

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41623 of 2023

Arising Out of PS. Case No.-18 Year-2022 Thana- D.R.I District- Muzaffarpur

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Kauleshwar Ray Son Of Birendra Ray Resident Of Village- Parathmik School
Jagdishpur Molaha, Ps- Dariyapur, Distt- Saran

... .. Petitioner/s

Versus

The Union Of India, Through Deputy Director, Directorate Of Revenue
Intelligence, Regional Unit Patna, Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nachiketa Jha, Advocate

For the Opposite Party/s : Mr. Ranvir Singh, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 04-09-2023 1. Heard learned counsel for the petitioner and learned
Senior Standing Counsel for the D.R.I.

2. The learned counsel for the petitioner submits that
the present quashing application has been filed seeking quashing
of the order dated 27.05.2023 passed in DRI Case No. 18 of
2022-23 dated 30.10.2022 passed by the learned Additional
Sessions Judge-I, Muzaffarpur whereby the learned court has
rejected the prayer of the petitioner for releasing his truck
bearing Registration No. WB39-C1207 which was seized by the
DRI in connection with the aforesaid case under Section 43(b)
of the N.D.P.S. Act.

3. The learned counsel for the petitioner next submits
that the learned trial court while rejecting the application for



release of the vehicle relied heavily on Section 60(3) of the N.D.P.S. Act. It is further submitted that the vehicle seized is liable to be confiscated under Section 60 of the N.D.P.S. Act, yet by virtue of Section 36(c) of the N.D.P.S. Act and Section 51 of the N.D.P.S. Act, the provisions contained in Section 451 or 457(1) of the Cr.P.C. would be applicable as none of the provision of the N.D.P.S. Act are inconsistent with the provisions of the Cr.P.C. and hence in deserving cases, the right of interim custody provided under Section 451 or 457(1) of the Cr.P.C. cannot be denied and if the vehicle is allowed to remain in the police station till the trial is not concluded, it will be rendered waste and thus would be contrary to the decision of the Hon'ble Supreme Court in the matter of **Sunderbhai Ambalal Desai vs. State of Gujarat reported in (2002) 10 SCC 283.**

4. The learned Senior Standing Counsel for the D.R.I. submits that in view of the provisions contained in Section 60 of the N.D.P.S. Act, the vehicle in question is not liable to be released in favour of the petitioner as Section 60 of the N.D.P.S. Act relates to confiscation of the vehicle seized. It is further submitted that from perusal of the allegations as alleged in the complaint it would manifest that the *ganja* was found concealed in a secret cavity made in the truck which amply demonstrates



that petitioner was having knowledge of the said cavity in which the *ganja* was kept.

5. The learned counsel for the petitioner rebuts the submissions of the learned Senior Standing Counsel for the DRI and submits that Section 60 of the N.D.P.S. Act incorporates regarding confiscation of vehicles seized in commission of the offence punishable under the provision of the N.D.P.S act.

“60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.

(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance [or controlled substances] lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance [or controlled substances] which is liable to confiscation under sub-section (1) and there receptacles, packages and coverings in which any narcotic drug or psychotropic substance [or controlled substances], materials, apparatus or utensils liable to confiscation under sub-section (1) is



found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(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.

6. The learned counsel for the petitioner thus submits that from perusal of the Section 60 of the N.D.P.S. Act, it would manifest that the same does not provide for confiscation of any vehicle after its seizure, rather confiscation is a separate procedure unconnected with the final outcome of the case i.e. acquittal, conviction, discharge. It is next submitted that procedure for making confiscation under Section 60 of the N.D.P.S. Act has been provided under Section 63 of the N.D.P.S. Act. It is further submitted that Section 63 of the N.D.P.S. Act prescribes the procedure for making confiscation.

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

7. The learned counsel for the petitioner next submits that any conveyance liable to be confiscated under Section 60 of the N.D.P.S. Act has to be in accordance with Section 63 of the N.D.P.S. Act after hearing the person who may claim any right



and after considering the evidence, if any, which he may produce in support of his claim.

8. The learned counsel further draws the attention of the Court to Section 51 of the N.D.P.S Act which provides:

51. Provisions of the code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and seizures.—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act.

9. It is further submitted that by virtue of Section 51 of the N.D.P.S. Act, the provision of Cr.P.C. has been made applicable insofar as they are not inconsistent with the provision of the Act, to all warrants issued, arrests, searches and seizures made under the Act. It is next submitted that since the provision contained in Section 451 of the Cr.P.C. providing provisions for interim custody insofar as it relates to passing of order for proper custody of conveyance pending conclusion of trial, is not inconsistent with any of the provisions of the N.D.P.S. Act including Section 60(3) of the N.D.P.S. Act and Section 63 of the N.D.P.S act, for release of conveyance used for carrying narcotic drug pending conclusion of the trial.

10. The learned counsel next draws the attention of



the Court to Section 36(C) of the N.D.P.S. Act which is with regard to application of code to proceedings before a Special Court and incorporates.

