

**IN THE COURT OF SH. NAROTTAM KAUSHAL,  
PRINCIPAL DISTRICT & SESSIONS JUDGE (S.W.),  
DWARKA COURTS, NEW DELHI**

**CR No.-CR/76/2021**

**CNR No.-DLSW010049002021**

**MEMO OF PARTIES**

**STATE (GOVT. OF NCT OF DELHI)**

**Petitioner...**

**1 VINAY AGARWAL**

**2 AKASH VASHISHT**

**Respondents...**

**DATE OF INSTITUTION : 08.05.2021  
DATE OF ARGUMENTS : 08.05.2021  
DATE OF ORDER : 08.05.2021**

Argued by:- Sh.V.K.Swami, Ld. Addl. PP for the State/ petitioner

**ORDER**

1.1 Challenge in the present revision petition is to order dated 05.05.2021 passed by Ld.MM-04, District S.W., Dwarka, New Delhi; vide which 12 concentrators seized by the Police were directed to be used during the period of investigations/ trial by family and personnel of Police department, which fall in the category of front line workers and Judicial Officer & their families. The order was passed on an application seeking release of seized property 'for use by police personnel as well as public, as and when

required.’

1.2 Sh.V.K.Swami, Ld. Addl. PP for the State has submitted that notice of the present revision petition to the respondents i.e. the accused persons, from whose custody the articles were seized, can be dispensed with, at this stage.

2 Aggrieved by the Order, vide which the case property has been temporarily put to use by Delhi Police Officials and the Judicial Officers and their families, present revision petition has been preferred.

3 Sh.V.K.Swami, Ld. Addl. PP for the State/ petitioner, has firstly argued that the order is in violation of Sec.-6 (E) of Essential Commodities Act, which provides Collector to be the competent Authority to order possession, delivery, disposal, release or distribution of the case property. Secondly, it has been argued that the Hon'ble High Court of Delhi in *W.P. (C) No.-5073/2021 titled as Venkateshwar Hospital Vs. Govt. of NCT & Ors.*, vide its order dated 29.04.2021 has directed that in case of seizure of Medicines/ Oxygen Cylinders, the same should be informed to the Concerned District Commissioner and the District Commissioner should proceed to pass orders for release of the same without any delay. Sh.Swami has further argued that the oxygen Concentrators should be released to such facilities, where they could be used round the clock for those, who needed it the most.

4 I have heard Sh.V.K.Swami, Ld. Addl. PP for the State/ petitioner and with his assistance, I have perused the impugned Order and the Judgement relied upon.

5 For ready reference, Sec.-6E of the Essential Commodities Act is reproduced hereinbelow:-

*6E.Bar of jurisdiction in certain cases.- Whenever any essential commodity is seized in pursuance of an order made under section 3 in relation thereto, or any package, covering or receptacle in which such essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation under section 6A, the Collector, or as the case may be, the State Government concerned under section 6C shall have, and, notwithstanding anything to the contrary contained in any other law for the time being in force, any Court, tribunal or other authority shall not have, jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering receptacle, animal, vehicle, vessel or other conveyance.*

At the threshold, a query was put to Ld. Addl. PP, as regards the notification, vide which the seized articles viz. Oxygen Concentrators were notified to be an Essential Commodity. On instructions from the IO, Ld. Addl. PP submitted that no such notification was available, as yet. Ld Addl. PP, however brought to the notice of this court OM dtd. 29.06.2020 issued by GOI seeking

to monitor the Maximum Retail Price of Medical Devices, including Oxygen Concentrators. This OM, does not, in any case, declare Oxygen Concentrators to be Essential Commodity. In the aforesaid facts & circumstances, when no notification declaring the Oxygen Concentrators to be essential commodity has been placed on record by the IO; evidently the provisions of Sec.-3/7 of the Essential Commodities Act are not attracted. IO was probably clear of this position, that is why the application for release of the case property was moved by him before the Ld. MM and not before the District Magistrate, as is the mandate of Sec.-6E of the Essential Commodities Act.

6 Thus, the seized articles having not been notified to be essential commodity, reference to the provisions of Essential Commodities Act or the procedure prescribed therein for release of the case property, is misplaced. The trial court has, thus, not erred in exercise of the jurisdiction, so invoked by the IO. Order passed by Ld. MM on this score can not be said to be illegal.

7 Next argument raised by Sh.Swami, Ld. Addl. PP is based on the law laid down by Hon'ble High Court of Delhi in ***Venkateshwar Hospital's*** case (supra). For ready reference, para no.-18 of the same is reproduced hereinbelow:-

*18. Whenever any seizure is made of the medicines/ Oxygen Cylinders, the IOs should immediately inform the concerned District Commissioner about the same, and they should also proceed, without waiting for any further*

*orders, to ascertain the genuineness of the said medicines. They should also ensure that the said case property is kept in refrigerated environment, so that the same does not lose its efficacy and become non-usable. The District Commissioners should proceed to pass orders for release of the same without any delay.*

In view of the aforesaid observation of the Hon'ble High Court of Delhi, IO ought to have immediately informed the District Magistrate and placed the seized machines at the disposal of District Magistrate for suitable utilization during the period of investigation/ trial.

8           A perusal of the impugned Order reveals that Ld. MM was greatly influenced by the fact that two Judicial Officers had lost their lives in battle with Covid 19. One of them being his own brother colleague with who he shared the corridors. As I pen down this order, judicial fraternity has lost one more officer, who also succumbed to be Covid-19 virus . Ld. MM in his zeal to provide life saving machines to front line workers i.e. the Delhi Police and to his judicial fraternity was so dazzled that he forgot that a judge on account of the office he occupies has to act & behave like a self-less, dispassionate saint. He has to rise above the interests of self and his ilk. Benevolent and well-intended, his act may be; the same can-not breach the Constitutional provisions of equality. On the touchstone of these morals & principles of law, Ld. MM seems to have faltered. Impugned order dtd. 5.5.2021, thus, is not sustainable and is set

aside.

9 IO shall be, within his rights to move a fresh application before the appropriate authority viz. the District Magistrate, in terms of orders passed by Hon'ble High Court in *Venkateshwar Hospital's* case (*supra*) or on the basis of notification, if any, declaring the seized articles to be essential commodity. Needless, to say he must act without wasting time.

10 The impugned Order dated 05.05.2021 passed by Ld.MM- 04, S.W., Dwarka Courts, New Delhi is, therefore, set aside. Revision petition is, accordingly, allowed.

11 Copy of this order be sent to trial court. Copy be also e-mailed to Ld Additional PP. Revision file be consigned to record room.

Announced through  
Video Conference on  
08.05.2021

(**NAROTTAM KAUSHAL**)  
Principal District & Sessions Judge (S.W.)  
Dwarka, New Delhi