2026:AHC:227922

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 8039 of 2025

Reserved

Payal Sharma

.....Revisionist(s)

Versus

State Of U.P. And 2 Others

.....Opposite Party(s)

Counsel for Revisionist(s)	:	Ajay Kumar Pandey
Counsel for Opposite Party(s)	:	G.A.

Court No. - 85

HON'BLE SANJIV KUMAR, J.

1. Heard Sri Ajay Kumar Pandey, learned Counsel for the revisionist and Sri Anil Kumar Mishra, learned A.G.A. for the State.

2. This criminal revision has been filed against the order dated 22.05.2025 passed by the Special Judge (Drugs and Cosmetics Act)/Additional Session Judge, Court No.9, Agra in Case Crime No.348 of 2023 under Section 8, 21, 22, 25, 27 A, 29 & 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short ‘NDPS Act’) and Section 17 (b), 27 (c), 28 (c) and 27 of the Drugs and Cosmetics Act, 1940, Police Station Jagdishpura, District Agra.

3. By the impugned order, the learned Trial Court has rejected Application No.1855 of 2025 filed by the revisionist/applicant, seeking the release of the seized disputed immovable property.

4. It is submitted by learned Counsel for the revisionist that the impugned order is not sustainable in the eye of law, as the learned Trial Court has passed the same without applying its judicial mind. The revisionist is neither named in the FIR nor she is an accused in the present case. She is the owner of the disputed property. It is further submitted that opposite parties, under the pretext of exercising the powers of search and seizure conferred under the NDPS Act and the Drugs and Cosmetics Act, has unlawfully sealed the premises belonging to the revisionist. It is also submitted that there is no provision under either of the aforesaid Acts

authorizing to seal the premises. It is well-settled law that the sealing of premises for the purpose of securing evidence can only be temporary and not permanent. The premises of the revisionist were raided on 08.07.2023 and sealed on the same day on the basis of the machines found therein. However, more than two years have elapsed and the opposite parties have neither removed the machines nor recorded any evidence nor released the property to its rightful owner, i.e., the revisionist. Therefore, the continued sealing of the premises is illegal and unsustainable in law.

5. Learned counsel for the revisionist has relied upon the judgment of the Hon'ble Supreme Court in **Nevada Properties Private Limited Through its Director v. State of Maharashtra and Another**, reported in **(2019) 20 SCC 119**. The relevant portion of paragraph-9 of the said judgment is reproduced hereinbelow:

> "***9.*** *Reference in this regard can also be made to Jagdish Chander v. State [Jagdish Chander v. State, 1989 SCC OnLine Del 403 : (1990) 40 DLT 233] , wherein the petitioner had challenged the seizure action of the police on the ground that the word "seizure" appearing in Section 102 of the Code would imply actual taking of possession and, therefore, would not include immovable property. This contention was not answered and left open as the Delhi High Court came to the conclusion that the seizure order therein under Section 102 of the Code was not in accordance with the statutory requirement as the property should be discovered under circumstances which create a suspicion of the commission of an offence, that is, the police officer should come across certain property in circumstances which create in his mind a suspicion that an offence has been committed. Section 102, it was held, would not be attracted where the property has not been traced or discovered which leads to a suspicion of an offence having been committed. Discovery of property should precede the detection of crime."*

6. Learned Counsel for the revisionist has also relied upon the decision of the Bombay High Court in **Narayan Power Solutions vs. Union of India**

and Another reported in 2023 SCC Online Bom 1499. The relevant paragraph No.8 is quoted hereinbelow:-

> "*8. We are thus of the opinion that the Customs authorities would not have an explicit power under section 105 of the Customs Act to seal the premises. This also for the reason that sealing of premises, is a drastic action. It results in tinkering with substantive rights of a person to hold, use and occupy any immovable property. The property may be used for the business purposes or otherwise, hence, any action to seal the premises would have a direct bearing and effect on legal rights of the person to use and occupy the premises as guaranteed by article 300A of the Constitution. The action of sealing would amount to suspension or taking away of such legal right, which cannot be resorted unless the procedure in law is adopted, namely, in a given case an opportunity of a hearing being granted unless the law otherwise would so prescribe. Once the sealing of the premises is of business premises, it would adversely affect the right to carry on business which is a fundamental right as guaranteed under section 19(1)(g) of the Constitution. In our opinion, it is for such reasons in providing for powers under section 105 of the Customs Act of search, the Legislature has kept out and/or has not included within its purview a power to seal, and has confined the power only to search the premises.*"

7. Learned Counsel for the revisionist has further submitted that the right to property is a Constitutional right guaranteed under Article 300A of the Constitution of India and no person can be deprived of his property except by authority of law. The learned Trial Court has failed to consider this legal position, therefore, the impugned order is liable to be set aside.

