

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Md. Shabbar Rashidi

C.R.R. 28 of 2024

Md. Hossain

Vs

The State of West Bengal

For the petitioner : Mr. Prajnadeepta Roy, Adv.
Mr. Naser Ali, Adv.
Mr. Debojyoti Goswami, Adv.

For the State : Mr. Aditi Shankar Chakraborty, Ld. A.P.P
Mr. Abhijit Sarkar, Adv.

Heard on : September 27, 2024

Judgment on : October 05, 2024

Md. Shabbar Rashidi, J.

1. The instant Revisional application is directed against an order dated July 26, 2023 passed by learned Judge, 1st Special Court under NDPS Act, Jalpaiguri rejecting the prayer of the petitioner for return of seized vehicle.
2. The petitioner has been carrying on transport business throughout the country on November 16, 2021, Raiganj police, moving on a secret information of the transportation of contraband Narcotic Drugs, intercepted the vehicle bearing registration No. UP-21 BN/0533 at Sariam over NH 31D, the petitioner along with another person was apprehended from the said vehicle as driver and helper. Upon interrogation of the apprehended person and on search huge quantity of Ganja was recovered from inside a secret chamber in the driver's cabin of the said vehicle which was duly seized under proper seizure list. Accordingly, the two persons were arrested under duly filled up memo of arrest. A formal written complaint was lodged in this regard which was registered as a First

Information Report corresponding to Raiganj Police Station Case No. 513/2021 dated November 16, 2021 under Section 21 (c)/22 (c) of the Narcotic Drugs and Psychotropic Substance Act.

- 3.** It has been submitted on behalf of the petitioner that the investigation of the case has ended in charge sheet under Section 20 (b)(ii)(c)/25/29 of the Narcotic Drugs and Psychotropic Substance Act. Since the submission of the charge sheet, several dates have elapsed on one or the other pretext.
- 4.** The petitioner is the registered owner of seized vehicle. On December 22, 2022, the petitioner filed an application for release of the seized vehicle. The learned court sought for reports in this regard and fixed the same for hearing on several dates. Ultimately, by the impugned order, the learned trial court rejected the prayer of the petitioner refusing to release the vehicle in question. It is submitted on behalf of the

petitioner that the learned trial court did not consider the provisions of Section 451 and 457 of the Code of Criminal Procedure and clearly defied the guidelines laid down in the cases of **(2002) 10 Supreme Court Cases 283 (Sunderbhai Ambalal Desai vs. State of Gujrat)** and **(2010) 6 Supreme Court Cases 768 (General Insurance Council vs. State of Andhra Pradesh)** with regard to release of vehicle.

5. It has also been submitted that the trial of the case is moving at a very slow pace and even if he is successful in the case, he would be prejudiced by non release of the seized vehicle as the vehicle is lying at the police station.
6. By filing the instant revisional application, the petitioner has prayed for setting aside the impugned order dated July 26, 2023 and directing release of the seized vehicle bearing Registration No. UP-21 BN/0533 along with all connected papers in favor of the petitioner.

- 7.** At the time of hearing, it was submitted on behalf of the petitioner that the seized vehicle is lying in the police station for a considerable period and is likely to be rendered unusable. The possession of such vehicle is liable to be restored to its lawful owner i.e. the petitioner pending trial of the criminal case in terms of the provisions of Section 451 or 457 of the Code of Criminal Procedure.
- 8.** On the contrary, learned advocate for the State submitted that the petitioner was arrested with huge quantity of contraband narcotic drugs which he was carrying through the seized vehicle. The contraband was recovered from a secret chamber in the driver's cabin of the seized vehicle giving ample presumption that the owner of the vehicle i.e. the petitioner was consciously using the vehicle for transportation of contraband articles. Under such circumstances, the vehicle is liable to confiscation in terms of Section 60(3) of the Narcotic Drug and Psychotropic Substance Act, 1985.

9. Relying upon **2023 SCC OnLine Cal 1094 (In Re: Moumita Saha)** learned advocate for the State vehemently opposes the prayer for release of the seized vehicle. It is submitted that the owner of the vehicle was voluntarily using the vehicle for carrying contraband narcotics, since a secret chamber was deliberately made for such use, the petitioner cannot prove that the vehicle was used for carrying narcotics without his knowledge, as contemplated under the provision of Section 60(3) of the Narcotic Drug and Psychotropic Substance Act.
10. Having heard learned advocate for the parties and on consideration of materials placed, it is evident that the petitioner was arrested with huge quantity of narcotics. Such narcotics were kept in a secret chamber in the driver's cabin of the vehicle through which it was being carried. The petitioner was also arrested from the said vehicle. It fact the petitioner was arrested in possession of narcotics.

