

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1199 of 2017

Sanjay Kujur, S/o. Levnath Kujur, Aged About 30 Years, R/o. Village Peetaama, P.S. Baghbahar, District Jashpur, Chhattisgarh.

---- **Petitioner**

Versus

Station House Officer, Police Station- Lundra, District Surguja, Chhattisgarh

---- **Respondent**

For Petitioner : Mr. Jitendra Shrivastava, Advocate

For Respondent : Mr. Neeraj Sharma, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

22.11.2017

Heard

1. The instant petition is against the order dated 29.07.2017 wherein the application filed by the petitioner for custody of the vehicle was refused. By such application, the petitioner claims to be the owner of the vehicle and seeks possession of the vehicle. The learned Court below rejected the same by holding that *prima facie* it revealed that 1.275 Kg Cannabis were recovered from the vehicle, as such, interim custody of the vehicle is dismissed.
2. Learned counsel for the petitioner would submit that the petitioner is the owner of the vehicle bearing No.C.G.14 MD 3325, which is an Alto Car, which was apprehended in a crime. It is contended that since the vehicle was out of order, as such, it was parked nearby side of the road and during such time somebody has placed 1.275 Kg Cannabis inside the vehicle; thereby, the offence is alleged to have been committed that the vehicle was used in transporting of the Cannabis. He further submits that the fact

would reveal that the vehicle was seized from the open place and the applicant was not apprehended. Consequently, it can be presumed that the applicant if at all would have abandoned the vehicle, he would not have kept the Cannabis inside. He submits that the conviction has not been affected, therefore, he is entitled to get back the vehicle as without any reasonable cause, the vehicle cannot be ordered to depreciate.

3. Per contra, learned State counsel opposes the prayer made by the petitioner.

4. 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.

5. Section 60 of the NDPS Act lays down that any conveyance used for carrying narcotic drugs shall be liable to confiscation and Section 63 of the NDPS Act prescribes the procedure for

confiscation. Reply of the State would show that confiscation proceeding has not been commenced. Predominantly, it is stated that since the vehicle was used for transporting the Cannabis, therefore, it should not be released. Sections 60 and 63 of the NDPS 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 practical 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 lose its road worthiness when kept in stationary 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 stationary position at the police station would not serve any purpose except the decay of its 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.

6. In the result, order dated 29/07/2017 is quashed and the petition is allowed. The vehicle is directed to be released to the petitioner 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. 2 lakhs and like sum of local surety be obtained before release of vehicle.

Sd/-
(Goutam Bhaduri)
Judge

Ashok