

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.329 of 2022

Arising Out of PS. Case No.-5 Year-2020 Thana- GOVERNMENT OFFICIAL COMP.
District- Purnia

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Shakir Akhtar S/o Late Shameem Akhtar, Resident of Gaiyari, Ward No. 6,
Near Ansar Masjid, P.S. And Dist. - Araria.

... .. Petitioner/s

Versus

1. The Union of India through the Narcotic Control Bureau, Patna.
2. The State of Bihar through the District Magistrate, Purnea.
3. The Excise Inspector, Purnea.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. A.B. Ojha, Senior Advocate.
	:	Mr. Nitesh Kumar, Advocate
	:	Mr. Sumit Kumar, Advocate.
For the UOI	:	Mr. K.N.Singh, Senior Advocate.
	:	Mr. Shyam Bihari Singh, Advocate.
For the State	:	Mr. Vikash Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 17-03-2023

Counter affidavit has been filed by the learned counsel for
the State in the Court itself, which is kept on record.

2. In the present criminal writ application preferred under
Articles 226 and 227 of the Constitution of India the petitioner
has sought for quashing of the order dated 09.04.2021 passed by
the learned Special Judge, NDPS Act., Purnea, in Special Case
No.12 of 2020/CIS No. 12 of 2020 (NDPS Act.) whereby the
petitioner's petition for release of his Tata Indigo Car bearing
Registration No. BR-38H-2618, Chasis No.
MAT6007341EPC08953 and Engine No.

475IDT14CVYP14326 seized in connection with the aforesaid case has been rejected.

3. Special Case No.12 of 2020/CIS No. 12 of 2020 (NDPS Act.) was registered on 26.06.2020 on the basis of written complaint made by Excise Inspector, Purnea.

4. The prosecution case, in brief, is that informant is Excise Inspector, Purnea. On 26.6.2020 during vehicle checking at Barsauni Toll Plaza, informant saw that one Tata Indigo car bearing Registration No. BR-38H/2618 was coming towards Purnea and after seeing the police personnel, the driver made U-turn and flee away towards Dagarua. On suspicion, Informant and other police personnel chased but the driver fled away with key after parking the said vehicle. After searching before two independent witnesses recovered 1280 bottles of Codeine Phosphate and Chlorpheniramine Maleate Syrup (ESKUF Cough Syrup) containing 100 ml each i.e. total 128.00 liters. Accordingly, informant seized the aforesaid cough syrup and car and prepared seizure list in accordance with law.

5. Learned counsel for the petitioner has submitted that the petitioner is the owner of the seized Tata Indigo Car. He further submits that much prior to alleged occurrence, the petitioner had given the said vehicle on lease to the accused

Ansir Akhtar with condition that if anything happens in course of plying the vehicle, the authorized person(s)/driver will bear all the liabilities including any legal proceeding. Counsel further submits that during course of investigation, the prosecution/informant has found the factum of authorization true and he submitted final report against the accused Ansir Akhtar and let off the owner of the vehicle (petitioner). There was no concern to the petitioner with the affairs of vehicle since 24.03.2020. He further submits that petitioner being the real owner of the said vehicle had no knowledge about alleged transportation of the aforesaid prohibited articles. He further submits that the seized vehicle is kept in open sky and its two window glasses are also open. He has submitted that as the vehicle was also seized by the excise officials, the petitioner had filed a petition for release of the car, but the learned Special Judge, NDPS Act, Purnea without taking into consideration the law laid down by the Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gujarat, [(2002) 10 SCC 290]** and **General Insurance Council and Ors. vs. State of Andhra Pradesh & Ors., [(2010) 6 SCC 768]** and also the judgment passed by this Hon'ble Court in the case of **Sukhdev Singh Vs. the Union of India & Anr. (Cr. Misc. No. 40514 of 2016)** rejected the

petition, vide order dated 09.04.2021, on the ground that the said car is liable for confiscation under Section 60 of the NDPS Act and that huge quantity of Codeine syrup was recovered from the seized car. He has submitted that due to the seizure of the car the petitioner is suffering financially and if the car is not released, the same would become junk, as it is lying in open with the Excise officials.

6. Mr. K.N. Singh, learned Sr. Counsel appearing on behalf of the Union of India fairly conceded that in view of the ratio laid down by the Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gujarat (supra)** and **General Insurance Council and Ors. vs. State of Andhra Pradesh & Ors. (supra)** and also the judgment passed by this Hon'ble Court in the case of **Sukhdev Singh Vs. the Union of India & Anr. (Cr. Misc. No. 40514 of 2016)**, the court below ought to have released the vehicle in question in favour of the petitioner. However, he has submitted that while releasing the vehicle the court must impose stringent condition so that the petitioner may not alienate the same and produce it as and when required by the court.

