

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 601 of 2018

1. Rajesh Kumar Sonkar S/o Shri Ramkishun Sonkar, aged about 50 years, R/o Kamchha Vinayaka, Post Office & Police Station – Bhelupur, District Varanasi (U.P.)

---- Applicant

Versus

1. State Of Chhattisgarh Through District Magistrate, Dhamtari, District Dhamtari, (C.G.)

---- Respondent

For Applicant	: Shri Shivendu Pandya, Advocate.
For Respondent/State	: Shri Vaibhav A. Goverdhan, P.L.

Hon'ble Shri Justice Goutam Bhaduri

Order

18/01/2019

1. The present petition is against the order dated 05.01.2018 whereby the application preferred by the petitioner for custody of his vehicle was rejected by the Court below.

2. As per the prosecution case, on 23.11.2017 the vehicle bearing No. UP/67/P/7171 was caught while transporting 101 kg of Cannabis from two other co-accused namely Santosh Kumar and Yashwant Singh. The present petitioner subsequently filed an application on the ground that he is the owner of the vehicle and the vehicle was given to Shrawan Kumar Sonkar on rent and the petitioner was never, not in any way was involved in the commission of the crime. It was further contented that the petitioner had to pay the amount of installments of Rs.21,335/- and the vehicle having been seized at Police Station Sihawa, District Dhamtari, it would not be motorable after sometime. Consequently, till the criminal case is decided, the vehicle may be handed over to him.

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 is silent as to whether confiscation proceeding has been commenced or not. 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 in those circumstances the interim custody of the vehicle can be handed over. 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, the order dated 05.01.2018 is quashed and the petition is allowed. The vehicle is directed to be released to the

petitioner on the following conditions :-

- (I) Before release of vehicle proper panchanama 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. 15 Lacs and like sum of local surety be obtained before release of vehicle.

Sd/-

(Goutam Bhaduri)
JUDGE