

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16466 of 2021

Arising Out of PS. Case No.-93 Year-2020 Thana- DHAMDAHA District- Purnia

Deepak Kumar S/o Arvind Kumar Yadav Resident of Village- Dhusar, P.S.-
Tikapatti, District - Purnia.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Saroj Kumari, Drug Inspector, Purnea -03, Purnea. Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Shailesh Kumar
For the Opposite Party/s :	Mr. Umeshanand Pandit
	Ms. Nirmala Kumari

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

5 11-08-2022 Heard counsel for the parties.

This petition has been filed for setting aside the order dated 06.10.2020 passed by the learned Special Judge, NDPS Act, Purnea in connection with Dhamdaha PS Case No. 93 of 2020 corresponding to Special Case No. 07 of 2020 registered under Section 420 of the Indian Penal Code, sections 27(b) (ii)/28 of the Drugs and Cosmetic Act and section 8(c) and 21(b) of the Narcotic Drugs and Psychotropic Substances Act whereby the application filed by the petitioner for release of Tata Tiago vehicle bearing registration no. BR-11AR/6634 has been rejected.

The brief facts of the case are that Tata Tiago vehicle bearing registration no. BR-11AR/6634 was seized in



connection with Dhamdaha PS Case No. 93 of 2020 corresponding to Special Case No. 07 of 2020 while being used as conveyance for transporting psychotropic substance.

It is contended on behalf of the petitioner that petitioner is *bona fide* owner of the Tata Tiago vehicle bearing registration no. BR-11AR/6634 which was seized by the police while being used as conveyance for transporting codeine phosphate cough syrup total 1062 bottles kept in two cartoons containing 100 ml. in each bottle, on 28.04.2020 in connection with Dhamdaha PS Case No. 93 of 2020 corresponding to Special Case No. 07 of 2020. It is next contended that no useful purpose would be served by keeping such seized vehicle at the police station for a long period, as the aforesaid vehicle is lying at the police station and getting deteriorated day by day. It is further submitted that confiscation proceeding has not been started or till date no such notice has been received by the petitioner. There is no bar in the NDPS Act for return of the seized vehicle during pendency of the inquiry or trial of the criminal case and as such the provisions of Section 451 or Section 457 of the Code of Criminal Procedure can be invoked for return of the seized vehicle during any inquiry or trial before the criminal court. In support of the same, he has relied upon a



decision of Supreme Court reported in (2002)10 SCC 283 in case of *Sunderbhai Ambalal Desai vs. State of Gujarat* wherein the Apex Court has directed the criminal court to exercise the power under Section 451 of the Code of Criminal Procedure for return of the seized articles on conditions pending final decision of the criminal case. The Supreme Court further observed in paragraph 17 of the said Judgement which is as follows:-

“17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of the applications for return of such vehicles.”

However, counsel for the State vehemently opposed the release of the vehicle in favour of the petitioner and submitted that the petitioner is owner of the aforesaid vehicle and arrested on the spot while transporting psychotropic substance with the vehicle in question. It is further submitted that the said vehicle is liable for confiscation under sub-section 3 of Section 60 of the Narcotic Drugs and Psychotropic substances Act, 1985. He further refers to Section 63 of the Act says that in the trial of offence under this Act, if the accused is convicted or acquitted or discharged the court shall decide



whether any article or thing seized under this Act is liable to confiscation and as such, he submits that the release of vehicle does not come under ambit of section 451 and 457 of the Cr.P.C.

Section 60(3) of the NDPS Act is as follows:-

“(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance (or controlled substances), or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or 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 animal or conveyance and that each of them had taken all reasonable precautions against such use.”

It is also relevant to quote the provision of Section 63 of the Narcotic Drugs and Psychotropic Substances Act, 1985 which is as follows:-

“Section 63. Procedure in making confiscations- (1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under Section 60 or Section 61 or Section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under Section 60 or Section 61 or Section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly:



Provided that no order of confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance, (controlled substance,) the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this subsection shall, as nearly as may be practicable, apply to the net proceeds of the sale.”

On bare perusal of the above provisions of section 60(3) and section 63 of the NDPS Act, it would be manifest that a seized vehicle can be confiscated by the trial court on the conclusion of the trial when the accused is convicted or acquitted or discharged. However, the seized vehicle is not liable to be confiscated if the owner of the seized vehicle can prove that the vehicle was used by the accused person without his knowledge or connivance and that he had taken all reasonable precautions against such use of the seized vehicle by the accused person. The above provisions can be invoked by the trial court at the time of passing the order whether seized vehicle is liable to confiscation on conclusion of trial and after conducting an inquiry to ascertain whether seized vehicle is to be returned to the registered owner or the same is liable to



confiscation to the State.

In view of the aforesaid discussion, it is apparent that, there is no specific bar under the provisions of the NDPS Act for return of any seized vehicle used for transporting narcotic drug or psychotropic substance as an interim custody pending final disposal of the Criminal Case. In the absence of any specific bar under the NDPS Act the court can invoke the general provisions of Section 451 or Section 457 of the Code of Criminal Procedure for return of the seized article or vehicle pending final decision of the criminal case. The only obligation on the part of the court returning the seized vehicle to the registered owner is that the registered owner of the vehicle must produce the same before the court on conclusion of trial, so that the court can decide whether the said vehicle is liable to be confiscated or returned to the registered owner.

Even the decision of Supreme Court in the case of *Sunderbhai Ambalal Desai* (Supra) also clearly reveals that the provision of section 60 and 63 of the NDPS Act do not exclude operation of section 451 and 457 of the Code of Criminal Procedure and as such, this court does not find any merit in the submission made on behalf of State that the release of vehicle does not come under the ambit of section 451 and 457 of the



Code of Criminal Procedure.

Considering the rival submissions of the parties, materials available on the record, provisions of law as discussed above and proposition of law laid down by the Supreme Court, this court is of the opinion that the trial court has committed gross error in refusing the prayer for release of the vehicle on the ground that the seized vehicle is liable to be confiscated under Section 60(3) of the NDPS Act. The seized vehicle can be returned to the registered owner as an interim custody pending final disposal of the Criminal Case.

In the aforesaid fact and circumstances, order dated 06.10.2020 passed by the learned Special Judge, NDPS Act, Purnea, is set aside and trial court is directed to release the vehicle of petitioner after due identification of ownership of the vehicle and on production of ownership and registration documents with respect to vehicle in question in his name with two sureties (one local) to the extent of the value of vehicle as indicated in the insurance document with further condition that the registered owner will produce the vehicle before the trial court as and when called for and the owner will not change the nature and character of the said vehicle during pendency of the criminal case before the trial court.



With the aforesaid observation, this application is
allowed.

(Prabhat Kumar Singh, J)

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