

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL. M.C. 5320/2013 & CRL.M.A. No. 19204/2013
% **Date of Decision: 22 November, 2016**

DIRECTORATE OF REVENUE INTELLIGENCE Petitioner

Through: Mr. Amish Aggarwala and Mr. Satish
Aggarwala, Advocates.

versus

AMIT KUMAR Respondent

Through: Mr. S. S. Das, Advocate.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

I.S. MEHTA, J.

1. Instant petition is arising out of the impugned order passed by the learned Special Judge, NDPS cases, Saket, New Delhi, dated 12.12.2013 *qua* against the present petitioner, i.e., Directorate of Revenue Intelligence(DRI), who preferred to file the present petition under Section 482 of the Code of Criminal Procedure for setting aside/quashing of the aforesaid impugned order.
2. The brief facts stated are that, on the basis of the secret information, the petitioner's, i.e., Directorate of Revenue Intelligence(DRI), officers had effected a seizure of 272.800 Kg of contraband substance from a three wheeler luggage carrier bearing registration No. DL 1LN 7074 which was driven by one Bablu Ram and co-

passenger Anil Kumar. The said seized contraband substance was found having presence of Methaqualone.

3. Subsequently, during the interrogation it was revealed by Anil Kumar that the contraband substance was handed over to him by one Parmanand @ Manu Khosla. Consequently, Manu Khosla's premises was searched out by the DRI officers and a further recovery of 33.450 Kg of similar substance was effected. Pursuant to the disclosures made by him a further recovery of 951.350 Kg of the similar substance was effected from a vehicle make Toyota Fortuner bearing registration No. DL 13CA 1800, belonging to the present respondent, i.e., Amit Kumar. The aforesaid vehicle is stated to be registered in the name of a company named M/s Scilla Biotechnologies Limited, of which the present respondent is stated to be the Director. The present respondent, i.e., Amit Kumar, along with Anil Kumar and Manu Khosla were subsequently arrested in this case under the NDPS Act as they all were found to be dealing in contraband substances. However, during the interrogation it was found that Bablu Ram was only a driver of the three wheeler luggage carrier bearing registration No. DL 1LN 7074 and was not personally involved in the commission of the offence. Therefore, he was not made a party to the seized contraband substance.
4. The petitioner, i.e., DRI, had drawn 39 samples out of the aforesaid seized substances, but none of the samples were tested positive for Methaqualone during the testing carried out in CRCL Delhi and only Ketamine Hydrochloride was detected in 30 out of the 39 samples and the remaining 9 samples were advised to be sent to CFSL

Hyderabad for their characterization. Subsequently, Manu Khosla and the present respondent, i.e., Amit Kumar, were released on bail by the lower Court vide order dated 20.07.2013.

5. Thereafter, the respondent moved an application dated 20.11.2013 seeking release of his vehicle make Toyota Fortuner bearing registration No. DL 13CA 1800 before the lower Court. The lower Court after perusal of the application as well as the reply thereto filed by the petitioner and hearing the arguments advanced by the counsels for the parties passed the impugned order dated 12.12.2013 directing that the vehicle make Toyota Fortuner bearing registration No. DL 13CA 1800 be released to the respondent on superdari subject to certain conditions which is reproduced as under:

*"1. that he shall furnish a superdaganama in the sum of Rs Ten lacs to the satisfaction of this court;
2. that he will not change the colour etc. of the above vehicle and will also not sell, transfer, above said vehicle without the prior permission of this court;
3. that he will produce the above said vehicle as and when directed by this court."*

6. Aggrieved from the aforesaid impugned order dated 12.12.2013, the petitioner has preferred this petition seeking setting aside/quashing of the impugned order dated 12.12.2013.

Hence the present petition.

7. The learned counsel for the petitioner has submitted that the order passed by the learned Special Judge, NDPS cases, Saket, New Delhi, is bad in law as well as on facts. The learned Special Judge had no

jurisdiction to entertain and dispose of the application and the order of release of the vehicle is without jurisdiction.

