

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

CRR 443 of 2024

Lalan Kumar Roy @ Lallan Kr. Ray
Vs.
The State of West Bengal

Ms. Suman Sehanabis (Mondal)
Mr. Salok Sah
Ms. Anwesha Chakraborty
... For the petitioner.

Mr. Aditi Shankar Chakraborty
Mr. Abhijit Sarkar
... For the State

1. The instant revisional application has been filed by the petitioner under Sections 397, 401 read with Section 482 of the Code of Criminal Procedure, 1973 corresponding to Section 528 of the Bharatiya Nagarik Suraksha Sanhita,(BNSS), 2023, challenging the order No. 7 dated 4th September, 2024 passed by the learned Judge, Special Court (under NDPS Act), 1st Court, Jalpaiguri in connection with NDPS Case No. 21 of 2023 arising out of New Jalpaiguri Police Station Case No. 169 of 2023 dated 27th February, 2023 under Sections 20(b)(ii)(c) 23(e) of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.
2. It is the petitioner's case that the petitioner is the owner of a vehicle bearing Registration No. NL01G/8534, which was intercepted on 27th February, 2023 and certain contraband articles were recovered and seized under the NDPS Act.

3. According to the petitioner, the final report in the form of charge-sheet has already been filed and the petitioner is not a named accused in the charge sheet. Since, the vehicle in question had been seized by the police and had been retained in the police station campus in connection with the above case, the petitioner had made a prayer on 18th September, 2023 before the learned Judge, Special Court under NDPS Act for return of the vehicle on the ground that he is the actual owner of the vehicle and is also not arraigned as accused either in the FIR or in the charge-sheet.
4. By an order dated 4th October, 2023, the learned Court had directed the investigating agency to verify the documents in support of the ownership of the vehicle and to submit a report before the learned Court.
5. Pursuant to the aforesaid, the investigating agency after a thorough verification of the document had come to a finding that the petitioner is the owner of the vehicle and a report to that effect was submitted.
6. The learned Court, however, in consideration of the above application for release of vehicle upon perusal of the materials on record, by an order dated 22nd November, 2023 directed the Officer-in-Charge, Ambari Falakata to file a report for ascertaining the following points:-

(1) *Whether the petitioner-alleged owner, Lallan Kr. Roy appeared before I.O. in compliance of notice, u/s. 160 of NDPS Act, and whether any interrogation is necessary regarding ownership, or any other aspect in relation to this case?*

(2) Whether the secret chamber from where the seizure was made as mentioned in the charge sheet was the original part of the body of the vehicle-in-question or the said chamber is a product of subsequent modification of the body of the alleged vehicle and exact position of such chamber in the vehicle as alleged and a specific report on this point”.

7. Challenging the aforesaid order, a revisional application was filed before this Court which was registered as CRR 50 of 2024. By an order dated 17th May, 2024, a coordinate Bench of this Court upon ascertaining that there is no dispute regarding ownership of the vehicle of the petitioner was of the view that the issue whether the secret chamber from where the contraband articles were recovered was the original part of the body of the vehicle or it was made subsequently, requires to be ascertained in the light of the directions issued by the learned Court before releasing the vehicle. The coordinate Bench thus, remanded the matter back to the learned Court to decide the issue of release of vehicle during the pendency of the trial and if necessary, to impose terms and conditions including keeping photographs of the vehicle from all angles to demonstrate the same at the time of trial.
8. Pursuant to the aforesaid, by an order dated 4th September, 2024, the learned Judge, Special Court under NDPS Act, 1st Court, Jalpaiguri by noting that the secret chamber in the vehicle had been deliberately created and huge quantity of Ganja were carried secretly in the chamber and by noting there may be every possibility of such chamber being created by the owner of the

vehicle, namely the petitioner and taking note of the fact that the charge having already been framed, while fixing the next date of hearing, refused the prayer for return of the vehicle at that stage.

9. Ms. Sehanabis, learned advocate representing the petitioner would submit that the above observations made by the learned Judge are perverse to say the least. According to her, the name of the petitioner does not feature in the charge sheet or in the FIR. The charge has also been framed in the meantime. Having regard thereto, there is no or little scope to hold the petitioner guilty in a trial wherein the petitioner is not even the accused. In any event, it is submitted that the vehicle in question is lying in the open and being subjected to waste and is deteriorating day-by-day. The Hon'ble Supreme Court has repeatedly directed release of vehicle involved in crime during the pendency of trial. In support of her aforesaid contention she has placed reliance on the judgment delivered in the case of **Sunderbhai Ambalal Desai vs. State of Gujarat**, reported in **AIR 2003 SC 638**. She submits that subject to terms and conditions as may be imposed, the vehicle may be released.

