

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37265 of 2016

Arising Out of PS.Case No. -9 Year- 2016 Thana -GOVERNMENT OFFICIAL COMP. District-
MUZAFFARPUR

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Malkit Singh son of Mahindar Singh, resident of 198 Swami Dayanand Colony,
Kishanganj, Delhi at present residing at House No. 165, Gali No.2, Upper Ground
Floor, Himgiri Enclave, Part A-II, near Pepsi Gali, P.S.- Barari, Delhi- 84.

.... Petitioner/s

Versus

1. The Union of India
2. Ajay Kumar, Intelligence Officer, Directorate of Revenue Intelligence,
Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kumar Uday Singh, Advocate

For the Opposite Party No.1 : Mr. S.D.Sanjay, Additional Solicitor General

For the Opposite Party No.2 : Mr. Rakesh Kumar Sinha, CGC

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 18-09-2017

In the present application preferred under Section 482 of the
Code of Criminal Procedure (for short 'CrPC') the petitioner has
sought for quashing of the order dated 27.07.2016 passed by the
learned Session Judge-cum-Special Judge, DRI (NDPS), Muzaffarpur,
in DRI (NDPS) Case No.09 of 2016 whereby the petitioner's petition
for release of his truck bearing Registration No.HR 63A 6545 seized
in connection with the aforesaid case has been rejected.

2. The DRI (NDPS) Case No.09 of 2016 was registered on



12.02.2016 on the basis of written complaint made by one Ajay Kumar, Intelligence Officer, DRI, Muzaffarpur.

3. The complainant alleged that the officers of the DRI, Regional Unit, Muzaffarpur intercepted a Tata Truck (container body) bearing Registration No.HR 63A 6545 on 11.02.2016 at Chakia Toll Plaza, Motihari acting upon a secret information. The said truck was being driven by one Wakeel Kumar. On search, twenty nine packets containing substance believed to be Ganja loaded in a specially built secret cavity on the hood of the cabin of the said truck were recovered. The gross weight and net weight of the packets was found 302.42 Kgs and 297 Kgs respectively. The Ganja was valued at Rs. 11,88,000/- and the truck in question was valued at Rs. 5,30,000/-. The Ganja recovered from the truck was seized and a seizure list was drawn in presence of the witnesses and the accused Wakil Kumar was arrested in exercise of powers conferred under Section 43(b) of the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act') having reason to believe that he is liable for punishment under Sections 20, 25 and 29 of the NDPS Act for violation of Section 8(c) of the said Act.

4. Learned counsel for the petitioner has submitted that the petitioner is the owner of the seized truck. He has not been made accused in the present case. He has submitted that from the statement



of accused driver recorded under Section 67 of the NDPS Act, it would be evident that the petitioner had no concern with the alleged offence. He has submitted that as the truck was also seized by the DRI officials, the petitioner had filed a petition for release of the truck, but the learned Session Judge-cum-Special Judge, DRI (NDPS), Muzaffarpur without taking into consideration the law laid down by the Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gujarat, [(2002) 10 SCC 290]** and **General Insurance Council and Ors. vs. State of Andhra Pradesh & Ors., [(2010) 6 SCC 768]** rejected the petition, vide order dated 27.07.2016, on the ground that the said truck is liable for confiscation under Section 60(3) of the NDPS Act and that huge quantity of Ganja was recovered from the seized truck and investigation is still continuing. He has submitted that due to the seizure of the truck, the petitioner is suffering financially and if the truck is not released, the same would become junk, as it is lying in open space at DRI premises in Muzaffarpur.

5. Mr. S.D.Sanjay, learned Additional Solicitor General appearing on behalf of the Union of India fairly conceded that in view of the ratio laid down by the Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gujarat** (supra) and **General Insurance Council and Ors. vs. State of Andhra Pradesh & Ors.** (supra), the court below ought to have released the vehicle in question in favour of the



petitioner. However, he has submitted that while releasing the vehicle the court must impose stringent condition so that the petitioner may not alienate the same and produce it as and when required by the court.

6. I have heard learned counsel for the parties at length and carefully perused the record.

7. 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).

8. 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.

9. In paragraphs 5 and 7 in **Sunderbhai Ambalal Desai** (Supra), the Supreme Court 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.

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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.”**

10. 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.”

11. 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.

12. Coming back to the facts and circumstances of the present case, it would be evident that in the FIR registered under



Sections 22, 25 and 29 of the NDPS Act, the petitioner is owner of the truck bearing Registration No.HR 63A 6545. It is also an admitted fact that till now the petitioner has not been made accused in the present case. He filed an application for release of the truck on 02.03.2016 before the learned Sessions Judge-cum-Special Judge, DRI (NDPS) Muzaffarpur, but the same was rejected, vide impugned order dated 27.07.2016, on the ground that huge quantity of Ganja was recovered from the truck and under Section 60(3) of the NDPS Act, the truck would be liable for confiscation.

13. In the opinion of this Court while considering the application dated 02.03.2016, the learned Session Judge-cum-Special Judge, DRI (NDPS) Muzaffarpur was bound to follow the statutory provisions contained in Chapter XXXIV of the CrPC and the ratio laid down by the Supreme Court in **Suderbhai Ambalal Desai** (supra) and **General Insurance Council & Ors.** (supra). The non-compliance of the directions of the Supreme Court in the aforesaid decisions is not permissible.

14. 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 of the NDPS Act would come into play after conclusion of 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.

15. I also see substance in the submissions of the learned counsel for the petitioner that if the truck is not released and kept idle in an open space in DRI premises, Muzaffarpur during pendency of the trial, it shall become a piece of scrap.

16. Keeping in mind the discussions made hereinabove and the ratio laid down by the Supreme Court in the decisions discussed above, the impugned order dated 27.07.2016 passed by the learned Session Judge-cum-Special Judge, DRI (NDPS), Muzaffarpur cannot be sustained. Accordingly, it is set aside.

17. The court below is directed to release the truck in favour of the petitioner, subject to the following conditions:-

- (i) That the petitioner shall furnish bank guarantee of Rs. 4 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.

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

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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