

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 528 of 2023

Surajit Das

Versus

The State of West Bengal

For the Petitioner : Mr. P.K. Khan, Adv.
Mr. Somdev Ash, Adv.
Ms. P. Dey, Adv.
Ms. S. Mukherjee, Adv.
Mr. S. Dutta, Adv.

For the State : Mr. Sandip Chakraborty, Adv.

Heard on : 08.04.2024

Judgment on : 08.07.2024

Ajay Kumar Gupta, J:

1. The petitioner being the owner of the vehicle No. WB 32J-4623 has filed this revisional application challenging the propriety, legality and correctness of an order dated 12.12.2022 passed by the Learned Judge, Special Court, Tamluk, Purba Medinipur in connection with NDPS Case No. 18 of 2022, under Sections 20(b)(ii)(c)/25/29 of NDPS Act, 1985 arising out of Egra P.S. Case No. 735/22 dated 13.10.2022 pending before the aforesaid court, thereby the learned Court below refused to return the vehicle bearing No. WB 32J-4623 along with its seized documents to the registered owner holding therein that if the vehicle would be released, this vehicle will further use to carry Ganja or any type of illegal activities.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

2. Learned counsels appearing on behalf of the petitioner submitted that the petitioner is the registered owner of the vehicle being registration No. WB 32J-4623 bearing Chasis No. MA3FSEB1S00529308, Model Name Swift Dzire Tour BS Ltd., registered on 16th June, 2016 and Tax valid upto 15th June, 2026, having licence being no. WB-3120110874048 issued dated 14.02.2011. The vehicle used to park in front of his residence crossing the main road with few other vehicles. It is stated that on the

date of incident his vehicle was parked in the same manner as it used to park daily with two other vehicles, namely, one Red OD-SX4 and one White Duster belongs to other owner.

3. It is further submitted that one Pintu Nandi is the authorised paid driver of the vehicle owned by the petitioner as the petitioner remains ill due to several physical ailments. The said Pintu Nandi also a paid driver of the Red OD-SX4 vehicle stated above. On the date of incident i.e. 13.10.2022, the above stated three vehicles were parked as stated above, the investigating agency upon source information, searched three cars parked in the said place and seized sufficient commercial quantity of contraband from the vehicle, White Duster parked thereof.

4. It is further submitted that at the time of searching, the contraband was seized. There were no accused present in the said place or inside the vehicle. Later, it came to the knowledge of the petitioner that the accused, from whose vehicle the contraband was seized, fled away. It is pertinent to mention that when the contraband was seized, petitioner's vehicle was parked 50 meters away from other two cars and the same is reflected in the order dated 12.12.2022 and it was admitted in the submissions of the prosecution. Subsequently, a notice was served upon the petitioner under Section 133 of the

Motor Vehicles Act and same was duly complied by the petitioner time and again and investigating officer seized his vehicle implicating his vehicle as contraband carrier only to extort money from the petitioner.

5. It is further contended that on 13.12.2022, a suo motu complaint was lodged by one Astami Sahu, S.I. of Egra Police Station, stating, inter alia, that on the date of incident upon information they seized commercial quantity of contraband from one White Duster and could not arrest the accused as he fled away from the place of incident. Subsequently, Pintu Nandi was arrested with some commercial quantity of ganja and subsequently taken into custody in connection with the present case.

6. It is further contended that the petitioner was nowhere connected in the present case neither he is an FIR named nor his involvement is found in this case. He has been implicated into this case as his vehicle is being used by the accused, namely, Pintu Nandi and was taken into custody with commercial quantity of contraband goods.

7. There was no involvement of the petitioner but the vehicle of the petitioner was seized on the basis of co-accused's statement alleging that the said vehicle was used as a carrier of ganja. The

petitioner made an application for return of seized vehicle before the Court of Learned Additional District and Sessions Judge, Court SPL, Court (NDPS Act), Tamluk, Purba Medinipur but the said prayer was rejected by the learned Court below vide order No. 6 dated 12.12.2022 only on the ground that if the vehicle would be released, the vehicle will further use to carry ganja or doing any type of criminal activities. As such, the rejection order is bad in law and liable to be set aside. He prays for release of the vehicle on any terms and conditions.

SUBMISSION ON BEHALF OF THE STATE:

8. On the other hand, learned counsel appearing on behalf of the State submitted that the learned Court has rightly rejected the prayer for return of the seized vehicle. If it would be released then again it may be used to transport contraband goods like Ganja as such order passed by the learned Court should be affirmed.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

9. Having heard the submissions of the parties and on perusal of the application, it appears from the impugned order under challenge that the vehicle bearing no. WB 32J-4623 was seized on the allegation of transportation of commercial contraband goods i.e. Ganja and the registered owner of the said vehicle is the present

petitioner. He prays for release of the vehicle but the said prayer was rejected by the learned Court below.

10. The question for consideration of the Court is whether the seized vehicle can be returned to the petitioner during the pendency of the criminal case in spite of having such allegation of carrying contraband goods?

