

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 193 of 2021**

- Ali Ahmad S/o Hamid Ahmad Aged About 33 Years R/o House No. 1329/1, J.E. Road, Kailash Nagar, Ward No. 11, Kumhari, Police Station Kumhari, Tahsil Dhamdha, District Durg Chhattisgarh.

----- Petitioner**Versus**

- State of Chhattisgarh Through Police Station Kumhari District Durg Chhattisgarh.

----- Respondent

For Petitioner :- Mr. H.B. Agrawal, Senior Adv.
With Ms. Preeti Yadav, Adv.
For State/Respondent :- Mr. Ishan Verma, PL

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

22/02/2021

1. Heard.

2. Petitioner's vehicle was found involved in commission of offence punishable under Section 20(B) of the of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called as 'NDPS Act') against

which he filed application under Section 457 of the Cr.P.C. for interim custody of the vehicle, which was rejected by the Special Judge (NDPS Act), Durg by order dated 30.09.2020 on the ground that the confiscation proceeding has been initiated against the vehicle in question, therefore, the petitioner is not entitled for interim custody of the vehicle, against which this petition under Section 482 of the Cr.P.C. has been filed.

3. Mr. H.B. Agrawal, learned Senior Advocate for the petitioner, would submit that the Court below is absolutely unjustified in rejecting the application as no useful purpose will be served by keeping the vehicle in police custody. He relied upon the judgment of the Supreme Court in the matter of **Sunderbhai Ambalal Desai v. State of Gujarat**¹ and would submit that interim custody can be granted of the vehicle seized for commission of offence under the NDPS Act and the impugned order is liable to be set

¹ (2002) 10 SCC 283

aside.

4. On the other hand, Mr. Ishan Verma, learned State counsel, would support the impugned order and oppose the submissions made by learned counsel for the petitioner.

5. I have heard learned counsel for the parties, considered their rival submissions herein-above and went through the records with utmost circumspection.

6. Section 51 of the NDPS Act provides that in cases of search and seizure, provision of the CrPC shall be applicable so far as they are not inconsistent in the provision of the NDPS Act. Section 51 of the NDPS Act provides as under:-

"51. Provisions of the Code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and seizures.-The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act.

7. Likewise, Section 60 of the NDPS Act provides for confiscation of any conveyance

used for carrying any psychotropic substances and the procedure of such confiscation has been provided under Sections 60 and 63 of the NDPS Act. Section 60 states 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 there receptacles, packages and coverings in which any narcotic drug or psychotropic substance 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."

Section 63 of the NDPS Act states as under:-

"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 drug, psychotropic substance, [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."

8. Section 60 of the NDPS Act does not provide for confiscation of any vehicle, immediately after it's seizure. Confiscation is a separate procedure unconnected with conviction, acquittal or discharge of the accused. It is only satisfaction of the Court, trying an offence under the Act, to decide as to whether the vehicle is liable to be confiscated or not.

9. In the matter of **Sunderbhai Ambalal Desai** (supra), the Supreme Court has held that the powers of Section 451 of the CrPC shall be expeditiously and judiciously exercised. It was observed as under:-

"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 vehicle in safe custody;
3. if the proper panchanama 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."

10. In the matter of Ashok Kumar v. State of Bihar and others² the Supreme Court while releasing a vehicle, imposed various conditions, which are as hereunder:-

- "1. He shall execute a bond in a sum of Rs.1,00,000/- (one lakh) with two solvent sureties to the satisfaction of the Chief Judicial Magistrate, Muzaffarpur.
2. He must satisfy the court that he is the registered owner of the vehicle.
3. He shall not allow his son Deepak Singh to use the vehicle until disposal of the prosecution case against him. He shall file an undertaking in court to that effect.
4. He shall produce the vehicle either before the court or before such other authorities as the court may direct.
5. He will not transfer the vehicle to anybody else nor possession of the same be parted with until disposal of the case."

11. Reverting to the facts of the present case in the light of principle of law laid down

² (2001) 9 SCC 718

by the Supreme Court in the above-stated judgments, it would appear that in absence of any provision, which bars from release of any vehicle seized, there appears no reason to keep the vehicle in police custody until the conclusion of the trial. The provision of Section 60 of the NDPS at all does not debar from releasing a vehicle during pendency of the trial. The provision of Section 60 of the NDPS Act and Section 451 of the CrPC Act in different sphere. If the vehicle is given to its owner with certain conditions namely producing it whenever called to do so, the production of the vehicle may be ensured at any later stage of trial or at the time of confiscation proceeding.

12. In view of foregoing discussion, the impugned order is set aside and the matter is remitted to learned Special Judge (NDPS Act), Durg to consider the petitioner's application and pass fresh order in view of the decision rendered by the Supreme Court in the matter of **Sunderbhai Ambalal Desai**

(supra) **Ashok Kumar** (supra) and case in
accordance with law.

13. With the aforesaid direction/observation
the present CRMP stands disposed of.

Sd/-
(Sanjay K. Agrawal)
Judge

Ankit