

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 3619 of 2017****IN THE MATTER OF****Rana Pratap Singh****Vs.****State of West Bengal & Anr.****For the Petitioner : Mr. Navanil De Adv.,
Mr. Brajesh Jha Adv.****For the State : Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Mr. Imran Ali, Adv.,
Ms. Debjani Sahu Adv.****Judgment on : 11.01.2024****Subhendu Samanta, J.**

This is an application u/s 401 read with Section 482 of the Code of Criminal Procedure preferred against an order dated 05.04.2017 passed by the Learned Judge Special-cum additional District Judges court Hooghly in connection with NDPS case No. 10 of 2016 thereby rejecting the prayer for return of seized vehicle.

The brief fact of the case is that the petitioner is the registrar owner of an ALTO 800 LXI Model car bearing Registration No. WB-12-C 9190. On 12.05.2016 the said vehicle was intercepted by the officials attached to Singur Police Station and upon research and seizure 20 KG of Ganja

was found in the dicki of the said vehicle. Accordingly the same vehicle was seized in connection with Singur P.S Case No. 189/16 dated 02.05.2016 u/s 20(b)(ii)(c) of NDPS Act. The present petitioner being the registered owner preferred an application for release the said vehicle. The Learned Special Judge has passed the impugned order and reject the prayer of the petitioner.

Hence this revision.

The Learned Advocate for the petitioner submits that the Learned Special Judge has acted illegally and mechanically passed the impugned order. Learned Special Judge has assigned no reason in rejecting the prayer of the petitioner to release the vehicle. The vehicle if not release shall be wasted and destroyed and such the petitioner shall suffer irreparable loss and injury. In support of his contention he cited the decisions of Hon'ble Supreme Court passed in **Sunderbhai Ambalal Desai Vs. State of Gujrat (2002)10 Supreme Court case 283.**

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 handling over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

He also submitted the order of a Coordinate Bench of this Court reported in **2023 SCC Online Cal 874** wherein the Hon'ble Single Bench has allowed the criminal revision, directing the Special Judge to release the vehicle seized in connection with a NDPS case. He also cited another decision of another Coordinate Bench of this court reported in **2015 SCC Online Cal 1612** wherein the Hon'ble Coordinate Bench has allowed the prayer of the petitioner to return the seized vehicle by furnishing necessary Bank Guarantee.

Both the decision of Hon'ble Single Bench of this Court has placed their reliance upon the decision of the Hon'ble Supreme Court passed in **Sunderbhai Ambalal Desai (supra)**. Ultimately the Learned Advocate for the petitioner submits that the ratio of **Sunderbhai Ambalal Desai** is squarely applicable in this case and the impugned order passed by the Learned Special Judge is liable to be set aside.

The Learned Advocate appearing on behalf of the State raised strong objection and submits that the IO has filed an

objection before the Learned Special Judge. The Learned Special Judge after perusing objection placed by the IO has passed the impugned order. By virtue of notification of the Ministry of Finance Department of revenue in exercise the power conferred in Section 52(A) of the NDPS Act dated 16.01.2015. The notification has laid down the procedure for disposal of the vehicle seized in connection with NDPS Act. Learned Special Judge, has passed the order by virtue of the notification of the Central Government so there is no error apparent in the impugned order.

Heard the Learned Advocate. Perused the notification of the Central Government dated 16.01.2015. The notification was issued in exercise the power conferred by Section 52A of the NDPS Act 1985. Notification laid down the mode of disposal of drugs as well as the seized conveyances as follows:

9.(5) (e) mode of disposal of conveyances –

(e) seized conveyances shall be sold out by way of tender or auctioned as determined by the Drug Disposal Committee.

It appears that the judgment cited by the Learned Advocate for the petitions as well as the judgment of Hon'ble Supreme Court passed in **Sunderbhai Ambalal Desai** has not dealt with the Notification of the Central Government dated 16.01.2015. Decision of Hon'ble Single Bench of this High Court had also no opportunity to dealt with the said Notification.

Accordingly the ratio decidendi of the judgment cited by the Learned Advocate for the petitioner has no application in this case.

The NDPS Act is a special statute; the Central Government has issued specific notification and rules in support of that Special Act. The Rules and Notifications by virtue of power conferred under Section 52A of the NDPS Act 1985 has to be followed according to the notification itself.

In perusing the impugned order it appears that the Learned Special Judge has not committed no error in passing impugned order. Learned Special Judge, has just followed the notification dated 16.01.2015. The impugned order suffers no illegality or impropriety and the same is not required to be interfered with.

It is reported by the State that the trial has already been started. The Learned Special Judge is directed to conclude the trial as early as possible, not already concluded.

Accordingly the CRR is disposed of.

Connected CRAN applications if pending are also disposed of. The order of stay passed by this court during the pendency of the criminal revision is also vacated

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)