

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 167 of 2017

Harishchand Gupta S/o Late Krishnanand Gupta Aged About 40 Years Caste Halwai, R/o Village- Lanbhua, Police Station Lambhua, Tahsil-Lambhua , District-Sultanpur, Uttar Pradesh.

---- Applicant

Versus

State Of Chhattisgarh Through, Police Station Tapkara, District Jashpur, Chhattisgarh.

---- Respondent

For applicant - Ms. Sharmila Singhai, Advocate.
For respondent/State -Shri Om.P. Sahu, G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

24/04/2017

1. Instant petition is against the order dated 25/01/2017 passed on an application filed by the applicant under Section 457 of Cr.P.C. wherein the possession of the vehicle was sought for was dismissed.
2. Brief fact of the case are that a vehicle bearing No. OD 15 A-4847 was intercepted on 17/06/2016 when an information was received that the vehicle was being used for transportation of cannabis. Having intercepted the vehicle, from the vehicle i.e Indica Car 100 kgs of cannabis were recovered. Thereafter, charge sheet was filed under section 20-B of NDPS Act. During the course of trial, an application having preferred by the applicant claiming himself to be the owner of the vehicle, said application was dismissed on the ground that said vehicle actually belong to UP bearing orginal number UP 44 Z-4847, therefore interim custody of the vehicle was dismissed.
3. Ms. Sharmila Singhai, learned counsel appearing for the applicant would submit that reasons given by the court below is completely absurd

as it is against the law laid down in case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in **(2002) 10 SCC 283** and would submit that keeping the vehicle in the police station would not serve any purpose and no proceeding of confiscation is being carried out, vehicle may be handed over to the applicant. It is further submitted that interim custody of the vehicle can certainly be given to the applicant.

4. On the other hand, learned State counsel opposes the prayer and further submits that in respect of the confiscation nothing has been shown in the reply and want to verify the same.

5. Heard learned counsel for the parties and perused the impugned order.

6. Sections 60 and 63 of the NDPS Act reads as under:-

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

(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance or controlled substances lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance or controlled substances which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substances or controlled substances, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and

the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation. (3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance or controlled substance, or any article liable to confiscation under sub-section (1) or sub-section (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.

63. Procedure in making confiscations.-(1) In the trial of offence 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 Section 60 or section 61 or section 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 section 60 or section 61 or section 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, and may order confiscation accordingly:

Provided that no order of confiscation of an 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 his claim:

Provided further that if any such articles or thing, other than a narcotic drug, psychotropic substance, or controlled substance, the opium poppy, coca plant or cannabis plant is liable to speedy and

natural decay, or if the court is of the 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.

7. Section 60 of the Act lays down that any conveyance used for carrying narcotic drugs shall be liable to confiscation and Section 63 of the Act prescribes the procedure for confiscation. Reply of the State which is placed would show that nothing has been stated as to whether confiscation proceeding has been commenced or not. Predominantly it is stated that since vehicle belong to UP bearing number UP 44 Z-4847, therefore it should not be released. Sections 60 and 63 of the Act reveals that there is no prohibition for handing over the interim custody of the vehicle used for transporting the contraband drugs. So for all practice purposes as would appear that the vehicle is lying at the disposal of the authorities or at police station. Therefore, if it is kept in the police station it must be occupying space or is prone to cause natural decay and may loose its roadworthiness when kept in stationery position. In context of subject matter the principle laid down in case of **General Insurance Council and others Vs. State of Andhra Pradesh and others** reported in **(2010) 6 SCC 768** which has earlier reiterated principle laid down in case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in **(2002) 10 SCC 283**, wherein it is held that keeping the vehicle in stationery position at the police station would not serve any purpose except the decay of it's value interim custody of the vehicle can be handed over. Reply of the State is silent as to whether any confiscation proceeding has been commenced or not. In the facts of this case, keeping the vehicle for period indefinite in police station will destroy very nature of the vehicle as it may turn junk in future. Therefore, I am inclined to allow

the application for interim custody of the vehicle.

8. In the result, order dated 25/01/2017 is quashed and the petition is allowed. The vehicle is directed to be released to the applicant on the following conditions:-

1. Before release of vehicle proper panchnama be prepared.
2. Photographs of vehicle should be taken and bond should also be produced that the article would be produced if required at the time of trial.
3. Proper security i.e. personal bond of Rs. 4.5 lakhs and like sum of local surety be obtained before release of vehicle.

Sd/-

(Goutam Bhaduri)

JUDGE