

Madhya Pradesh High Court
Mahesh Vishnoi vs Smt. Suleha Patel on 29 August, 2020
Author: Rajendra Kumar Srivastava

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CRR-1751-2020

The High Court Of Madhya Pradesh
CRR-1751-2020
(MAHESH VISHNOI Vs SMT. SULEHA PATEL)

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Jabalpur, Dated : 29-08-2020

Heard through Video Conferencing.

Shri Ravindranath Chaturvedi, learned counsel for the petitioner.

Shri K.S. Patel, learned Panel Lawyer for the respondent-State.

This revision petition under Section 397/401 of Cr.P.C. has filed by the petitioner against the order dated 29.05.2020 passed by the 18th Upper Sessions Judge, Bhopal (M.P.), in Special Case No. 29/2020, whereby the application under Section 451 of Cr.P.C. for grant of ad-interim custody of the vehicle on supurdaginama has been rejected.

As per prosecution case, on 22.01.2020, during search, 261 gram opium was recovered from the vehicle (Creta Car) bearing registration No. MP-47-CA-2964 of the petitioner. The petitioner along with two other persons were traveling. The police has registered the FIR and seized the vehicle.

Learned counsel for the petitioner submits that the learned Court below erred in rejecting the application for interim custody of vehicle ignoring the fact that the vehicle was not used in commission of any offence. The petitioner has falsely been implicated in the case. He further submits that the petitioner is registered owner of said vehicle and he is having all the documents in this regard. It is further submitted that in view of the mandate of Hon'ble the Supreme Court in the case of Sunderbhai Ambalal Desai and others Vs. State of Gujrat reported in (2002) 10 SCC 283, the vehicle should be given into interim custody as its denial leads to deleterious effect upon the seized vehicle. The petitioner is ready to furnish adequate surety and he shall abide all the conditions as imposed by the Court. It is further submitted by the learned counsel for the petitioner that there are no criminal antecedents of the petitioner. It is further submitted that the vehicle in 2 CRR-1751-2020 question which is now kept in the police station, be released on supardiginama otherwise due to its non-use, the same would be useless after sometime. There is no need to keep the said vehicle in custody.

On the other hand learned counsel for the State opposes the prayer of the petitioner and submitted that the petitioner's vehicle was found to be involved in a serious crime registered under NDPS Act and if the vehicle in question is handed over, the same would be used for commission of another offence.

Having considered the rival submissions made by the learned counsel for the parties and on perusal of record, it is found that 261 gram opium was seized from the joint possession of petitioner/accused and other co-accused persons in the aforesaid vehicle. There is no provision under the NDPS Act to restrict the power of the trial Court to release the vehicle in interim custody. It has been held by this

High Court in the case of Pandurang Kadam Vs. State of M.P. 2005(2) ANJ MP 351, that notwithstanding the fact that the vehicle is liable to be confiscated under Section 60 of the NDPS Act, it may be released in interim custody in appropriate cases. Thus, interim custody should not be denied to the owner of the vehicle, simply because it is liable to be confiscated under Section 60 of the NDPS Act. Further, the High Court of Tripura, Agartala in the case of Shri Sankar Das Vs. State of Tripura (Cri. Petition No. 9 of 2018 dedcided on 16.03.2018) has held in paras 9, 10, 11, 12 and 13 as under:-

"[9] Substantively, directions in Union of India vs. Mohanlal (supra) are concerned with the storage and disposal of the narcotic drugs and psychotropic substances. However, in Para-31.2 of the said decision in respect of storage, the reference has been made to conveyance as well. Similarly, in the notification dated 16.01.2015 the provision has been made for disposal of the narcotic drugs and psychotropic substances, controlled substances or the conveyances under Section 52A of the NDPS Act. Clause 4 of the said notification provides as under:

3 CRR-1751-2020 "4. Manner of disposal - (1) Where any narcotic drug, psychotropic substance, controlled substance or conveyance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53 of the said Act or if it is seized by such an officer himself, he shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances as per Annexure 1 to this notification and apply to any Magistrate under sub-section 9(2) of section 52A of the said Act as per Annexure 2 to this notification within thirty days from the date of receipt of chemical analysis report of seized narcotic drugs, psychotropic substances or controlled substances.

(2) After the Magistrate allows the application under sub-

section (3) of section 52A of the said Act, the officer mentioned in subparagraph (1) shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit details of the seized items to the Chairman of the Drug Disposal Committee for a decision by the Committee on the disposal, and the aforesaid officer shall send a copy of the details along with the items seized to the officer- in- charge of the godown."

[10] The question, therefore, emerges is that whether the Magistrate under sub Section 52A (2) has any authority to direct disposal?

Bare reading of the said provision would show no such direct authority has given to the Magistrate. According to the said notification dated 16.01.2015 power of the Drug Disposal Committee has been authorized to dispose [see para-7] but no reference in respect of the disposal of the conveyance is available except to include the word 'conveyance'. That perhaps be the reason why the special court has refused to release the vehicle. But the authority can be derived if Section 60(3) and Section 63 of the NDPS Act are read for this purpose.

[11] Let us further examine whether the said provision is 4 CRR-1751-2020 self-contained code. From the reading of the entire notification dated 16.01.2015, it would appear that the Drug Disposal Committee has no other power except to act in the mode as prescribed for disposal, as provided in Para-9(5) (e). The following mode has been provided:

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

Such disposal in terms of the Para-9(5)(e) only be possible after the confiscation proceeding is complete. Without confiscation, the disposal of the seized conveyance within the scheme of the NDPS Act, 1985 cannot be visualized and as such, the ancillary question that emerges is that whether the said notification has provided a mechanism for disposal without confiscation inasmuch as Section 60(3) has clearly provided that 'any animal or conveyance used in carrying any narcotic drug or psychotropic substance or controlled substance or any article liable to confiscation under sub Section (1) or sub Section (2) of Section 60 shall be liable to confiscation unless the owner of the animal or the 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.