Section 36C—Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

11. The learned counsel submits that Section 36(C) of the N.D.P.S. Act incorporates – same as provided in this act, the provisions of Cr.P.C. have been made applicable to the Special Court constituted under the N.D.P.S. Act by Amendment Act No. 2 of 1989 with effect from 29.05.1989. It is further submitted that “same as otherwise provided in the Act as incorporated in Section 36(C) of the N.D.P.S. Act indicates to exclude some provisions of the Cr.P.C. like Section 360 of the Cr.P.C. which have been expressly excluded by Section 32A and 33 of the N.D.P.S act.

12. The learned counsel for the petitioner thus submits that since provisions of the Cr.P.C. including Section 451 and 457 have been made applicable by virtue of Section 36(C) of the



N.D.P.S. Act to the proceedings before the Special Court and there is no express bar contained in the N.D.P.S. Act for grant of interim custody, then merely because the vehicle is liable to confiscation under Section 60 of the N.D.P.S. Act, it cannot be held that once the vehicle is seized in connection of an offence under the N.D.P.S. Act, interim custody cannot be granted, as jurisdiction of criminal court has to be construed strictly unless expressly excluded.

13. The learned counsel next relies on the judgment of the Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai vs State of Gujarat** (*supra*) and draws the attention of the Court to paragraph '7' of the judgment which is as follows:-

“In our view, the powers under Section 451 Cr.P.C. 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 panchanama before handing over possession of the 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.”

14. The learned counsel next submits that from perusal of the allegations as alleged in the complaint it would manifest that the complainant has alleged that he had confidential information that a truck bearing Registration No. WB39-C1207 was intercepted at Maithi Toll Plaza where two persons were apprehended and on search, 28 packets of *ganja* like substance was recovered which was weighed and the gross weight was found to be 285.270 kg, net weight 283.310 kg and accordingly the *ganja* was seized along with the vehicle.

15. The learned counsel for the petitioner submits that petitioner was not found at the place of occurrence and being owner of the truck, he came to be implicated. It is further submitted that the petitioner is a businessman and is carrying on the business of transportation and he was completely unaware that his driver and *khalashi* would indulge in an act which would lead to seizure of his vehicle. It is next submitted that no prudent person would use his own vehicle for committing an occurrence and thus would create evidence against himself and



hence would get implicated. The learned counsel next submits that when procedure for confiscation has been mandated by Section 63 of the N.D.P.S. Act then the procedure will be followed and in the event, if it is found that a case for confiscation is made out then definitely petitioner will have no case. It is further submitted that what the petitioner is praying in the present application is for interim custody of the vehicle which is lying in the police station and will get destroyed if the same is not released, it is also submitted that the Hon'ble Supreme Court in the case of **General Insurance Council & Others vs. State of Andhra Pradesh & Others** reported in **(2010) 6 SCC 768** at paragraph '7' had recorded:-

“7. While dealing with the seized vehicles from time to time by the police either in commission of various offences or abandoned vehicles or vehicles which are recovered during investigation of complaint of thefts, the Court observed 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.

18. In case where the vehicle is not



claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.”

16. It is thus submitted by the learned counsel for the petitioner at the cost of repetition that Section 36(C) of the N.D.P.S. Act and Section 51 of the N.D.P.S. Act makes the provisions of the Cr.P.C. applicable and as such the vehicle so seized be released as the provisions of Section 451 and 457 of the Cr.P.C. is not inconsistent with any of the provisions of the N.D.P.S. Act nor the N.D.P.S. Act envisages any provisions which could even remotely suggest that the interim custody of the vehicle can be retained in absence of confiscation.

17. In view of the submissions made by the learned counsel for the petitioner, the finding of the learned trial court



that since vehicle is to be confiscated under Section 60(3) of the N.D.P.S. Act, cannot be countenanced, accordingly the order dated 27.05.2023 passed in DRI Case No. 18 of 2022-23 passed by the learned Additional Sessions Judge-I, Muzaffarpur rejecting the prayer of the petitioner for releasing his truck bearing Registration No. WB39-C1207 which has been seized by the DRI in the aforesaid case under Section 43 of N.D.P.S. Act is set aside and the vehicle is directed to be released on the following conditions:-

(i) the petitioner shall furnish personal bond of Rs. 7,00,000/- with one solvent surety in the like amount to the satisfaction of the learned trial court, thereafter the aforesaid truck shall be handed over to the petitioner on proving ownership of the vehicle;

(ii) whenever required by the competent court, the truck shall be produced on petitioner's expense at the place directed;

(iii) at the time of release of the truck, the authorities shall ensure to take note of the chassis number, engine number and registration number of the truck in presence of the petitioner and obtain his signature and keep the same on record;

(iv) the petitioner shall not alter or change the condition of the truck in any manner during pendency of the case;



(v) the petitioner shall not create any third party right over the said vehicle; and

(vi) in the event, all or any of the aforesaid conditions are found to be violated, the respondent shall be at liberty to move this Court for seeking modification of the order passed by this Court releasing the vehicle.

(Satyavrat Verma, J)

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