

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Proceedings through Video Conferencing****CR.R. No. 430 of 2021**

Manoj Kumar Sahu son of Shri Kamta Prasad Sahu, aged about 40 years, R/o. Village Rajpur, PS Dhamdha, Distt. Durg, CG

---- Applicant

Versus

State of Chhattisgarh through the Police Station Kumhari, Distt. Durg CG

----Non-applicant

 For applicant : Mr. T.K. Jha, Adv.
 For respondent : Mr. Devesh Verma, Govt. Adv.

Hon'ble Shri Justice N.K. Chandravanshi**Order on Board****24-8-2021**

1. This criminal revision has been preferred by the applicant against the order dated 24-6-2021 passed by the learned Special Judge (NDPS), Durg in Crime No. 178/2020 registered at PS Kumhari, Distt. Durg, by which the application filed by the applicant under Section 457 of the Criminal Procedure Code, 1973 (in short 'Cr.P.C.') for handing over the vehicle bearing registration No. CG 09 B 1496 (in short 'vehicle in question') to him on supurdnama has been rejected.

2. Brief facts of the case are that on 22-11-2020, police of PS Kumhari on receiving an information that accused Manoj Sahu along with co-accused Jharnesh Yadu are transporting contraband Ganja from Orissa to Dhamdha via Kumhari for selling, said vehicle has been modified by making box beneath the trolley, police stopped said vehicle near Kumhari in Raipur-Bhilai road, and seized contraband Ganja 2 quintal 6 kg 804 gm, kept in different places of the vehicle, one Lava Mobile phone, and vehicle in question from possession of the applicant and sale proceed of Ganja Rs. 8,500/-, one Redmi mobile from co-accused Jharnesh. Offence under Crime No. 178/2020 under Section 20 (ख) 27(क) of the provisions of Narcotic Drugs and Psychotropic

Substances Act, (in brief 'NDPS Act') has been registered against the accused persons and the same is pending consideration as Special Case No. 8/2019 (Manoj Sahu and another Vs. State of CG) in the Court of Special Judge (NDPS Act), Durg.

3. The applicant filed an application for supurdnama under the provisions of Section 457 of the Cr.P.C. for custody of the vehicle in question on the ground that he is registered owner of the vehicle in question, said vehicle may be damaged if kept in police station premises for a long time, it is vehicle of daily use, final disposal of the case may take time, he is ready to abide by the conditions which may be imposed by the Court. Therefore, it be handed over to the applicant during pendency of the criminal case.

4. The Special Judge (NDPS), Durg by its impugned order dated 24-6-2021 rejected the said application on the ground that the applicant is also accused in the case, record shows that more cases of the like nature have also been registered against him. Hence, this revision.

5. Learned counsel for the applicant submits that the applicant is registered owner of the vehicle in question, it is a vehicle of daily use, kept parking for more period would damage the parts of the vehicle, but the trial Court dismissed his supurdnama application on the ground that he himself is accused in this case and record shows that other cases of the same nature have been registered against him. He further submits that any conveyance used for carrying any narcotic drug or psychotropic substance is liable to be confiscated under the NDPS Act, but such proceeding is initiated only after completion of trial, according to provisions of Section 63 of the NDPS Act, there is no bar in the NDPS Act to give Supurdnama of the vehicle during pendency of the trial. Therefore, the impugned order may be set aside and the revision may be allowed. To support his contention, he placed reliance on decision of coordinate bench of this High Court in the matter of **Tikeshwar Singh -V- State of Chhattisgarh** (MANU/CG/0572/2020) and decision of High Court of Punjab and

Haryana at Chandigarh in **Gurbinder Singh @ Shinder -v- State of Punjab** (MANU/PH/1888/2016).

6. Learned Counsel for the State opposed the submission made by learned counsel for the applicant submitting that huge quantity of Ganja i.e. 2 quintal, 6 kg., 804 gm has been seized from the vehicle in question which the applicant himself was carrying, being owner of it, therefore, looking to the facts of the case, learned Court below has not committed any error in passing rejection order. Hence, the revision petition may be dismissed.

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

8. A perusal of the case diary shows that in this case, the applicant is said to be registered owner of the vehicle in question. Facts of the case show that he was caught by the police while carrying 2 quintal, 6 kg and 804 gm Ganja in the said vehicle. 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.

9. In case of **Tikeshwar Singh** (supra), coordinate bench of this Court has held that in vehicle seized for commission of offence under Section 20B of the Narcotic Drugs and Psychotropic Substances Act, 1985, interim custody can be granted under Section 451/457 of the Cr.P.C. Similar view has been given in case of **Gurbinder Singh @ Shinder** (supra). In the case of **Tikeshwar Singh** (supra), the applicant/owner of the vehicle was not an accused of the case and he had stated that he had given said vehicle to the accused for his lawful purpose, but the accused has used it for commission of alleged offence.

10. There is no dispute regarding legal proposition that under the NDPS Act, the vehicle, used for transporting contraband article and is seized under the NDPS Act, can be granted in supurdnama, but where owner of the vehicle himself, knowingly, is involved in carrying huge quantity of contraband article Ganja in the vehicle i.e. 2 quintal, 6 kg, 804 gm, then his claim regarding parity of other cases, where quantity of seized contraband is not commercial quantity, could not be considered reasonable, that too, where case diary of this case shows that some other cases have also been registered against the applicant of the same nature.

11. 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 supurdname.

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

Sd/-

**N.K. Chandravanshi
Judge**

Pathak/-