7. I have heard learned counsel for the parties and carefully perused the record.

8. The horrifying situation of the case property such as

vehicles, machines etc. found lying in police station premises and Court premises and ultimately becoming junk and losing their value engaged attention of the Supreme Court in **Sunderbhai Ambalal Desai (supra)**.

9. In the aforesaid case, after examining the scope of Sections 451 and 457 of the CrPC, the Supreme Court held that the powers under Section 451 CrPC should be exercised expeditiously and judiciously.

10. In paragraphs 5 and 7 in **Sunderbhai Ambalal Desai (Supra)**, the Supreme Court observed as under:-

“5. Section 451 clearly empowers the Court to pass appropriate orders with regard to such property, such as-

(1) for the proper custody pending conclusion of the inquiry or trial;

(2) to order it to be sold or otherwise dispose of, after recording such evidence as it thinks necessary;

(3) if the property is subject to speedy and natural decay to dispose of the same.

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7. In our view, the powers under

Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

11. It has further been held in the said judgment that whatever be the situation, it is of no use to keep seized vehicles at the police station for a long time. In this regard, in paragraph

17 it has been held as under:-

“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 applications for return of such vehicles.”

12. The provisions prescribed under Sections 451 and 457 CrPC were once again considered by the Supreme court in **General Insurance Council and Ors. vs. State of Andhra Pradesh & Ors. [(2010) 6 SCC 768]**. After taking note of the directions given by the Supreme Court in **Sunderbhai Ambalal Desai case (supra)** in **General Insurance Council vs. State of Andhra Pradesh (supra)**, the Supreme Court noticed that police, investigating as well as prosecuting agency were not taking adequate steps for compliance of the directions, which has resulted in loss of assets worth several hundred crore and recovered articles were reduced to junk by the time they are released. It gave further directions in this regard.

13. Coming back to the facts and circumstances of the present case, it would be evident that in the FIR registered under Sections 22b(ii)c of the NDPS Act, the petitioner is owner of the Tata Indigo Car bearing Registration No. BR-38H-2618. It is also an admitted fact that till now the petitioner has not been made accused in the present case. He filed an application for release of the car before the learned Special Judge, NDPS Act, Purnea, but the same was rejected, vide impugned order dated 09.04.2021 on the ground that huge quantity of Codience syrup was recovered from the car and under Section 60 of the NDPS Act, the car would be liable for confiscation.

14. In the opinion of this Court while considering the application for release of car, the learned Special Judge, NDPS Act, Purnea was bound to follow the statutory provisions contained in Chapter XXXIV of the CrPC and the ratio laid down by the Supreme Court in **Suderbhai Ambalal Desai** (supra) and **General Insurance Council & Ors.** (supra). The non- compliance of the directions of the Supreme Court in the aforesaid decisions is not permissible.

15. So far as the power to confiscate the card in question under Section 60 of the NDPS Act is concerned, it is a settled legal position that Section 60 of the NDPS Act would come into

play after conclusion of trial. In case, the trial court comes to a conclusion that the accused persons are guilty of the offences under the NDPS Act, the vehicle used in the illegal trade of contraband articles can be confiscated.

16. I also see substance in the submissions of the learned counsel for the petitioner that if the car is not released and kept idle in an open space in office of Excise during pendency of the trial, it shall become a piece of scrap.

17. Keeping in mind the discussions made hereinabove and the ratio laid down by the Supreme Court in the decisions, discussed above, the impugned order dated 09.04.2021 passed by the learned Special Judge, NDPS Act, Purnea cannot be sustained. Accordingly, it is set aside.

18. The court below is directed to release the car in favour of the petitioner, subject to the following conditions:-

(i) That the petitioner shall furnish bank guarantee of Rs. 5 lacs to the satisfaction of the court;

(ii) That the petitioner shall execute a bond for the return of the said vehicle if required by the court at any point of time;

(iii) That the petitioner shall also give an undertaking on oath that he shall not alter or part with the ownership of the vehicle during pendency of the trial; and

(iv) While passing the order for release, the court below shall be at liberty to take any other reasonable sureties from the petitioner to its own satisfaction.

19. Subject to release the vehicle upon payment of 1 ½ as per value fixed by the Insurance Company. Insurance amount in the form of bank guarantee before the Authority.

20. With these observations and directions, the present Cr. Writ Application stands allowed.

(Dr. Anshuman, J.)

ravishankar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	