

02.5.2023
Sl.10
Ct. No.3
SD

***CALCUTTA HIGH COURT
In the Circuit Bench at Jalpaiguri***

CRR 28 of 2021

In re: Moumita Saha

... petitioner.

Mr. Satarupriya Mukherjee
Ms. Osmitta Mukherjee
Mr. Debjit Kundu

... for the petitioner.

Mr. Aditi Shankar Chakraborty
Mr. Abhijit Sarkar

... for the State.

Being aggrieved and dissatisfied with the order dated 20.10.2020 passed by the learned Judge, Special Court, 2nd Court, Jalpaiguri in connection with Jaigaon Police Station Case No.57 of 2020 dated 18.02.2020 under the provisions of Section 22(c) of The Narcotic Drugs and Psychotropic Substances Act, 1985 (in short NDPS Act), present application under Section 482 read with 401 of the Code of Criminal Procedure has been preferred.

By the impugned order, learned court below has been pleased to reject the petitioner's prayer for releasing the vehicle seized in connection with the said case. The petitioner contended that on 18.02.2020, the SI of Police lodged complaint stating that on the basis of source information complainant along with other police personnel went to the spot and intercepted one vehicle being WB 16 AF 3458 Hyundai i20 along with driver and two other persons sitting in the back seat and it is also alleged that 320 bottles of caught syrup containing narcotic substances was recovered from the dikki of said vehicle and three persons were arrested and aforesaid criminal case has been started.

The petitioner submits that she is the owner of said vehicle and she has

valid permit and after seizure the vehicle is lying in the open space of the police station and due to delay in trial, the condition of the vehicle is getting deteriorated day by day. The petitioner accordingly moved an application before learned Special Court with a prayer to release the said vehicle but the court below after hearing the said application was pleased to reject the said prayer by the order impugned, quoting Section 60(3) of the NDPS Act.

Learned counsel appearing on behalf of the petitioner submits that on the date of occurrence the petitioner was in her matrimonial home at Siliguri and her brother took the vehicle and the petitioner is not liable for the said offence. He further submits that huge amount of instalment of the said vehicle is pending.

In this context, he relied upon a judgment of Madhya Pradesh High Court in ***Golu @ Nirmal vs. The State of Madhya Pradesh*** passed on May 12, 2022 and contended that there is no express bar contained in the NDPS Act for grant of interim custody as contained in Section 52(c) of the Indian Forest Act, 1927 and as such, merely on the ground that the vehicle is liable to confiscation under Section 60 of the NDPS Act, it cannot be said that once the vehicle is seized under Section 60 of the NDPS Act, interim custody cannot be granted, since the relevant provisions of NDPS Act are not inconsistent with the Code of Criminal Procedure.

In this context, he also relied the judgment of ***Sundar Bhai Ambala Desai vs. State of Gujrat (2002 Supp (3) SCR 39)*** case and contended that owner of the vehicle would not suffer for long pendency of the proceeding.

He further relied upon another judgment of Madhya Pradesh High Court in ***Kapil Jha vs. The State of Madhya Pradesh*** delivered on January 27, 2022 and contended that seized conveyance is to be sold by way of tender or auction but such disposal can only be possible after the confiscation proceeding is complete without confiscation, the disposal of seized vehicle cannot be

undertaken. Accordingly, he prayed for return of the seized vehicle.

Learned counsel appearing on behalf of the State raised strong objection and referred Section 60(3) of the NDPS Act and Section 63 of the Act and contended that ***Sundar Bhai Ambala Desai's*** case is not applicable in the present context. The NDPS Act has laid down special provision for confiscation and as such, the seizure under the said Act is not guided either by Section 451 or Section 457 of the Code of Criminal Procedure. Accordingly, learned counsel for the State contended that the court below has not committed any mistake in rejecting the said prayer and as such, the order impugned does not call for interference.

Considered the submissions made by both the parties.

On perusal of charge sheet, it appears that the charge sheet has been submitted against four accused persons which includes the present petitioner, Moumita Saha. In the charge sheet, the petitioner has been shown as absconder and it is also stated that the Investigating Officer has made several attempts to interrogate the said owner of the vehicle but in vain. Accordingly, the charge sheet has been submitted against the said owner of the vehicle under Section 22(c) of the NDPS Act.

In such circumstances, the question cropped up as to whether the vehicle which has been allegedly used as carrier for committing the offence and which is liable for confiscation could be released on certain terms.

Before going to further details let me reproduce section 60(3) of the Act which runs as follows:-

“Section 60(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 may be that there is no express bar contained in the NDPS Act for grant of interim custody in order to protect the innocent owner of the vehicle. It would not be out of context to state that Section 37 of the NDPS Act provides that the bail can only be granted where there are reasonable grounds for believing that accused is not guilty of such offence and that he is not likely to commit any offence while on bail. The spirit of section 37 and the other provisions of the said Act make it clear that strict applications thereof are required to achieve the purpose, so that further offence relating to illicit traffic in narcotic drugs and psychotropic substances could be prevented. Before passing an order of releasing the vehicle involved in such offence, the court has to satisfy the reasons which justify such release. The NDPS Act is a special Act, which has been enacted with a view to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances. In the present case petitioner/owner of the vehicle herself is an accused and she is still absconding and did not make co-operation with the investigating agency, in spite of repeated reminders. Accordingly it would not be unreasonable to hold that the vehicle in question used for committing the offence, if released on terms, then there would be every chance of committing such offence with the help of the same vehicle. Petitioner's innocence could have been understandable, if she made co-operation with the investigating agency.

Under the said provision if the owner of the vehicle is not an accused, in that case a separate and independent proceeding has to be drawn for confiscation in terms of the express provisions in Section 60(3) of the Act, to protect an innocent owner before confiscating his vehicle.

Accordingly, I am of the view that this is not an appropriate case where such prayer can be allowed and accordingly, the court below has not committed any error in rejecting the said prayer made by the petitioner and as such, the order impugned does not call for any interference.

CRR 28 of 2021 is dismissed.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)