10. Mr. Sarkar learned advocate appearing on behalf of the State by drawing attention of this Court to the provisions of Section 60 of the NDPS Act, would submit that the vehicle in question is liable to be confiscated and had accordingly been seized. He would submit that if the vehicle is released there is every likelihood of the vehicle being used for the same offence. By placing reliance on an unreported judgment of a coordinate Bench of this Court in

the case of **Md. Hossain vs. State of West Bengal** in **CRR 28 of 2024** delivered on 5th October, 2024 he would submit that the Court ordinarily in matters relating to NDPS Act, ought not to release the vehicle in question especially when the vehicle is intercepted with huge quantity of narcotic contraband. On the same contention he also placed reliance on the judgment delivered in the case of **Moumita Saha vs. State of West Bengal** reported in **2023 SCC Online Cal 1094**. Mr. Sarkar, however, candidly submits that in the instant case, neither the petitioner is named in the FIR nor he is a named accused in the final report in the form of charge sheet. No charges have also been framed against the petitioner.

11. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case there is no dispute as regards the ownership of the petitioner in respect of the vehicle in question. It is also not in dispute that the vehicle in question was intercepted along with contraband articles. In fact, such contraband articles were retained in a secret chamber, which had identified by the learned Special Judge when the application for release of the vehicle was made. The learned Special Judge in order to ascertain whether the secret chamber from where the seizure was made as mentioned in the charge sheet, was the original part of the body of the vehicle or is a product of subsequent modification of the body of the alleged vehicle and also to ascertain the exact position of such chamber in the vehicle had directed the Officer-in-Charge Ambari Falakata

to file a report. Although, a revisional application was filed, the coordinate Bench of this Court by an order dated 17th May, 2024 refused to interfere with such direction. The Court, however, by the aforesaid order was of the view that the learned Trial Court should consider and decide the issue of release of vehicle during the pendency of the trial, if required, by imposing terms and conditions including keeping photographs of the vehicle from all angle. Pursuant to the aforesaid, upon receipt of the report, the learned Special Judge has taken a decision. From the order impugned it would transpire that the reasons for refusing the release of vehicle appears to be the possibility of involvement of the petitioner in creating the secret chamber. Unfortunately, neither in the FIR nor in the final report in the form of charge sheet reflects the involvement of the petitioner in any way. No charge has also been framed against the petitioner. Mr. Sarkar, learned advocate by placing the case diary has also confirmed that no liberty has been reserved by the investigating officer to file any supplementary charge sheet.

12. Having regard thereto, I find that the aforesaid observation made by the learned Judge Special Court, under NDPS Act, 1st Court, Jalpaiguri, in Case No. 21 of 2023 to be perverse and without any basis and the same is accordingly set aside.
13. Although, Mr. Sarkar by placing reliance on the judgment delivered in the case of Md. Hossain (supra) and Moumita Saha (supra) has tried to impress upon the Court that ordinarily in matters relating to NDPS Act, the vehicle should not be released,

I, however, notice that unlike the instant case in both the aforesaid cases cited above the owner was an accused. The aforesaid judgments are, thus, distinguishable on facts

14. Having regard thereto, I am of the view that the vehicle could not have been held back on the assumption of involvement of the petitioner in creation of secret chamber which is not borne out from the FIR or the charge sheet. The petitioner, however, cannot be permitted to seek return of the vehicle without being put to terms. It is also necessary to ascertain the actual value of the vehicle so that adequate security in the form of bank guarantee can be called for from the petitioner for the purpose of ensuring production of the vehicle at the time of trial. In my view, it would not be convenient for this Court to determine the aforesaid aspect.
15. Having regard thereto, let this matter be remanded to the learned Judge, Special Court, under NDPS Act, 1st Court, Jalpaiguri on the question of determining the value of the vehicle and the terms and conditions as may be imposed for the purpose of release of vehicle.
16. With the above observations and directions, the revisional application, being CRR 443 of 2024 stands disposed of.
17. Before parting I must record that pursuant to the direction passed on 2nd December, 2024 an affidavit has been affirmed by the Investigating Officer explaining the circumstance leading to the non-production of the case diary before this Court on 2nd

December, 2024. Having considered the affidavit, the explanation is accepted.

18. Let the affidavit of the Investigating Officer affirmed on 3rd December, 2024 be retained with the records.

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

(Raja Basu Chowdhury, J.)