

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 1616 of 2022

**Sonu Kumar
Vs.
Union of India**

**For the petitioner : Ms. Baisali Ghoshal, Adv.,
Mr. Niraj Kumar Singh, Adv.,
Ms. Soniya Yasmeen, Adv.**

**For the opposite
Party : Mr. K. K. Maiti, Adv.,
Mr. Tapan Bhanja, Adv.**

Judgement on : 18.01.2023.

Bibek Chaudhuri, J.

Affidavit-of-service filed in Court today be kept with the record.

The opposite party, the Union of India and the Superintendent of Customs is represented by Mr. K. K. Maiti, learned Advocate. The petitioner has challenged an order dated 25th March, 2022 passed by the learned Special Judge, NDPS Act, 1st Court at Calcutta rejecting an application dated 17th January, 2022 filed by the petitioner praying for return of the seized vehicle being Truck No. UP80 ET 2645. Indisputably, the said truck was intercepted by the officers of the Customs Department and huge quantity of narcotic substance was

recovered from the said truck and a case under Sections 21/23/25/29 of the NDPS Act was registered.

It is submitted by the learned Advocate for the petitioner that the said truck was intercepted on 31st December, 2021. Since then it is lying under open Sun in front of the office of the Customs Department. The Investigating Officer has already submitted charge-sheet and the next date is fixed on 14th February, 2023 for supply of copies. In view of submission of charge-sheet retention of seized truck by the Customs Department is not necessary.

Learned Advocate for the Customs Department, on the other hand, submits that the petitioner being the owner of the seized truck directed its driver and helper to load contraband articles, i.e., phensedyl syrup in the truck and under his instruction the offence was committed. Therefore, the seized truck cannot be returned.

Section 451 of the Code of Criminal Procedure is the provision relating to disposal of property pending trial in certain cases. It runs as follows:-

“When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation – For the purposes of this section, “property” includes (a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.”

Thus, the above-mentioned provision 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 disposed of, after recording such evidence as it think necessary;
- (3) if the property is subject to speedy and natural decay, to dispose of the same.

The Hon’ble Supreme Court in ***Sunderbhai Ambalal Desai – Vs.- State of Gujarat [Special Leave Petition (Crl.) 2745 of 2002***, decided on 1st October, 2002] held as hereunder:-

“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.”

It was further observed in the said report:-

“Similarly for the Narcotic drugs also, for its identification, procedure under Section 451 Cr.P.C. should be followed of recording evidence and disposal. Its identify could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same.”

In the instant case, the seized truck is lying in stationary condition since 31st December, 2021. If a vehicle does not run for such long period of time the said vehicle may be inoperative.

Considering such circumstances, this Court is of the view that the learned Special Judge (NDPS Act), Bench-I, Calcutta has acted illegally and with material irregularity in passing the order dated 25th March, 2022. Accordingly, the said order is set aside. The instant revision is disposed of directing the learned Trial Judge to pass necessary order regarding return of the seized truck in view of the observation made hereinabove within a fortnight positively.

The instant revision is, thus, disposed of on contest.

The petitioner is at liberty to act on the server copy of the order.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 25.