8. Per contra learned A.G.A., appearing on behalf of the State/opposite parties, has submitted that there is no illegality or infirmity in the impugned order. The premises were seized on the apprehension that it might be misused in future. Hence, the present revision has no force and is liable to be dismissed.

9. Considering the submissions of learned Counsel for the parties and upon perusal of the record, it is evident that, by the impugned order, the application filed by the revisionist/applicant for the release of the immovable property in her favour was rejected on the ground that there was a strong possibility of the property being misused, if released. In the present case, an FIR was lodged against the named accused under Sections 8, 21, 22, 25, 27-A, 29 and 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 17(b), 27(c), 28(c) and 27 of the Drugs and Cosmetics Act, 1940. Admittedly, the revisionist/applicant is neither named in the FIR, nor charge-sheet has been filed against her. It is also not disputed that the revisionist/applicant is the owner of the disputed property. According to the prosecution, illegal cough syrups, narcotic substances, machines, equipments and other materials were recovered from the disputed property by the informant and the accompanying police team. It is not in dispute that, after investigation, charge-sheet has been filed for offences punishable under the Indian Penal Code and the Narcotic Drugs and Psychotropic Substances Act, but no charge-sheet has been filed under the Drugs and Cosmetics Act. At the time of the alleged recovery, the aforesaid property was sealed along with the machines and other equipments found therein.

10. Learned Counsel for the revisionist has submitted that there is no provision under the Drugs and Cosmetics Act, the Narcotic Drugs and Psychotropic Substances Act, or the Code of Criminal Procedure, authorizing to seal a house or other immovable property for an indefinite period. Learned A.G.A. could not point out any provision under the aforesaid Acts or the Code of Criminal Procedure, under which the property could be sealed for indefinite period, on the ground that the offence might be repeated. Under Sections 22(1)(c) and 22(2A) of the Drugs and Cosmetics Act, the concerned Inspector is empowered to direct a person not to dispose of the stock of drugs for a period of twenty days. However, no provision of the said Act was brought to the notice of the Court authorizing the sealing of immovable property in connection with an offence under the said Act.

11. So far as Section 42(1)(c) of the NDPS Act is concerned, the drug or substance and all materials used in its manufacture may be seized, along

with any other article, animal or conveyance liable to confiscation. Section 63(1) of the NDPS Act provides for an order of confiscation where the accused is convicted, acquitted or discharged and the Court decides that any article or thing is liable to confiscation. Section 68F of the NDPS Act provides for the seizure or freezing of illegally acquired property where the officer concerned is of the opinion that such property has been illegally acquired and is likely to be concealed or transferred in a manner that may frustrate proceedings relating to its forfeiture. In this regard, the officer is required to furnish information to the competent authority after following the prescribed procedure. Section 68Z of the NDPS Act provides for the release of property in certain cases. Nothing has been brought on record to show that the property was sealed in compliance with any provision of the NDPS Act or the Drugs and Cosmetics Act.

12. The Hon'ble Supreme Court in **Nevada Properties Private Limited Through its Director (supra)** has clarified that the general power of the police to seize property, under Section 102 Cr.P.C., (corresponding to Section 106 B.N.S.S.) does not include the power to attach, lock or seal immovable property on the mere suspicion of an offence. No provision was brought to the notice of the Court that empowers an Inspector to lock or seal a building permanently on the apprehension that the owner might manufacture or sell illegal drugs in the future. Sealing of property may be a temporary measure, but it cannot be permanent in nature unless permitted under law. Preventive sealing of immovable property in the absence of an existing violation and lawful statutory authority violates Article 300-A of the Constitution of India, which guarantees that no person shall be deprived of his property save by authority of law. Therefore, to seal or attach a property, there must be an existing violation or an express statutory provision authorizing such action and the procedure prescribed by law must be followed.

13. In view of the above, in the absence of any evidence to show that the property was permanently sealed under any provision of law authorizing such action, the same cannot be kept permanently sealed merely on the apprehension that the offence may be repeated in future. The Trial Court has rejected the release application solely on the ground that the property

may be misused in future. Thus, the finding on which the application for release was rejected has no legal basis.

14. In view of the above, the revision is **allowed**. The impugned order dated 22.05.2025 is hereby **set aside**. The Trial Court is directed to decide the release application of the revisionist afresh, in the light of the observations made above and in accordance with law, expeditiously.

(Sanjiv Kumar,J.)

November 3, 2026
Amit

Digitally signed by :-
AMIT KUMAR
High Court of Judicature at Allahabad