8. The learned counsel for the petitioner has further submitted that the learned Special Judge failed to appreciate that the vehicle had been used for storage of contraband substances and has, therefore, been seized as per the provisions of the NDPS Act, 1985. The NDPS Act being a special Act overrides the general law under the Criminal Procedure Code and there is no power conferred upon the special Court for release of the vehicle on superdari under the NDPS Act.
9. The learned counsel for the petitioner has further submitted that this is not a case where a complaint has been filed before the learned Special Judge for him to exercise jurisdiction over the property seized in the case. The learned Special Judge erred in holding that the vehicle is not required for any purpose by the petitioner "at this stage" as reports in respect of 10 samples are awaited from CFSL Hyderabad. Further the investigation in the case is pending and the vehicle may be required for further investigation. The order of release of the vehicle may interfere in further investigation and it is not within the province of the lower Court to decide the matter in which investigation is being conducted or determined whether or not the vehicle would be needed for further investigation.
10. The learned counsel for the petitioner in support of his arguments has placed reliance on the following judgments:

1) ***Manu Khosla vs. Directorate of Revenue Intelligence, SLP Crl No. 9593/2014.***

- 2) *Ganga Hire Purchase Pvt. Ltd. vs. State of Punjab and Ors.*, AIR 2000 SC 449.
 - 3) *Narender Kaur vs. Arun Sheoran, I.O., Narcotics Control Bureau*, MANU/DE/0512/2000.
 - 4) *Directorate of Revenue Intelligence vs. Anil Kumar*, MANU/DE/2419/2014.
 - 5) *Assistant Collector of Customs House, Indraprastha Estate, New Delhi vs. Tilak Raj Shiv Dayal, Dehradun*, MANU/DE/0052/1969.
 - 6) *Randhir Singh and Ors. vs. Director of Intelligence*, MANU/DE/0283/1985.
 - 7) *Tarlok Singh vs. The Suprintendent of Customs and Anr.*, MANU/DE/0231/1978.
 - 8) *Kirta Ram vs. State of Rajasthan*, MANU/RH/0750/2007.
11. On the other hand, the learned counsel for the respondent has submitted that the Court below has rightly appreciated the facts on record and the impugned order is just and proper, and the same requires no interference. He further submits that the present petition is without merit and is baseless and may be dismissed.
12. The learned counsel for the respondent has placed reliance on the following judgments in support of his contentions:
- 1) *Sunderbhai Ambalal Desai vs. State of Gujarat*, SLP Crl No. 2725/2002.
 - 2) *Sunderbhai Ambalal Desai vs. State of Gujarat*, 2002 (9) SCALE.

3) *Madan Lal vs. State, NCT of Delhi[Delhi], Delhi 2002 (1) JCC 444.*

4) *Gurbinder Singh @ Shinder vs. State of Punjab, CRR No. 1765/2015.*

13. The whole dispute hinges around whether, the effected 951.350 Kg of contraband substance from the vehicle make Toyota Fortuner bearing registration No. DL 13CA 1800 pursuant to the disclosure made by Manu Khosla does cover under the NDPS Act, 1985?

The answer obviously is YES.

14. In the year 1961, a single convention on narcotic drugs was adopted by member countries. The Single Convention, adopted in 1961, consolidated those treaties and broadened their scope to include cannabis and drugs whose effects are similar to those of the drugs specified, however, India opposed to it.
15. India, prior to 1985 exercised the statutory control over narcotic drugs under The Opium Act, 1857 and The Dangerous Drugs Act, 1930.
16. The Single Convention unambiguously condemns drug addiction, however, stating that "addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind" which ultimately compelled the Indian government to introduce the Narcotic Drugs and Psychotropic Substances Bill, 1985 in the Lok Sabha on 23 August 1985. It was passed by both the Houses of the Parliament and was assented by the

President on 16 September 1985. It came into force on 14 November 1985 as:-

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 (shortened to NDPS Act).

17. The general procedure adopted to deal with the custody and disposal of the property are given under the relevant provisions of Sections 451 and 452 and 457 Cr.P.C., 1973 which are reproduced 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.

452. Order for disposal of property at conclusion of trial.-

(1) When an inquiry or trial in any Criminal Court is concluded, the court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which

any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof without any condition or on condition that he executes a bond with or without sureties, to the satisfaction of the court, engaging to restore such property to the court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

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."

18. On a bare perusal of the above three provisions, one can come to a conclusion that each of these provisions deal with a different situation.

Section 451 Cr.P.C. deals with interim custody of the seized property which has been produced before the Court.

Section 452 Cr.P.C. deals with the disposal of the seized property after enquiry or trial in a criminal Court is concluded.

Section 457 Cr.P.C. applies to a situation where the property which has been seized by the police was not produced before the Court.

