

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.1051 of 2017**

Smt. Shivkumari Roy W/o Shrawan Roy aged about 60 years, R/o. Village Lilatola Post Beldogari Tahsil Pushprajgarh, District- Anuppur (M.P.) Through Vikas Kumar Roy, S/o. Shrawan Roy, R/o Liltola Post Beldogari Tahsil Pushprajgarh District Anuppur (M.P.).

---- Applicant**Versus**

State of Chhattisgarh through District Magistrate Bastar and Police Station Nagarnar District- Bastar (C.G.)

---- Respondent

For Applicant	:	Mr. Anand Kesharwani, Advocate
For Respondent	:	Mr. Rajkumar Jaiswal, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board**31/01/2018**

1. This revision has been preferred against the order dated 21/09/2017 passed by the Special Judge (N.D.P.S. Act) Bastar Place Jagdalpur in Special Case No. 1/2016, wherein, the application filed by the applicant for custody of the vehicle was refused.
2. By the said application, the applicant claimed to be the owner of the vehicle and desired possession of the vehicle. The learned Court below rejected the same holding that prima facie it revealed that 18 kg cannabis were recovered from the vehicle and there is likelihood to early decide of the case, as such, interim custody of the vehicle was dismissed.

3. Learned counsel appearing for the applicant submits that the applicant is the owner of the vehicle bearing no. MP65 C 1340, Bolero, which was apprehended in crime. It is further submitted that the vehicle was seized from the possession of one- Ajeet Kanojia on 15/12/2015. Since then, the vehicle is in the custody of police and the same has been kept in an open place. He further submits that initially on 06/06/2016, an application was moved under Section 457 of Cr.P.C for taking possession of the said vehicle and on 27/06/2016, the said application was dismissed holding that that in the instant matter charges has been framed and the case is already fixed for recording of evidence, therefore, at this stage not required to allow the application. After lapse of 1 ½ years, the applicant again moved an application under Section 457 of Cr.P.C for taking the possession of the vehicle on 21/09/2017 and the trial Court holding that the trial may be completed soon and on this ground, has rejected the application. He further submits that since the vehicle is a machinery and if it is not used for long time, it will become junk. It is further submitted that the applicant is a old lady and she is dependent upon the income of this vehicle. She has also lodged the missing report of the said vehicle on 16/12/2015 inspite that the learned trial Court has rejected the application only on the technical ground.
4. Per contra, learned State counsel opposes the prayer made by the counsel for the applicant.
5. 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 substance 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 52 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.

6. 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.

7. 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 21/09/2017 is quashed and the revision is allowed. The vehicle is directed to be released to the applicant on the following conditions:-
 - i. Before release of vehicle proper panchnama be prepared.
 - ii. 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.
 - iii. Proper security i.e. personal bond of Rs. 3 lakhs and like sum of local surety be obtained before release of vehicle.

Sd/-

(Arvind Singh Chandel)
Judge