

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18258 of 2021

Arising Out of PS. Case No.-570 Year-2019 Thana- BARACHATTI District- Gaya

BAJRANG SHARMA S/o Om Prakash Sharma Resident of House No. 8
nazrul Saraini, Sri Nagar Pally Durgapur Benachitty, P.S.- Bardhwan, West
Bengal PIN 713213

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjeev Kumar
Mr.Shivendra Prasad
For the Opposite Party/s : Mr.Atul Chandra

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

5 08-04-2022 Heard learned counsel for the parties through video
conferencing.

2. By way of filing supplementary affidavit, the Union
of India through Director, Narcotic Control Bureau, Patna has
been impleaded, as opposite party no. 2.

3. The present application has been filed for quashing
of order dated 14.12.2020 passed by learned Additional Sessions
Judge – III, Gaya in NDPS Case No. 71 of 2019, arising out of
Barachatti P.S. Case No. 570 of 2019 for the offence punishable
under Sections 22 / 22 of the N.D.P.S. Act, whereby the
application filed on behalf of the petitioner for release of 280
pieces of iron plates has been rejected.

4. The prosecution case, in brief, is that on



24.11.2019, while the informant alongwith other police team was on patrolling duty, a secret information was received that Doda is being carried illegally on a truck. It is further alleged that during checking of the vehicles, the truck in question, bearing registration no. RJ19GF – 2597, was stopped and on search of the said truck, 81 bags of *Doda* was found loaded weighing about 1538 kg. alongwith 280 pieces of iron plates and the same were seized. It is further alleged that when driver of the said truck was searched, one mobile phone and cash of Rs. 32, 500/- were recovered from his possession.

5. It is submitted by learned counsel for the petitioner that the consignor had booked iron plates for his customer of Rajasthan i.e. Daga Udyog A-53, MIA Basni II Phase, Jodhpur, vide invoice no. GSPL/D/01376 dated 23.11.2019 through Balaji Logistic (India) bulity No SBL/05A/1104 dated 23.11.2019. It is further submitted that the petitioner, who is owner of the iron plates, has got no concern either with the driver or the owner of the truck as well as the smuggling of Doda. The petitioner possess all the relevant documents relating to ownership of the sale goods i.e. iron plates, which are lying in the open sky in the police station since 25.11.2019 and deteriorating day-by-day.



6. Learned counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court, reported in (2002) 10 SCC 283 (Sunderbhai Ambalal Desai vs. State of Gujarat), wherein the Hon'ble Supreme Court has directed the criminal court to exercise the power under Section 451 of the Cr.P.C. for return of the seized articles on conditions pending final decision of the criminal case.

7. Learned A.P.P. for the State has filed counter affidavit and submitted that huge quantity of contraband articles has been recovered from the truck in question. It is next submitted that the alleged document(s) of consignment is matter of investigation. Chargesheet has already been submitted against the driver, the investigation is still going on and the learned court below, after taking into consideration the entire facts & circumstances as well as Section 61 of the N.D.P.S. Act, has rightly dismissed the application filed by the petitioner for release of the aforesaid articles.

8. From perusal of the F.I.R. itself, it is apparent that the truck in question was loaded with 281 pieces of iron plates each measuring 1 foot in width and 20 feet in length and the same was seized alongwith contraband articles (*Doda*) and admittedly, the iron plates are lying in open sky and day-by-day



deteriorating.

9. Regard being has to the facts and circumstances of the present case and in view of settled proposition of law by the Hon'ble Supreme Court in the case of Sunderbhai Ambalal Desai (*supra*), this Court is of the opinion that the learned Trial Court has committed gross error in refusing the prayer for release of the iron plates on the ground that the seized iron plates are liable to be confiscated under Section 61 of the N.D.P.S. Act. No purpose would be served in keeping the iron plates in open sky. The seized iron plates can be returned to the *bonafide* owner as an interim custody pending final disposal of the criminal case.

10. In view of aforesaid facts and circumstances, the impugned order dated 14.12.2020 passed by learned Additional Sessions Judge – III, Gaya in NDPS Case No. 71 of 2019, arising out of Barachatti P.S. Case No. 570 of 2019 is, hereby, set aside and the matter is remanded back to the court of learned Additional Sessions Judge – III, Gaya for passing a fresh order.

11. I am of the opinion that if the petitioner satisfies the court below that he is the *bonafide* owner of the said iron plates and produces all the reliable documents relating to the



same, the learned court below shall release the iron plates in his
favour with proper surety.

12. With above observation, the petition stands
allowed.

(Prabhat Kumar Singh, J)

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