

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1598 of 2019

Arising Out of PS. Case No.-52 Year-2019 Thana- TARAIIYA District- Saran

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Digvijay Kumar Thakur @ Guddu Jha, son of Late Shyam Thakur, resident of
Mohalla- Lakshmisagar, P.S.- Darbhanga Sadar, District- Darbhanga (Bihar).

... .. Petitioner.

Versus

1. The State of Bihar (through the Director General of Police, Bihar, at Patna).
Bihar
2. The District Magistrate, Saran at Chhapra.
3. The Superintendent of Police, Saran at Chhapra.
4. The S.H.O. of Taraiya Police Station, District- Saran.
5. The Inspector, Drugs and Cosmetics Saran at Chhapra. Saran at Chhapra.

... .. Respondents.

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Appearance :

For the Petitioner/s : Mr. Mithilesh Kumar Jha, Advocate.
For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG-3.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 22-06-2020

This case has been heard through video-conferencing.

In the present application preferred under Article 226 & 227 of the Constitution of India, the petitioner has prayed to set aside the order dated 15.10.2019 passed by the learned 1st Additional Sessions Judge, Saran in N.D.P.S. Case No.2 of 2019 (arising out Taraiya P.S. Case No.52 of 2019), whereby the petitioner's petition for release of his truck bearing registration no.BR06G 5190 seized in the aforesaid case, has been rejected.

The aforesaid N.D.P.S. case was registered on the basis of written complaint filed by the Drug Inspector submitted



to the S.H.O., Taraiya under Section 27 (b) (2) and 28 of the Drugs and Cosmetics Act, 1940 and Section 8 (c) and 22 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter in short referred to as the 'N.D.P.S. Act').

The complainant alleges that he inspected a truck bearing registration no. BR06G 5190 and the same contained huge quantity of medicine and such medicines were unloaded and verified product wise. He further alleged that the medicine described at page-1 of his report, did not covered by valid bills. Those medicines are ease of cough syrup and Dialex DC Syrup, which also contain Codeine Phosphate which is a product covered under the N.D.P.S. Act. It is further alleged that the driver Pappu Yadav was apprehended and disclosed the name of the petitioner as owner of the Truck and also disclosed one Transport Agency under the banner of Maa Bhagwati Transport Agency loaded the said medicines for its destination at Transport Nagar, Patna and on the basis of the said report of Drug Inspector, a formal F.I.R. was lodged.

Learned counsel for the petitioner submitted that he has been made an accused on technical ground being an owner of the truck and named by the driver. As a matter of fact, he was neither with the truck nor he was aware of the material being



carried by his truck. He further submitted that the truck in question has orally agreed with the Maa Bhagwati Transport Agency to provide service on monthly payment and pursuant to such agreement, he entrusted his truck to the aforesaid Transport Agency and only the Agency is plying his truck for carrying the goods. He further submitted that Maa Bhagwati Agency booked goods of consignor Aradhya Enterprises and M/s Surya Roshni for the consignee M/s P.P. (Arun Jee), G.M., Road and Mr. A.K. & sons, G.M. Road, Patna and also for M/s Baleshwar Drugs Patna. The truck was intercepted while the same was on way to Patna and at that time, the petitioner was present at Darbhanga in his house and he was not at all aware about the nature of goods carried by the truck in question. He lastly submitted that from the report of the informant, it appears that each bottle of cough syrup of 100 ml contained 1/5 gram of codeine phosphate and the said codeine phosphate is not the N.D.P.S. material rather the only codeine is placed in the list of N.D.P.S.

Learned counsel for the petitioner has submitted that the petitioner is the owner of the seized truck. He has been made accused in the present case as owner of the truck. Petitioner has filed a petition for release of the truck but the learned Court below without taking into consideration of the law laid down by



the Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in (2002) 10 SCC 290 and in the case of **General Insurance Council and others Vs. State of Andhra Pradesh and others** reported in (2010) 6 SCC 768 rejected the petition vide order dated 15.10.2019 on the ground that the same is not maintainable because on 26.07.2019 a report has been submitted by the police that the matter has been forwarded to the District Magistrate for confiscation. He has submitted that due to the seizure of the truck, the petitioner is suffering financially and if the truck is not released, the same would become junk, as it is lying in open space in the police station.

