

HIGH COURT OF TRIPURA
AGARTALA

CRL PETN 32 OF 2022

Shri Bal Krishna Mishra

.... Petitioner

Vrs.

The State of Tripura

...Respondent.

Present:

For the petitioner (s) : Mr. S. Lodh, Advocate.

For the respondent (s) : Mr. R. Datta, P.P.
Mr. S. Debnath, Addl. P.P.
Mr. S. Ghosh, Addl. P.P.

Date of hearing and
delivery of judgment : 14.07.2022
& order

Whether fit for : Yes
reporting

HON'BLE MR. JUSTICE ARINDAM LODH
Judgment and Order(Oral)

Question arises for consideration in this criminal petition is whether Section 63 of the NDPS Act mandates the owner of a seized vehicle to file an application for releasing the vehicle on bail within one month from the date of its seizure, and such owner cannot file any

application or claim for releasing his seized vehicle after expiry of one month.

2. A brief narration of facts may be outlined herein below:-

The police have detained and seized one TATA Ultra 1518 Truck, bearing No.MH-04-JK-8349 and recovered huge quantity of contraband articles. Driver of the vehicle was arrested. A case was registered as TLM PS Case No. 2021 TLM 059, under Section 20(b)(ii)(c)/25 and 29 of the NDPS Act. The owner of the vehicle filed an application on 23rd March 2022 before the learned Special Judge, Khowai District for releasing the vehicle on bail, but, after expiry of one month. While disposing of the said bail application, learned Special Judge relied upon a judgment passed by this court in ***Crl. Petn. No.8 of 2018 [Kishan Singh Vrs. The State of Tripura, disposed of on 16.03.2018]***, wherein it was observed thus:

“... 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...”

3. Having quoted the aforesaid observation, the learned Special Judge has recorded a finding in the order dated 01.06.2022, passed in Special (NDPS) 01 of 2022 as follows:-

“In the instant case the petitioner did not pray for the vehicle within 30 days from the date of seizure.

Hence, in view of the judgment passed by the Hon’ble High Court of Tripura in Kishan Singh Vrs. State of Tripura, the petitioner is not entitled to get interim custody i.e. bail of the said vehicle at this stage. Hence, the petition praying for releasing the vehicle is rejected.”

4. Feeling aggrieved, and dissatisfied with the aforesaid impugned order, the owner of the vehicle has approached this court and urged to interfere with the impugned order in exercise of its inherent power vested under Section 482 of CrPC.

5. I have heard Mr. S. Lodh, learned counsel appearing for the petitioner and Mr. R. Datta, learned Public Prosecutor along with Mr. S. Debnath and Mr. S. Ghosh, learned Additional Public Prosecutors appearing for the State-respondent.

6. Mr. Lodh, learned counsel appearing on behalf of the petitioner has submitted that Section 63 of the NDPS Act does not contemplate that an owner has to file an application for releasing his vehicle within a period of 30 days from the date of seizure.

7. On the other hand, learned P.P. appearing on behalf of the State of Tripura has defended the impugned order passed by learned Special Judge and candidly submits that the views taken by learned Special Judge was based on the principle laid down by this court in the case of ***Kishan Singh (supra)***.

The above submissions of the learned counsels lead this court to peruse Section 63 of the NDPS Act, which reads 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 thing seized under this Act appears to be 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 and decide such liability, and may order confiscation accordingly:*

Provided that no order of confiscation of an article or thing shall 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:..."

8. The proviso of sub-section (2) of Section 63 of the NDPS Act is relevant to decide the issue raised by learned counsels appearing for the parties. A bare reading of the said proviso makes it aptly clear that an order of confiscation of an article or thing shall be made after expiry of one

month from the date of seizure. In other words, an order of confiscation of any article or thing cannot be made by the court within one month from the date of seizure i.e. the court may pass an order of confiscation after expiry of one month. In the opinion of this court, the said proviso of sub-section (2) of Section 63 of the NDPS Act does not contemplate that the owner of the said vehicle cannot file an application for releasing his/her vehicle after expiry of one month. In the instant case, till today no confiscation proceeding has been initiated after expiry of one month from the date of seizure. It is not the mandate of law as embodied under the proviso of sub-section (2) of Section 63 of the NDPS Act that a court must make an order of confiscation after expiry of one month from the date of seizure. The law makers have used the word “may” in sub section (2) of Section 63 of the NDPS Act which means that court is not legally bound to pass an order of confiscation in all the cases as a matter of routine. In the case of **Kishan Singh (supra)**, this court after placing reliance upon the judgment of the Hon’ble Supreme Court of the **Union of India Vrs. Mohanlal**, reported in **(2016) 3 SCC 379** has observed thus:

“Where no one claims the ownership of the vehicle within the stipulated time of 30 days, the court may direct the Drug Disposal Committee for disposal by sale.”

9. The above proposition of law, in my opinion, does not support the plea of the State-respondent that the owner of the vehicle has to file an application for releasing the vehicle on bail within 30 days. What the court

has meant to say, that, in case no owner comes forward to claim the ownership of the vehicle within 30 days, then, the court may pass an order directing the Drug Disposal Committee for disposal of the vehicle by sale. In no way it bars the owner to approach the court and file an application for releasing the vehicle after expiry of 30 days.

10. In the light of above analysis on law, particularly, the proviso of sub-section (2) of Section 63 of the NDPS Act, in my opinion, the learned Special Judge has misconstrued the judgment of this court in *Kishan Singh (supra)* qua Section 63 of the NDPS Act. Accordingly, the learned Special Judge has committed an error of law in rejecting the application of the petitioner for releasing the vehicle in question on bail. As a corollary, the owner of the vehicle may file an application for bail at any stage of the proceeding or even during the proceeding of confiscation.

11. Needless to say, to claim the release of vehicle under seizure, the owner of the vehicle must satisfy the necessary conditions as laid down in sub Section (3) of Section 60 of the NDPS Act which reads as under:

“60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.--

.....

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance 3[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.”

12. Having observed thus, I am inclined to release the vehicle No. TATA Ultra 1518, truck bearing No. MH-04-JK-8349 on bail seized in connection with Teliamura PS Case No.2021 TLM 059, subject to the following conditions:

- (i) It is found that the owner of the vehicle is not a resident of the State of Tripura and he is a resident of Thane, Maharashtra, however, his vehicle carries national permit. In view of this, the owner of the vehicle shall furnish a bail bond of Rs.10,00,000/- (Rupees ten lakh) with two local sureties. If the owner fails to provide two local sureties in that case, the registered owner of the vehicle has to deposit Rs.10,00,000/- (Rupees ten lakh) in cash before the competent court;
- (ii) the owner of the vehicle shall keep the vehicle in good condition and he shall not transfer the vehicle, modify or change the nature and character of the vehicle in any manner whatsoever till disposal of the case now pending

before the court of learned Special Judge (NDPS),
Khowai Tripura;

- (iii) the owner shall produce the vehicle as and when directed by the prosecution or by the court;
- (iv) the learned Special Judge may pass any such direction during trial; and
- (v) it is further made clear that if the sureties fail to produce the vehicle at any point of time during the course of trial or before disposal of the case, then, they have to deposit Rs.10,00,000/- (Rupees ten lakh) in cash to the competent court, and in that respect they have to give an undertaking by way of affidavits which have to be sworn before a Judicial Magistrate, Khowai Judicial District.

In the result, the order dated 01.06.2022, passed by learned Special Judge (NDPS), Khowai Judicial District is set aside and quashed.

With the aforesaid observations and directions, the instant criminal petition stands allowed and disposed.

Case diary is returned.

JUDGE