

HIGH COURT OF MADHYA PRADESH**MCRC-38089/2021****(SURENDRA DHAKAD Vs THE STATE OF MADHYA
PRADESH)****Gwalior, Dated: 13.01.2022**

Shri Amit Lahoti, learned counsel for the petitioner.

Shri Ramadhar Chaubey, learned Public Prosecutor for the respondent/State.

This petition under Section 482 of the Code of Criminal Procedure is directed against the order dated 18.06.2021 passed by learned 7th Additional Sessions Judge, Morena in Criminal Revision No.33/2021 by which the petitioner's revision under Section 397 Cr.P.C. for grant of interim custody of the vehicle seized for commission of offence under Section 8/20 of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short "the NDPS" Act) has been rejected finding no merit.

2. The petitioner is registered owner of Tata Tigor Car bearing registration No. MP07-TA2281, which was found involved in the commission of offence punishable under Section 8/20 of the NDPS Act. He filed an application under Section 457 Cr.P.C. for interim custody of the aforesaid vehicle before learned Judicial Magistrate First Class, Morena which was rejected on 04.06.2021 against which he filed a revision before the 7th Additional Sessions Judge, which was also dismissed holding that since the vehicle in question is liable to be confiscated under Section 60 of the NDPS Act, therefore, it

cannot be directed to be released on interim custody.

3. Shri Amit Lahoti, learned counsel for the petitioner submits that though the vehicle seized is liable to be confiscated under Section 60 of the NDPS Act, yet, by virtue of Section 36-C of the NDPS Act as well as by virtue of Section 51 of the NDPS Act, the provisions contained in Section 451 or 457(1) of the Cr.P.C. would be applicable as none of the provisions of the NDPS Act are inconsistent with the provisions of the Cr.P.C. and therefore, in a deserving case, the right of interim custody provided under Section 451 or 457(1) of the Cr.P.C. cannot be denied and if the vehicle is allowed to remain in police station till the trial is concluded, it will go waste and it will be contrary to the decision of the Supreme Court in the matter of **Sunderbhai Ambalal Desai Vs.State of Gujarat (2002 (10) SCC 283)**.

4. On the other hand, Shri G.P.Chaurasia, learned Public prosecutor appearing for the respondent/State submits that in view of the provisions contained in Section 60 of the NDPS Act, the vehicle in question is not liable to be released in favour of the petitioner.

5. Heard learned counsel for the parties and considered the rival submissions made herein-above and also gone through the records.

5. Section 60 of the NDPS Act provides for confiscation of vehicle seized in commission of the offence punishable under the provisions of the NDPS Act, which states as under:-

"60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.-(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 be confiscation.

(2) Any narcotic drug or psychotropic substance 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 or controlled substances which is liable to confiscation under sub-section (1) and there receptacles, packages and coverings in which any narcotic drug or psychotropic substance 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 or controlled substance, 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. "

6. The aforesaid provision does not provide for confiscation of any vehicle immediately after its seizure. Confiscation is a separate procedure unconnected with conviction, acquittal, or discharge of the accused. It is only satisfaction of the court trying an offence under the Act, to decide as to whether the vehicle is liable to be confiscated or not. A detailed procedure for making confiscation under Section 60 of the NDPS Act has been provided in Section 63 of the NDPS Act which provides as under:-

"63. Procedure in making confiscations.-(1) IN the trial of offences under this Act, whether the accused is

convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.

(2) Where any article or this seized under this Act appears to eb liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into an decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of an article or this shall be made until the expiry of one month form 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:

Provided 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 directed it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale."

7. As such, by virtue of Section 60 of the NDPS Act, any conveyance used for commission of offence is liable to confiscation in accordance with Section 63 of the NDPS Act after hearing the person who may claim any right thereto and considering the evidence, if any, which he may produce in support of the claim and confiscation order can be made only at the end of the trial. Neither of the said provisions (Section 60 and 63 of the NDPS Act) contained in the Act empowers the trial Court to make an order for proper custody of such a conveyance pending trial.

8. At this stage, it would be appropriate to notice Section 51 of the NDPS Act which provides as under:-

"51. Provisions of the Code of Criminal

Procedure, 1973 to apply to warrants, arrests, searches and seizures.- The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, all the warrants issued and arrests, searches and seizures made under this Act."

9. By virtue of Section 51 of the NDPS Act, the provisions of the Code of Criminal Procedure, 1973 have been made applicable in so far as they are not inconsistent with the provisions of the Act, to all warrants issued and arrests, searches and seizures made under the Act. Since the provision contained in Section 451 of the Cr.P.C. providing provision for interim custody in so far as it relates to passing of order for proper custody of conveyance pending conclusion of trial, is not inconsistent with any of the provisions including Sections 60(3) and 63 of the NDPS Act, in appropriate cases order for release of conveyance used for carrying narcotic drugs pending conclusion of trial can be under Section 451 of the Cr.P.C. (See **B.S.Rawant v. Shaikh Abdul Karim and another**).

10. However, any Amendment Act No.2 to 1989, the NDPS Act was amended and Section 36-C was inserted in the Act making the provisions of the Cr.P.C. applicable to the proceedings before the Special Court. Section 36-C of the NDPS Act states as under:-

"36-C. Application of Code to proceedings before Special Court - Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purpose of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a 'Special Court' shall be deemed to be a Public Prosecutor".

