

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 1315 of 2020**

Jageer Ali S/o Shri Kasim Ali @ Dhassu Ali, Aged about 30 years, R/o Ward No. 8, Jhilmila, Police Station and Tahsil Saraipali, Distt. Mahasamund, chhattisgarh.

---Petitioner**Versus**

State of Chhattisgarh, Through Station House Officer, Police Station Basna, Distt. Mahasamund, Chhattisgarh.

--- Respondent

For Petitioner :- Mr. Roop Naik, Advocate
For State :- Mr. Suyash Dhar, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****25/01/2021**

1. The instant petition is directed against the impugned order dated 28/09/2020 passed by learned Upper Session Judge, Saraipali rejecting petitioner's application under Section 457 of CrPC for grant of interim custody of his vehicle seized for commission of offence punishable under Section 20(B) of the NDPS Act, 1985.

2. Mr. Roop Naik, learned counsel for the petitioner, would submit that learned Upper Session Judge is absolutely unjustified in rejecting petitioner's application for grant of interim custody of his vehicle only on the ground that it is liable to be confiscated under Section 60 of the NDPS Act. He would also submit that learned Upper Session Judge, while rejecting petitioner's application, has failed to consider the decision rendered by this Court in Tikeshwar Singh v. State of Chhattisgarh¹ decided on 11/12/2020, therefore, the matter be remitted to learned Upper Session Judge for hearing and disposal afresh in accordance with law.

3. On the other hand, Mr. Suyash Dhar, learned counsel appearing for the respondent/State, would submit that in view of the provisions contained in Section 60 of the NDPS Act, the vehicle in question is not liable to be released in favour of petitioner.

4. This Court in Tikeshwar Singh (supra) has held that despite the fact that the vehicle is liable to be confiscated, but the NDPS Court has the

¹ CrMP No. 1374 of 2020

power and jurisdiction to grant interim custody of the said vehicle and held as under :-

"15. Since the provisions of the CrPC including Section 451/457 have been expressly made applicable by virtue of Section 36-C of the NDPS Act to the proceedings before the Special Court (NDPS) and there is no express bar contained in the NDPS Act for grant of interim custody as contained in Section 52C of the Indian Forest Act, 1927, as amended by the M.P. Amendment Act, 1983, therefore, merely on the ground that the vehicle is liable to confiscation under Section 60 of the NDPS Act, it cannot be held that once the vehicle is seized for commission of offence under the NDPS Act, interim custody cannot be granted, as jurisdiction of criminal court has to be construed strictly unless expressly excluded."

5. In view of the above, the impugned order passed by learned Upper Session Judge is hereby set aside and the matter is remitted to the concerned NDPS Court to consider it afresh in light of the decision rendered by this Court in **Tikeshwar Singh** (supra) within two weeks from the date of receipt of a copy of this order.

6. With the aforesaid observation/direction, the instant petition stands disposed of. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge