

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.573 of 2022**

Arising Out of PS. Case No.-84 Year-2021 Thana- GOVERNMENT OFFICIAL COMP.  
District- East Champaran

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Gita Kole, W/o Raju Prasad, Proprietor, Manokamna Trade and Suppliers, At  
Ghorasahan, Ward No. 10 (Adapur), P.S.- Ghorasahan, District- East  
Champaran. ... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Custom, New Delhi
2. The Deputy Commissioner, Land Custom Station, Raxaul, District- East Champaran, Bihar
3. The Superintendent of Land Custom Station, District- East Champaran, Bihar
4. The Inspector of SSB, ICP, Raxaul, District- East Champaran, Bihar
5. The Inspector of Custom, ICP, Raxaul, District- East Champaran, Bihar
6. The A.S.I., S.S.B., ICP, Raxaul, District- East Champaran, Bihar

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Rakesh Kumar No.1, Advocate  
For the Respondent/s : Mr.Anshuman Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL ORDER**

3      20-10-2022                      Heard learned counsel for the petitioner and Mr.  
  
Anshuman Singh, learned counsel for the Department of  
  
Customs.

Petitioner in this case is seeking setting aside of the  
order dated 16.07.2022 passed by learned 1<sup>st</sup> Additional  
Sessions Judge-cum-Special Judge, East Champaran at  
Motihari in NDPS Case No.84 of 2021 whereby and  
whereunder the learned court rejected the petition seeking  
release of the seized clothes (mentioned at serial no.4 of  
Annexure-A to the complaint of Custom).



Learned counsel submits that as per the prosecution case a truck was intercepted on secret information that it was transporting illegally export manufactured psychotropic substances/drugs concealing the same in a secret chamber of the truck. Acting on the said information the truck was located parked in the examination yard of ICP. The officers of SSB at ICP, Raxaul in presence of two independent witnesses approached the truck but the driver or the cleaner of the truck was not found there. It is alleged that on search conducted, in a secret chamber behind the driver seat six duffle bags were recovered. The bags were taken out and examined in presence of the independent witnesses and found to be containing drugs of different chemical composition appearing to be manufactured psychotropic substances.

It is alleged that the manner in which the drugs were secreted in the secret chamber of the truck it gave reasons to believe that those articles were being exported illegally out of India to Nepal. The miscellaneous goods covered under different shipping bills which were loaded on the said truck were being used to conceal the recovered medicines and, therefore, the custom authorities are of the view that they are also liable to be confiscated for contravention of the



provisions of the NDPS Act, 1985 read with the Customs Act, 1962.

Learned counsel for the petitioner submits that in this case cognizance has been taken on 02.03.2022 against the named accused persons namely Raju Prasad and Aandip Tamang for the offence under Sections 21(C), 23(C) and 25 of the NDPS Act. The petitioner is not named in the FIR/Complaint. It is submitted that the petitioner is owner of the seized clothes mentioned at serial no.4 of the seizure list and except that there is no allegation against the petitioner. The petitioner being the proprietor of 'Manokamna Trade and Suppliers' is the bonafide owner of the said clothes and he was consignee of the said clothes as per the documents which are available. It is pointed out that the injection vials and tablets as per seizure list has been recovered from a secret chamber behind the driver seat. Therefore, the allegation that those were concealed under the clothes in question is apparently false.

It is lastly submitted that under the provisions of the NDPS Act the trial court is competent to pass an order for confiscation of any other article or vehicle etc. only after final conclusion of the trial, in this case the same court has ordered



for release of the clothes of one Sanoj Kumar (proprietor of M.K. Vastralay, Raxaul) vide order dated 07.03.2022 (Annexure-5) but rejected the application of the petitioner which shows the inconsistency in the order passed by the learned 1<sup>st</sup> Additional District & Sessions Judge-cum-Special Judge, East Champaran, Motihari.

When this matter was taken up on 29.09.2022, this Court after hearing learned counsel for the petitioner, on the request of Mr. Anshuman Singh, learned counsel for the Department of Customs granted time to the Department to file a counter affidavit and directed to list this matter on 18<sup>th</sup> October, 2022. This Court cautioned the Department that if the 'Sarees' get damaged in the custody of the Department, the Department will have to take the responsibility and liability thereof.

Today, Mr. Anshuman Singh, learned counsel submits that he could not file a reply/counter affidavit because he was himself not satisfied with the instructions which were received from the Department. He prays for further time which this Court refused to grant. Learned counsel has pointed out that Section 61 of the NDPS Act would make the clothes/Sarees also liable for confiscation. It is, however, not



disputed that in the same case the learned court below has ordered for release of some of the clothes of M.K. Vastralay, Raxaul and the said order has not been challenged by the Department.

Considering the facts and circumstances of the case, the nature of the clothes which are likely to get damaged and would lose its value over the period and further that the trial of the NDPS case is not likely to be concluded in near future and in similar situation in respect of one of the traders the same court has directed release of the clothes, this Court directs release of the Sarees/clothes as per serial no.4 of the seizure list in favour of the petitioner subject to the verification of documents of the consignment in question in her name and on furnishing surety bond (not in form of cash or bank guarantee) to the extent of the value of the Sarees/clothes with an undertaking that she will abide by the order of the learned trial court, if any, passed in the confiscation case upon conclusion of the trial.

Let the entire exercise of verification be completed within 15 days from the date of communication of this order.

Before this Court parts with this order, it must be brought to the notice of the learned Presiding Officer of the



court that apparently his order as contained in Annexure-5 and the order impugned in the present case seem to be inconsistent. This is to be looked into in future.

This application stands disposed of accordingly.

**(Rajeev Ranjan Prasad, J)**

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