19. The present case pertains to one under the NDPS Act, 1985 which is a special law as compared to the general procedural law mentioned herein above. The NDPS Act, 1985 is applicable over the general law for the purposes of the present case. The reliance is placed upon the judgment of the Apex Court in the case reported at ***P.V. Hemalatha vs. Kattamkandi Puthiya Maliackal Saheeda and Another; 2002 5 SCC 548.***

20. Section 8 of the NDPS Act, 1985 deals with produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance except for medical or scientific purposes which is reproduced as under:-

"8. Prohibition of certain operations. - No person shall-

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance,

except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorization also in accordance with the terms and conditions of such licence, permit or authorization:

Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

[Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.]"

21. Further Section 60 of the NDPS Act deals with its liability of illicit drugs, substances, plants, articles and conveyances to confiscation. Sub-section (3) of Section 60 of the NDPS Act specifically emphasis that any animal or conveyance used in carrying any narcotic drugs or psychotropic substance shall be liable to confiscation.
22. Instant is a case where recovery of 951.350 Kg of Methaqualone/Ketamine Hydrochloride was alleged to be effected from a vehicle make Toyota Fortuner bearing registration No. DL 13CA 1800, belonging to the present respondent, i.e., Amit Kumar, and releasing of the said vehicle on superdari is to be dealt as per the provisions of the NDPS Act, 1985 as the said Act being a special law.
23. The Department of Revenue of the Ministry of Finance with its Notification No.S.0.311.(E) dated 10.02.2011 declared Ketamine Hydrochloride to be a part of the schedule of the NDPS Act, thereby declaring it to be a psychotropic substance which is reproduced as under:

*" TO BE PUBLISHED IN THE GAZETTE OF INDIA,
EXTRAORDINARY,*

*PART II, SECTION 3, SUB-SECTION (ii)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
NOTIFICATION*

New Delhi, the 10th February, 2011

S. O. 311 (E).- Whereas the Central Government is satisfied, on the basis of information and evidence which has become available to it with respect to the nature and effect of, or the scope of abuse of, any substance (natural

or synthetic) or natural material or any salt or preparation of such substance or material, that it is expedient to add the following substance or natural material or salt or preparation of such substance or material in the list of Psychotropic Substances specified in the Schedule to the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) Act;

Now, therefore, in exercise of the powers conferred by Section 3 of the said Act, the Central Government hereby makes the following addition in the list of Psychotropic Substances specified in the Schedule of the said Act, namely:-

In the Schedule to the Said Act, after serial number 10 and the entries relating thereto, the following serial number and the entries shall be inserted, namely:-

S. No.	International Non-proprietary names	Other non-proprietary names	Chemical name
"11oA	Ketamine		2-(2 chlorophenyl)-2- (methyl amino) cyclohexanone"

F.No. N/11012/4/2010-NC-II

SATYA NARAYANA DASH, Under Secy.

Note: The Schedule to the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) was amended vide number S.O. 785(E), dated 26th October, 1992 and subsequently by S.O. 49(E), dated 8th January, 1993, S.O. 39(E) dated 12th January, 1996, S.O. 475(E),

dated 11th June, 2003, G.S.R. 621(E), dated 1st August, 2003 and G.S.R. 1(E), dated 2nd January, 2004."

24. The Court below while dealing with the instant case went wrong on the point that, no offence under the NDPS Act was made out, for want of inclusion of Ketamine Hydrochloride in the Schedule of the NDPS Rules, 1985. The notification of the Department of Revenue of the Ministry of Finance with its Notification No.S.0.311.(E) dated 10.02.2011 declared Ketamine Hydrochloride to be a part of the schedule of the NDPS Act, thereby declaring it to be a psychotropic substance. Reliance is placed on the judgment of the Apex Court in the case reported at *Union of India and Another vs. Sanjeev V. Deshpande, AIR 2014 SC 3625* and the judgment of this Court in the case reported at *Directorate of Revenue Intelligence vs. Anil Kumar, 2014 (4) JCC 202*.
25. The decisions relied upon by the learned counsel for the respondent are of no help to the respondent in view of the facts and circumstances of the case and for the reason that the NDPS Act is a special law and the offence committed under the said Act shall be dealt in accordance with the provisions of the special law.
26. Keeping in view the facts and circumstances and the discussions made above, the present petition succeeds. The petition is allowed and the impugned orders dated 12.12.2013 passed by the learned Special Judge, NDPS cases, Saket, New Delhi is set aside.
27. The respondent is directed to surrender the vehicle make Toyota Fortuner bearing registration No. DL 13CA 1800 forthwith before

the trial court, failing which the trial court will proceed further in accordance with law.

The petition is disposed of accordingly.

28. Let one copy of this order be sent to the concerned court for necessary compliance. No order as to costs.

I.S.MEHTA
(JUDGE)

NOVEMBER 22, 2016