To answer this question, learned counsels for the petitioner relied a judgment of this Court passed in ***Raju Singha V. The State of West Bengal***¹

11. Upon perusal of the said judgment, it appears a single Bench of this Court relied several documents, judgments of the Hon'ble Supreme Court and High court and discussed the same in paragraphs 4 as under:

“8. In "Sunderbhai Ambalal Desai V. State of Gujarat" reported in (2002) 10 SCC 283 the Supreme Court has directed the criminal court to exercise the power under Section 451 of the Code of Criminal Procedure for return of the seized articles on some conditions pending final decision of the criminal case. With regard to the return of the seized vehicle during pendency of the criminal case the Supreme Court has observed as follows in paragraph 17 of the said judgment:

¹ 2016 SCC OnLine Cal 4013; (2017) 1 RCR (Cri) 441.

"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."

9. In "B. S. Rawant V. Shaikh Abdul Karim" reported in 1989(2) Bom CR 209 learned single Judge of the Bombay High Court held that the provisions of Section 451 or Section 457 of the Code of Criminal Procedure are not inconsistent with the provisions of the NDPS Act and as such the seized article or the seized vehicle may be returned to the rightful claimant as an interim custody on condition that the said seized vehicle or seized article may be produced before the trial court for taking final decision whether the said article or vehicle is liable to be confiscated or to be returned to the rightful claimant. It is held by the Bombay High Court in the said decision that the vehicle seized for transporting narcotic drug or psychotropic substance can be returned to the registered owner as an interim custody on condition of production of the said vehicle before the trial court at the appropriate stage of the proceeding under Section 451 or Section 457 of the Code of Criminal Procedure.

10. In "Tridip Mitra V. State of West Bengal" reported in 2006(2) CHN 198 learned single Judge of our High Court also laid down that during pendency of the trial learned Judge of the Special Court under NDPS Act has jurisdiction under Section 451 and Section 457 of the Code of Criminal Procedure to pass necessary order for return of the seized vehicle as an interim custody. It is relevant to quote paragraph 16 of the said judgment:

"16. The decision of the Supreme Court in *Sunderbhai Ambalal Desai* and decision of the Bombay High Court mentioned above clearly reveals that, provisions of Sections 41,42,43,51,53,55,60 and 63 of the NDPS Act do not exclude operation of Sections 451 and 457(1) of the Code. The decision of this Court in *Asis Bose V. State of West Bengal (supra)* and *Sri Jiban Aich V. State of West Bengal (supra)* concerning Forest Act reveals that vehicle used in transporting forest produce should not be released normally but can be released imposing certain conditions which will have deterrent effect on the owner and putting different conditions including condition that the said vehicle henceforth shall not be used in indulging similar type of offence in future. Besides that, the general provisions laid down by the Supreme Court in *Sunderbhai Amlalal*

Desai (supra) cannot be ignored as it was observed that the vehicles should not be kept in Court compound or thana compound for indefinite period till the conclusion of trial to allow the vehicles lose its value open to sky, sun and rain. The Supreme Court and this Court clearly laid down the consideration of the Court is production of the vehicle at the time of trial and also during confiscation proceeding if any confiscation proceeding is started at all and for securing that the said vehicle is not used in similar type of offence in future. If Government fiscal policy of fetching money by auction of vehicles after confiscation proceeding is considered then also it is desirable that the vehicles should be in good condition. A vehicle if kept at thana or Court compound open to sky for indefinite period would become scrap material within a year or two for want of maintenance. A scrap material cannot fetch such money which a good conditioned vehicle would fetch."

11. In "Rabi Ranjan Ojha V. The State of West Bengal" reported in (2011) 2 C.Cr. L.R. (Cal) 755 learned single Judge of our High Court interfered in the order of refusal to return the seized vehicle passed by learned Judge of the Special Court. In this case the vehicle was seized for carrying narcotic drug, but the said seized

vehicle was returned to the registered owner on furnishing bank guarantee of Rs.5,00,000/- on condition that the registered owner will produce the vehicle as and when called for by the court and the registered owner will not change the nature and character of the vehicle without the permission of the trial court.”

12. In the light of above discussions and on perusal of the judgments relied by the Hon’ble Single Bench and the proposition laid down by the Supreme Court as well as other High Courts, this Court is of the opinion that the seized vehicle can be allowed to be returned to the registered owner as an interim custody upon furnishing bond with surety of Rs. 8,00,000/- (Rupees eight lakhs) only and on further condition that the petitioner will produce the said vehicle before the learned Trial Court as and when called for and he shall not change the nature and character of the vehicle during the pendency of the criminal case.

13. Accordingly, the impugned order dated 12.12.2022 passed by the Learned Judge, Special Court, Tamluk, Purba Medinipur in connection with Egra P.S. Case No. 735/22 dated 13.10.2022 in connection with NDPS Case No. 18 of 2022, under Sections 20(b)(ii)(c)/25/29 of NDPS Act, 1985 is hereby set aside. The fate of

the said vehicle will be decided by the learned Trial Court after conclusion of trial.

14. Accordingly, **CRR 528 of 2023** is, thus, allowed. Connected applications, if any, are also, thus, disposed of.

15. Case Diary, if any, is to be returned to the learned Advocate for the State.

16. Let a copy of this judgment and order be sent to the learned Court below for information and taking necessary action.

17. Interim order, if any, stands vacated.

18. Parties shall act on the server copies of this order uploaded on the website of this Court.

19. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)