

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 896 of 2018

Dayaram Patel S/o Shri Heera Lal Patel Aged About 35 Years R/o- Village- Karoudiya, Post Office- Jagmal, Tahsil- Byouhari, District- Shahdol (M.P.), Through His Power Of Attorney Holder Smt. Kamini Patel, W/o Budhsen Patel, Aged About 48 Years, R/o- Beside Dudhadhari Mandir, Mathpara, Raipur, Tahsil And District- Raipur, Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh Through- District Magistrate, Raipur, District- Raipur, Chhattisgarh.

---- Respondent

 For Petitioner : Shri Shivendu Pandya, Advocate
 For Respondent : Shri Ashish Shukla, Dy.A.G.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

09/07/2018

Heard.

1. The instant petition is against the order dated 15/01/2018 whereby an application filed by the petitioner to get custody of the vehicle bearing number M.P. 18C-7877 has been dismissed.
2. As per the prosecution case, vehicle bearing number M.P. 18C-7877 was seized in connection with Crime No.336/2017 for offence under section 20-B of NDPS Act. Date of incident was on 27/11/2016 and the accused persons were illegally transporting cannabis through said vehicle and were apprehended near Jamgaon Khar Canal and they left the car and fled away. Subsequently, on having been searched the vehicle 134.540 gms of cannabis were recovered. Subsequently, application was filed by the petitioner through power of attorney Kamini Patel to get

custody of the vehicle but the same has been dismissed, therefore instant petition.

3. Learned counsel for the petitioner submits that the petitioner has given the vehicle to his relatives Mahendra @ Billu Patel and Sonu Patel on rent and while they were transporting the cannabis they were apprehended. He further submits that keeping the vehicle in the police station will not serve any purpose, therefore same may be released till pendency of the case which may be subject to the final decision of the court below.
4. Per contra, learned State counsel opposes the prayer made by the petitioner.
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 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.

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. 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.

7. In the result, order dated 15/01/2018 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. 5 lakhs and like sum of local surety be obtained before release of vehicle.

Sd/-

(Goutam Bhaduri)
Judge