11. By virtue of Section 36-C of the NDPS Act, "Save as otherwise provided in this Act", the provisions of the Cr.P.C. have been made applicable to the Special Court constituted under the provisions of the NDPS Act by Amendment Act No.2 of 1989 with effect from 29.5.1989. "Save as otherwise provided in the Act" employed in Section 36-C of the NDPS Act, is indicative of/reflection of the word "exception" intended to exclude some provisions of the Cr.P.C. like Section 360 Cr.P.C. etc., which have been expressively excluded by the NDPS Act by Sections 32A and 33 of the NDPS Act. As such, the above stated phrase has qualified the operation of the Cr.P.C. in the proceedings before the Special Court to the extent provided in the NDPS Act. Once the Cr.P.C. has been made applicable, the provisions of the Cr.P.C. contained in Sections 451 and/or 457 of the Cr.P.C. would automatically be attracted. As such, with effect from 29.5.1989, the Cr.P.C. as a whole, subject to the exception carved out as noticed herein-above, has been made applicable to the proceeding before the Special Court (NDPS) and therefore application under Section 451 or 457 of the Cr.P.C. for interim custody of the vehicle seized in commission of offence punishable under the NDPS Act would be maintainable and the Special Judge (NDPS) is empowered to consider the application under Section 451/457 of the Cr.P.C. on merit.

12. In **Principles of Statutory Interpretation** by Justice G.P.,Singh, it has been held that the bar of jurisdiction has to be

strictly construed and unless it is expressly barred, bar cannot be inferred or implied and this principle is also applicable to criminal court.

13. In the matter of **Rajasthan State Road Transport Corporation and others v. Mohar Singh**, their Lordships of the Supreme Court relying upon the above-stated celebrated text (Principles of Statutory Interpretation by Justice G.P.Singh), held as under:-

"21. We may in this behalf profitably notice the following excerpts from Principles of Statutory Interpretation (11th Edn.) by Justice G.P.Singh:

"It is a principle by no means to be whittled down' and has been referred to as a 'fundamental rule'. As a necessary corollary of this rule provisions excluding jurisdiction of civil courts and provisions conferring jurisdiction on authorities and tribunals other than civil courts are strictly construed. The existence of jurisdiction in civil courts to decide questions of civil nature being the general rule and exclusion being an exception, the burden of proof to show that jurisdiction is excluded in any particular case is on the party raising such a contention. The rule that the exclusion of jurisdiction of civil court is not to be readily inferred is based on the theory that civil courts are courts of general jurisdiction and the people have a right, unless expressly or impliedly debarred to insist for free access to the courts of general jurisdiction of the State. Indeed, the principle is not limited to civil courts alone, but applies to all courts of general jurisdiction including criminal courts. the rule as stated above relating to strict construction of provisions excluding jurisdiction of courts of general jurisdiction was recently expressly approved by the Supreme Court."

14. Since the provisions of the Cr.P.C. including Section 451/457 have been expressly made applicable by virtue of Section 36-C of the NDPS Act to the proceedings before the Special Court (NDPS) and

there is no express bar contained in the NDPS Act for grant of interim custody as contained in Section 52C of the Indian Forest Act, 1927, as amended by the M.P. Amendment Act, 1983, therefore, merely on the ground that the vehicle is liable to confiscation under Section 60 of the NDPS Act, it cannot be held that once the vehicle is seized for commission of offence under the NDPS Act, interim custody cannot be granted, as jurisdiction of criminal court has to be construed strictly unless expressly excluded.

15. The Supreme Court in **Sunderbhai Ambala Desai** (supra) has laid down parameters for considering the application for interim custody expeditiously and judiciously so that the owner of the article would not suffer because of its remaining unused or by its misappropriation and court or the police would not be required to keep the vehicle in safe custody. It was observed as under:-

" 7. In our view, the powers under Section 451 Cr.P.C. 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 vehicle in safe custody;

3.if the proper panchanama before handing over possession of 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. In view of the above, the finding of the Court below that since the vehicle is liable to be confiscated, interim custody under Section

451/457 of the Cr.P.C. cannot be granted, is liable to be set aside and accordingly, the impugned orders dated 04.06.2021 and 18.06.2021 passed by Judicial Magistrate First Class, Morena as well as Seventh Additional Sessions Judge, Morena are hereby set aside. Accordingly, by allowing the application, the vehicle is ordered to be released on following conditions:-

(i) It is ordered that on furnishing personal bond of **Rs.2,50,000/- (Rupees Two Lac Fifty Thousand Only)** with one solvent surety in the like amount to the satisfaction of the trial Court by the petitioner, the aforesaid vehicle (Tata Tigor bearing registration No. MP 07-TA 2281) shall be handed over to the respective petitioner on *Supurdginama* on proving ownership of the same;

(ii) whenever it would be required by the competent Court the same will be produced on petitioner's own expenses at the place as would be directed in this regard;

(iii) at the time of release of the vehicle on *Supurdginama*, the aforesaid Authority shall ensure to take note of chassis number, engine number and registration number of the aforesaid vehicle and keep on record;

(iv) the petitioner shall neither alter or change the condition of the aforesaid vehicle in any manner whatsoever during pendency of the litigation;

(v) the petitioner shall not create any third party rights over the aforesaid vehicle;

(vi) the petitioner shall not fiddle with or scratch or erase numbers engraved in the chassis and engine of the vehicle;

(vii) in the event, all or any of the aforesaid conditions are found to have been violated, the respondent / State is at liberty to move this Court to such modification / variation of the order passed by this Court today.

With the aforesaid, this application stands disposed of.

(Deepak Kumar Agarwal)
Judge

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