Mr. Saroj Kumar Sharma, learned AC to AAG-3 fairly conceded that in view of the ratio laid down by the Supreme Court in **Sunderbhai Ambalal Desai (supra)** and **General Insurance Council and others (supra)**, the learned Court below ought to have released the vehicle in question in favour of the petitioner. However, he has submitted that while releasing the truck the Court must impose stringent condition so that the petitioner may not alienate the same and produce it as and when required by the Court.

I have heard learned counsel for the parties at length



and carefully perused the record.

The horrifying situation of the case property such as vehicles, machines etc. found lying in police station premises and Court premises and ultimately becoming junk and losing their value engaged attention of the Supreme Court in **Sunderbhai Ambalal Desai (supra)**. In the aforesaid case, after examining the scope of Sections 451 and 457 of the Cr.P.C., the Supreme Court held that the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously.

In paragraph 5 and 7 in **Sunderbhai Ambalal Desai (supra)**, the Supreme Court has held as under:-

“5. Section 451 clearly empower the Court to pass appropriate orders with regard to such property, such as-

(1) for the proper custody pending conclusion of the inquiry or trial;

(2) to order it to be sold or otherwise dispose of, after recording such evidence as it thinks necessary;

(3) If the property is subject to speedy and natural decay to dispose of the same.

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7. In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence



instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

In paragraph-17 of the said judgment, it has further been held that whatever be the situation, it is of no use to keep seized vehicles at the police station for a long time.

The provisions prescribed under Sections 451 and 457 Cr.P.C. were once again considered by the Supreme Court in **General Insurance Council and others (supra)** and after taking note of the directions given by the Supreme Court in **Snderbhai Ambalal Desai (supra)**, the Supreme Court noticed that police, investigating as well as prosecuting agency were not taking adequate steps for compliance of the directions, which was resulted in loss of assets worth several hundred crores and recovered articles were reduced to junk by the time they are released. It also gave further directions in this regard.

Now, coming to the facts and circumstances of the present case, it would be evident that in the F.I.R. registered under Section 27 (b) (2) and 28 of the Drugs and Cosmetics Act, 1940 and Section 8 (c) and 22 (c) of the N.D.P.S. Act, the petitioner is the owner of the seized truck. He filed an



application for release of the truck before the learned Additional Sessions Judge, Saran at Chapra but the same was rejected vide impugned order dated 15.10.2019 on the ground that a report has been submitted by the police that the matter has been forwarded to the District Magistrate, Saran at Chapra for confiscation.

In the opinion of this Court, while considering the application, the learned Court below was bound to follow the statutory provisions contained in Chapter XXXIV of the Cr.P.C. and the ratio laid down by the Supreme Court in **Sunderbhai Ambalal Desai (supra)** and **General Insurance Council and others (supra)**. The non-compliance of the directions of the Supreme Court in the aforesaid decisions is not permissible.

So far as the power to confiscate the truck in question under Section 60 of the N.D.P.S. Act is concerned, it is a settled legal position that Section 60 of the N.D.P.S. Act would come into play after conclusion of trial. In case, the trial court comes to a conclusion that the accused persons are guilty of the offences under the N.D.P.S. Act, the vehicle used in the illegal trade of contraband articles can be confiscated.

I also see substance in the submissions of the learned counsel for the petitioner that if the truck is not released and



kept idle in an open space, during pendency of the trial, it shall become a piece of scrap.

Keeping in mind the discussions made hereinabove and the ratio laid down by the Supreme Court in the decisions discussed above, the impugned order dated 15.10.2019 passed by the learned 1st Additional Sessions Judge, Saran in N.D.P.S. Case No.2 of 2019 (arising out Taraiya P.S. Case No.52 of 2019) cannot be sustained. Accordingly, it is set aside.

The Court below is directed to release the truck in favour of the petitioner, subject to the following conditions:-

- (i) That the petitioner shall furnish bank guarantee of Rs. 5 lacs to the satisfaction of the Court;
- (ii) That the petitioner shall execute a bond for the return of the said vehicle if required by the Court at any point of time;
- (iii) That the petitioner shall also give an undertaking on oath that he shall not alter or part with the ownership of the vehicle during pendency of the trial; and
- (iv) While passing the order for release, the Court below shall be at liberty to take any



other reasonable sureties from the petitioner
to its own satisfaction.

With these observations and directions, this writ
application stands allowed.

(Anjani Kumar Sharan, J)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.06.2020
Transmission Date	