11. The petitioner seeks release of the seized vehicle. It has been alleged that the petitioner is the owner of the seized vehicle. He has sought release of the vehicle on the ground that the vehicle is lying in open in the police station and is liable to natural decay. The other ground that has been canvassed for such purpose is that the delay in the trial of the case.

12. Section 451 and Section 457 of the Code of Criminal Procedure primarily deals with the disposal of property by a criminal court which reads as follows:

451. Order for custody and disposal of property pending trial in certain cases.—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.

457. Procedure by police upon seizure of property.—

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property

consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

- 13.** In the case at hand the owner of the seized vehicle is known but at the same time he is an accused in the case. The property sought to be released is liable to confiscation, in the facts of the case, in terms of the provisions of Section 60 of the Narcotic Drug and Psychotropic Substance Act, 1985. Section 60 of the said Act states that

60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.—1 [(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 2 [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 2 [or controlled substances] which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance 2 [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 2 [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.

14. The petitioner applied for release of the seized vehicle before the learned trial court which was turned down by the impugned order on the ground that the vehicle was liable to confiscation. Hence the petitioner has come up with the instant application.

15. It has been alleged that the learned trial court did not adhere to the guidelines issued in the case of **Sunderbhai Ambalal Desai (Supra)**. In the said case, directions were issued for consideration of the disposal of the seized property as no orders were being passed by the learned Magistrate. The Hon'ble Supreme Court observed that,

7. In our view, the powers under Section 451 CrPC 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 panchnama 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.*

16. However, in the instant case, the learned trial court has promptly passed an order regarding disposal of the seized property. Learned court chose not to release the seized vehicle in view of the provisions contained in Section 60 (3) of the Narcotic Drugs and Psychotropic Substance Act.

17. Similarly, in the case of **Raju Singh (Supra)** a coordinate bench of this court observed that,

5. In view of the proposition of law laid down by the Supreme Court, Bombay High Court and our High Court, I do not find any merit in the submission made on behalf of the State that the seized vehicle can be returned to the registered owner as an interim custody only on fulfilment of the conditions laid down under Section 60(3) of the Narcotic Drugs and Psychotropic Substances Act. In my view, the seized vehicle can be returned to the petitioner being the registered owner of the said vehicle on furnishing of bond with surety and on condition that the petitioner will produce the seized vehicle before the trial court as and when called for and that he will not change the nature and character of the vehicle during the pendency of the criminal case before the trial court.

18. However, in the said case, although, release of vehicle seized in connection with NDPS case was sought by the owner of the vehicle. But there appears nothing in the said case that the owner himself was arrested carrying the narcotic drugs and he was an accused. In the instant case, however, the owner i.e. the petitioner was arrested with the contraband which he was carrying in his own vehicle. It was incumbent upon the petitioner to establish that the carriage belonging to him was being used for the purpose of transportation of contraband without his knowledge in spite of due diligence observed by him. The petitioner was himself carrying such articles consciously using his own vehicle which was seized. In fact, being the owner of the vehicle, he owed responsibility for the secret chamber in the driver's cabin.

19. On the similar considerations, the order refusing prayer for release of the vehicle in an NDPS case was upheld by a coordinate bench of this court in the case of **Moumita Saha (Supra)**.

20. In any case, by the impugned order the prayer of the petitioner for release of seized vehicle was refused in consideration of the fact that the petitioner himself was an accused in the case and was arrested with huge quantity of narcotic contraband being carried through his own vehicle. I am not in a position to return a finding that such view of the learned trial court was perverse. No material irregularity or impropriety is apparent in the impugned order.

21. So far as delay in trial is concerned, the last update of the trial court as placed before this court is of 2023. No materials are placed before me to determine as to if there is any delay in the trial and if so on whose account such delay has been caused.

22. However, for better ends of justice, it would be appropriate to request the learned trial to expedite the trial and endeavour to dispose of the case as expeditiously as

possible without granting any unnecessary adjournment to any of the parties.

23. In the result, thus, I find no reason to interfere with the impugned order. Accordingly, the instant revisional application, being CRR 28 of 2024 is dismissed, without any order as to costs.

(Md. Shabbar Rashidi, J.)