disposed of. The applicant is directed to file an application before the trial Court under the provisions of Section 63 of the NDPS Act and if any proceedings is not yet commenced or completed or pending then the Court is directed to proceed further as per the confiscation law mentioned in the NDPS Act and if any proceeding is already commenced, completed or otherwise pending then the present order will not operate with the said order and then the Court may dispose of the same as per the provisions of law regarding confiscation. The applicant may file a copy of the order before the Court below for compliance if applicable. The Registry is also directed to send a copy to the Court for compliance and information through usual and fax mode.

Sd/-

(Chandra Bhushan Bajpai)

JUDGE