

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
CR.R. No. 230 of 2021

- Doulat Singh @ Dilip Singh Lodhi (wrongly mentioned Doulat Singh in the impugned order) correct name Dilip Singh Lodhi, S/o Param Singh Lodhi Aged About 22 Years Occupation Labour, R/o Imliya Ghat, Police Station Tejgarh Damoh, District Damoh (M.P.).

---- Applicant

Versus

State of Chhattisgarh through Station House Officer, Police
Station Tilda Nevra, District Raipur, CG

----Non-applicant

 For Applicant : Mr. Jitendra Shukla, Adv.
 For respondent : Mrs. Seema Dixit, Panel Lawyer.

Hon'ble Shri Justice N.K. Chandravanshi
Order on Board

8-9-2021

1. This criminal revision has been preferred by the applicant being aggrieved by the order dated 24-2-2021 passed by the learned Special Judge (NDPS Act), Raipur (CG) in Crime No. 198/2020 (in revision petition and in impugned order, Crime No. wrongly mentioned as 45/2020) registered at PS Tilda Nevra, by which the application filed by him under Section 457 of the Criminal Procedure Code, 1973 (in short 'Cr.P.C.') for handing over the Motor Cycle bearing registration No. MP 34 MM 0232 (in short 'the vehicle in question') to him on supurdnama, has been rejected.

2. Brief facts of the case are that on 9-7-2020 at 18.50 pm, on receiving information from the informant that two persons are carrying contraband article Ganja for selling in a Bajaj Platina motorcycle bearing registration No. MP 34 MM 0232 and coming towards Nevra town, they caught the riders of the said motorcycle and after search of them and motorcycle, police seized 9.00 kg Ganja, (as per *Taul Panchnama*) kept in white polythene packet tied with a tape. Police also seized Rs. 400/- from the applicant, and one mobile and Rs. 760/- from the co-accused. Motorcycle was also seized. On the basis of above, offence under the provisions of the Narcotic Drugs and Psychotropic Substances Act, (in short 'NDPS Act') under Crime No. 198/2020 was registered.

3. The applicant filed an application for supurdnama under the provisions of Section 457 of the Cr.P.C. for custody of the said vehicle on the ground that he is registered owner of the vehicle, the said vehicle is kept in open place and if not used, said vehicle is likely to be damaged. It is a vehicle of daily use and, therefore, it be handed over to the applicant during pendency of the criminal case.

4. The Special Judge, by its impugned order dated 24-2-2021, rejected the said application on the ground that the applicant was using the vehicle in question for selling Ganja. Hence, this revision.

5. Learned counsel appearing for the applicant submit that the applicant has been granted bail and he is registered owner of the vehicle. No useful purpose would be served by keeping the vehicle in the custody of the Court, as if the vehicle is not in use, it is likely to be damaged, and, therefore, impugned order passed by the Special Judge be set aside and the vehicle may be given to him on supurdnama.

6. On the other hand, learned counsel appearing for the State submits that if the vehicle is handed over to the applicant, there is possibility that it may be again misused in transporting such contraband articles. Therefore, the Special Judge has rightly rejected the application for supurdnama and the impugned order does not call for any interference by this Court in exercise of revisional jurisdiction.

7. I have heard learned counsel for the parties and perused the material available on record, the impugned order and the case diary.

8. A perusal of the documents available on record shows that the vehicle in question has been seized on 9-7-2020 and is lying idle in the custody of police. The applicant is allegedly owner of the vehicle in question and the quantity of seized contraband is said to be 9.00 kg. As per counsel for the applicant, he has been enlarged on bail. Looking to the quantity of the seized contraband, trial Court ought to have used its discretionary power and supurdnama of the vehicle in question should have been allowed, but learned trial

Court has not done so. Therefore, considering the totality of the facts and circumstances of the case and looking to the quantity of the seized contraband article Ganja i.e. 9.00 kg, I feel inclined to allow this revision petition.

9. Accordingly, the impugned order dated 24-2-2021 passed by learned Special Judge (NDPS Act), Raipur, in Crime No. 198/2020 is set aside. The Revision petition is allowed and it is directed that vehicle in question be released and handed over to the applicant on the following conditions:-

(i) The applicant shall execute a bond in a sum of 50,000/- (Fifty thousands) with two solvent sureties of Rs. 25,000/- (Twenty five thousands) each to the satisfaction of the Special Judge (NDPS Act), Raipur.

(ii) The applicant must satisfy the court that he is the registered owner of the offending vehicle.

(iii) The applicant shall not transfer or dispose of the vehicle in question to any one else and shall not make any change in its body, colour or engine.

(iv) The applicant shall also file an undertaking before the trial Court that the offending vehicle shall not be used for commission of any offence; and before giving custody of the offending vehicle to the applicant, three coloured photographs from different angles clearly indicating registration number and other particulars of the vehicle shall be kept on file. The expenses for the photographs shall be borne by the applicant.

(v) The applicant shall produce vehicle either before trial Court or before such authorities as may be directed, on his own expenses, as and when directed.

Sd/-

N.K. Chandravanshi
Judge

10.

11. As per sub-section (3) of Section 60 of the NDPS Act, any conveyance used in carrying any narcotic drug or psychotropic substance, shall be liable to confiscation, unless owner of the 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 conveyance and that each of them had taken all reasonable precautions against such use.

12. A perusal of the documents available on record shows that the applicant is alleged registered owner of the vehicle in question, he himself is accused in the crime, he was caught red handed carrying 9.00 kg contraband Ganja as per Tol panchnama.

13. Considering the facts and circumstances of the case and material available on record, in the considered opinion of this Court, the trial Court has not committed any error in rejecting the application for releasing the vehicle in supurdnama.

14. Hence, the revision being devoid of substance, deserves to be and is hereby dismissed.