[12] It is thus apparent that Section 60(3) of the NDPS Act has made provision for protecting the interest of an innocent owner before confiscating his vehicle. The procedure of confiscation has been made under Section 60(3) of the NDPS Act which provides that in the trial of offences under the NDPS Act, whether the accused is convicted or acquitted or discharged the Special Court shall decide whether any article or thing seized under this act is liable to confiscation under Sections 60,61 or 62 and if it decides that that the seized articles or things are liable to be confiscated it may order confiscation accordingly. The procedure for confiscation has been further elaborated under sub Section 2 of Section 63 of the NDPS Act. A substantive reading of Section 63 5 CRR-1751-2020 read with Section 60(3) of the NDPS Act would provide that until the trial is over the confiscation proceeding cannot be initiated. However, exception has been carved out in proviso-es to sub Section 2 of Section 63 of the NDPS Act. The first proviso provides that no order of confiscation of an article or thing shall made be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim. The second proviso to sub-Section 2 of Section 63 of the NDPS Act provides further that if any such article or thing, other than a narcotic drug, psychotropic substance, controlled substance, the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold.

[1 3] A conjoint reading of proviso-es as referred above would certainly allow a prudent person to infer that immediate disposal would mean the disposal after expiry of one month and that would apply to articles or things other than the narcotic drugs, psychotropic substance, controlled substances, the opium poppy, coca plant or cannabis plant which are liable to speedy and natural decay. If the court is of the opinion that sale would be beneficial for its owner it may any time direct it to be sold. In that event the Drug Disposal Committee shall make all arrangements for sale of

those things or articles. So far the conveyance [of which ownership has been claimed] is concerned, its involvement in carrying out the offence has to be proved in the trial and on such proof, the proceeding for confiscation may ensue in terms of Section 63(1) of the NDPS Act and the confiscation only be made after affording a reasonable opportunity of being heard to the person who has any right or claim over the said conveyance. Such confiscation can be done only after the trial is complete and the Special Court decides for confiscation as the court is to see that the vehicle or conveyance which was used for commission of offence under the NDPS Act is not made available to the person or persons who 6 CRR-1751-2020 indulged in the blameworthy act. 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 NDPS Act to protect an innocent owner before confiscating his vehicle or conveyance. Thus, there is a right to the owner who claimed within 30[thirty] days from the day of seizure, his title over the vehicle to have interim custody of the said vehicle subject to the adequate security till completion of the trial. In absence of any contrary provision in Union of India vs. Mohanlal (supra), this Court is of the view that the vehicle bearing registration No.TR-01-AT-0341 as seized in connection with Khawai P.S. Case No. No.2017/KHW/128 may be released to its registered owner till completion of the trial."

So, it is evident that trial Court is empowered to release the vehicle on supurdginama in pending trial.

On perusal of interim order, the Court below has rejected the application assigning the only reason that the vehicle is piece of evidence but in view of the mandate of Hon'ble the Supreme Court in the case of Sunderbhai Ambalal Desai (Supra), if the seized vehicle is kept standing for long period, the value of said vehicle would be diminished and vehicle would be deteriorated. It is further held that the Magistrate concerned would take immediate action for seeing the power under Section 451 of Cr.P.C. are properly and promptly exercised and article are not kept for a long time at the police station. Therefore, the trial Court is empowered to release the vehicle on supurdginama in pending trial. There is no evidence on record to show that applicant has criminal past and he was involved in similar crimes in the past too. If the seized vehicle is kept standing at the Police Station, the value of the said vehicle would be diminished and the parts of the vehicle would be destroyed.

Accordingly, the present petition is allowed and the impugned order dated 29.05.2020 passed by the 18th Upper Sessions Judge, Bhopal (M.P.), 7 CRR-1751-2020 in Special Case No. 29/2020, is hereby set aside. It is directed that vehicle (Creta Car) bearing registration No. MP-47-CA-2964 be released in favour of the petitioner subject to verification of ownership and on following terms & conditions thereof :-

- (i) That, the petitioner shall produce the necessary documents like original registration, sale-letter etc before the trial Court.
- (ii) That, the petitioner shall furnish a personal bond in the sum of Rs. 10,00,000/- (Rupees Ten Lakhs Only) with one solvent surety in the like amount to the satisfaction of the trial Court on an undertaking to produce the said vehicle before the trial Court as and when required.

(iii) That, the petitioner shall get the vehicle photographs showing the registration number as well as the chassis number of the vehicle. Such photographs shall be taken in the presence of the responsible officer, who will be deputed by the trial Court and to be kept in the file of the case.

(iv) That, the photographs of the petitioner as well as surety must have been placed in the personal bond and bond of surety. Further, the photograph of person identifying him before the Court must also have been placed in the personal bond. The petitioner, surety and person identifying him shall carry their full residential proof.

(v) The petitioner shall undertake not to transfer the ownership of the vehicle and shall not lease it to anyone and not make or allow any changes in it to be made so as to make unidentifiable.

(vi) The petitioner will not allow the vehicle to be used in any anti-social activities.

(vii) In the event of confiscation order by the Court competent, the petitioner shall keep the vehicle present positively for confiscation.

A copy of this order be sent to the learned trial Court concerned for necessary compliance.

Certified copy as per rules.

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JUDGE

(RAJENDRA KUMAR SRIVASTAVA)
CRR-1751-2020

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