

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

06.01.2022

Sl. No. 20.
Mithun/
Ct.No.2.

CRR/43/2021

(Via Video Conference)

In the matter of: **Aklima Bibi**

...petitioner.

Mr. Subhasish Misra, Adv.,
Mr. Swarup Das, Adv.

...for the petitioner.

Mr. Aditishankar Chakraborty, Ld.A.P.P.
Mr. Arun Kumar Sarkar, Adv.

...for the State.

The instant criminal revision is directed against an order dated 19th December, 2020 passed by the learned Additional Sessions Judge, 1st Court, Cooch Behar (NDPS), in connection with N.D.P.S. Case No.28 of 2020 under Section 20(b)(II)(c)/29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter described as NDPS Act.).

The petitioner is a registered owner of a vehicle under the name Mahindra Bolero bearing No.WB 69A 0849. It is taken by the petitioner. She being the registered owner of the said vehicle, purchased the same on hire purchase agreement on 17th February, 2018. The EMI for hire purchase has not been paid till date. On 9th May, 2020, police intercepted the said vehicle and arrested the driver namely Dilip Das and one Rafik

Islam travelling in the said vehicle with narcotic substances of above commercial quantity. On completion of investigation, police also submitted charge-sheet against the said Dilip Das and Rafik Islam under Section 20(b)(II)(c)/29 of the NDPS Act.

At the time of search and seizure, narcotic substances along with the vehicle of the petitioner were seized. The petitioner being the registered owner of the seized vehicle, filed an application for releasing the same on the ground that the vehicle is still under hypothecation and the petitioner is not in a position to make payment of EMI without the vehicle being plied on road for commercial purpose. The learned Trial Judge by passing the impugned order dated 19th December, 2020 rejected the said application on the ground that the accused persons are still absconding and the learned Trial Judge is not empowered under Section 63 of the said Act to release the vehicle.

Being aggrieved the petitioner has challenged the impugned order dated 19th December, 2020 by filing the instant revision.

Section 63 runs thus:-

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 [or 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 sub-section shall as nearly as may be practicable, apply to the net proceeds of the sale.”

It is needless to say that in NDPS Case No.28 of 2020, the petitioner being the owner of the seized vehicle was not made an accused. No material could be collected against the petitioner to prima facie prove that the owner of the said vehicle permitted the vehicle to carry contraband substances. Since charge sheet was not submitted against the petitioner/owner of the vehicle, the Trial Court should presume that the vehicle was used

without the knowledge and connivance of the owner of the vehicle.

The learned Trial Judge failed to consider the said aspect of the matter. Therefore, the impugned order suffers from material irregularity.

For the reasons stated above, the impugned order dated 19th December, 2020 is set aside.

Learned Trial Judge is directed to dispose of the application filed by the petitioner/owner of the vehicle in accordance with law and dispose of the same in the light of the observation made hereinabove.

The instant criminal revision, is accordingly, disposed of on contest, however, without costs.

(Bibek Chaudhuri, J.)