

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1676 of 2018

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Pappu Yadav, Son of Bhikhari Yadav, resident of Village/
Mohalla- Bhawanipur Bazar, Police Station- Nakardai,
District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Superintendent of Police, East Champaran.
3. The Officer-in-Charge, Aadapur (Nakardai) Police Station,
East Champaran.
4. The Commandant, 'E' Coy, 47th Battalion, SSB, Pantoka,
Bihar.
5. The Commander Naka/Patrolling Team, BOP Nayaktola, E
Coy 47th Battalion, SSB, Pantoka, Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Chandra, Adv.

For the Respondent/s : Mr. Kumar Manish (SC-5)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

3 14-08-2018 The motorcycle of the petitioner, bearing
Registration No. BR05W-7724, was seized in connection with
N.D.P.S. Case No. 78 of 2017, arising out of Aadapur
(Nakardai) P.S. Case No. 284 of 2017, instituted for the
offences under Sections 20, 22, 24 and 25 of the Narcotic



Drugs and Psychotropic Substances Act, 1985 (*in short the N.D.P.S. Act*). The aforesaid vehicle was being driven by one Jai Kishore Yadav, who was arrested by S.S.B. personnel for carrying 8.20 kilograms of *Charas* on the said motorcycle.

A prayer was made by the petitioner, in whose name the vehicle stands, for its release on the ground that the same was taken by his brother for carrying his wife to hospital for treatment. It was also submitted by the petitioner before the Trial Court that the aforesaid narcotics was being carried by his brother without his knowledge or connivance.

The Trial Court, however, by order dated 13.03.2018 has rejected the petition on the ground that there has been a recovery of 8.20 kilograms of *Charas* from the possession of the rider of the aforesaid motorcycle. The Trial Court, however, has not indicated whether the vehicle is to be confiscated or whether proceeding has been initiated for its confiscation.

Under the provisions of Sections 60, 61 and 62 of the N.D.P.S. Act, any conveyance/vehicle which is used for transporting of narcotics can be seized, provided it is proved that the conveyance/vehicle was being used without the knowledge of the owner.

Section 63 of the N.D.P.S. Act reads as follows:-



63. Procedure in making confiscations.-

(1) In the trial of offences 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 article or thing other than a narcotic drugs, 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 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.

The confiscation proceeding in that event has to be initiated by the Court and it matters not whether an accused is convicted, acquitted or discharged.



No indication is found in the order dated 13.03.2018. If the Trial Court does not intend to confiscate the vehicle, then keeping the vehicle in open in police station premises would serve no purpose. Should the Court decide that the vehicle is liable for confiscation and be confiscated, the situation would be otherwise.

In any view of the matter, since there is no application of mind over the aforesaid issue by the learned Trial Court, the order dated 13.03.2018 is set-aside.

The case is remitted to the learned Trial Court for writing out a fresh order, indicating whether the Court intends to initiate any proceeding for confiscation of the aforesaid vehicle. The court below, in any event, shall pass necessary orders within a period of four weeks from the date of receipt/production of a copy of this order. Should the petitioner feel aggrieved by the order, he can avail of his remedies provided under the law.

With the aforesaid direction and observation, the writ petition is disposed of.

(Ashutosh Kumar, J)

Praveen-II/-

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