



IN THE HIGH COURT OF KARNATAKA



KALABURAGI BENCH

DATED THIS THE 5TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR JUSTICE K NATARAJAN

CRIMINAL PETITION NO.200895 OF 2024 (482)

BETWEEN:

KAWAL JEET KAUR
W/O JANG BAHADUR SINGH,
AGE: 69 YEARS,
OCC: BUSINESS,
R/O 3/201, LIC FLAT, SECTOR NO.6,
VIDYA NAGAR, JAIPUR,
RAJASTHAN-302039,
REPRESENTED BY HER POWER OF ATTORNEY,
HOLDER SRI. RAJESH SHARMA
S/O SHRI. SHYAM SUNDAR SHARMA,
AGE: 42 YEARS,
OCC: PRIVATE SERVICE,
R/O G22, GANESH NAGAR,
NEAR GAYATRI NAGAR,
HARMANDA,
JAPUR (RAJASTHAN)-302039.

...PETITIONER

(BY SRI. RAJESH DODDAMANI, ADVOCATE)

AND:

THE STATE OF KARNATAKA
THROUGH EXCISE RANGE OFFICE, INDI,
NOW REPRESENTED BY THE ADDL. SPP,
HIGH COURT OF KARNATAKA,
KALABURAGI BENCH-585103.

...RESPONDENT

(BY SRI. JAMADAR SHAHABUDDIN, HCGP)





THIS CRIMINAL PETITION IS FILED U/S.482 OF CR.P.C. PRAYING TO ALLOW THIS PETITION AND QUASH ORDER DATED 10.07.2024 PASSED BY THE HON'BLE PRINCIPAL DISTRICT AND SESSIONS JUDGE, VIJAYAPURA PASSED IN CRIMINAL MISC. NO. 981/2024 VIDE ANNEXURE-K AND CONSEQUENTLY ALLOW THE APPLICATION FILED U/S. 457 OF CR.P.C., WHICH IS AT ANNEXURE-E AND CONSEQUENTLY RELEASE THE ARTICLES SEIZED BY THE EXCISE RANGE OFFICE, INDI IN CRIME NO. 105/2023-24/1006IE/100606 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 20(b)(II)(B), 25,61,8(B),8(C), 15(C) AND 18(C) OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985, NOW PENDING ON THE FILE OF THE HON'BLE PRINCIPAL DISTRICT AND SESSIONS JUDGE, VIJAYAPURA.

THIS PETITION, COMING ON FOR ADMISSION THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE K NATARAJAN

ORAL ORDER

(PER: HON'BLE MR JUSTICE K NATARAJAN)

This petition is filed by the petitioner/RC holder of the vehicle under Section 482 of Cr.P.C. for setting aside the order passed by the Prl. District and Sessions Judge, Vijayapura dated 10.07.2024 in Crl.Misc. No.981/2024, having dismissed the application under Section 457 of Cr.P.C. and release the vehicle, which was seized by the Excise Range Office in Crime No.105/2023-



24/1006IE/100606 for offences punishable under Sections 15(c), 18(c), 20(b)(ii)(B), 25, 61, 8(b), 8(c) of NDPS Act.

2. Heard the arguments of learned counsel for the petitioner and learned HCGP for the State.

3. The case of the prosecution is that the petitioner is the owner of the goods container vehicle bearing registration No.RJ-14/GG-4191 and he is engaged in the profession of transportation of goods from different parts of the country and the vehicle in question was hired by the Royal India Roadways for transportation of garments. Accordingly, garments were sent along with 12 invoices from Ludhiana, Panjab to Tripura and Coimbatore, Tamil Nadu. When the vehicle was passing near the jurisdiction of Shiradon check post, the vehicle was intercepted and on verification, the Excise Inspector found 10 plastic bags kept below the seat of the driver, which contained opium and Ganja, which was seized and an FIR was registered against the driver of the vehicle. The vehicle along with the Narcotic Drugs was seized and the matter was under investigation. The driver/accused was



remanded to judicial custody. Later on, the accused was enlarged on bail by the Trial Court. The petitioner being the RC holder of the vehicle filed an application under Section 457 of Cr.P.C. before the Special Court for interim custody of the vehicle, which came to be rejected. He filed another application before the Drugs Disposal Committee(DCC), they have also given endorsement seeking clarification from the Commissioner of Excise, Bangalore. Therefore, the petitioner is before this Court.

4. Learned counsel for the petitioner contended that the DCC is not releasing the vehicle, which has nothing to do with the offence committed by the driver of the vehicle under the NDPS Act. The vehicle in question was hired by some private party for transporting their goods. The accused/driver committed an offence by transporting the drugs, without the knowledge of the owner of the vehicle. Yet, the DDC is not releasing the vehicle. The petitioner has placed reliance of the decision of a Division Bench of this Court in Crl.RP.No.623/2020



holding that the Courts have power to release the vehicle for interim custody. Hence, he prays to allow this petition.

5. Learned HCGP has objected to this petition and has filed a report from the Investigating Officer, whereas he has raised objections that, if the vehicle is released, he may use it for commission of other offences, he may use it for absconding and he may sell it. This would delay the proceedings and hence, he prays to dismiss this application.

6. Having heard both the counsel and perused the records, the following points would arise for consideration:

- i) Whether the Sessions Judge being the Special Court under the NDPS Act, is empowered to release the vehicle in view of the judgment of the Division Bench of this Court in Crl.RP.No.623/2020?
- ii) Whether there is any bar for releasing the vehicle by the Court or Magistrate under Sections 451 and 457 of Cr.P.C. (At present Sections 497 and 503 of BNSS,2023).



7. The accused/driver of the lorry, who took the lorry bearing registration No.RJ-14/GG-4191 from Panjab to Tamil Nadu for delivering garments as per the 12 invoices produced, was intercepted near the Shiradon check post by the Excise Department and they found opium and Ganja, which were hid under the seat of the driver. While registering FIR and in the Panchanama, the accused/driver revealed that he was transporting the narcotic drugs without the knowledge of the owner of the vehicle. Hence, it appears that the vehicle in question has nothing to do with the transportation of narcotic drugs.

8. Now the question arises whether the Courts have the power to release the vehicle in question. In this regard, Division Bench of this Court in Crl.RP.No.623/2020 has elaborately held that the Court has the power to release the properties as per the notification No.F.No.V/2/2004-NC.II(L) issued by the Central Government dated 16.01.2015, there is no second opinion with regard to the power of the Court stated by the Division Bench of this Court.



9. Learned Session Judge has rejected the application on the ground that the Central Government has issued a new or fresh notification dated 23.12.2022, vide which, the notification dated 16.01.2015 is repealed.

10. I am of the considered opinion that the order of the Trial Court is not correct and it is misconception of the law and rules or notification dated 23.12.2022. A perusal of the notification dated 16.01.2015 would go to show that there is no rules framed for release of the vehicle for interim custody. The Division Bench of this Court in the aforesaid case has held as follows in para Nos.58 and 59(ii):

*"58. In the judgments relied upon by the learned Counsel for the respondents in the case of **Shajahan -vs- In Inspector of Excise and Others** reported in **2019 SCC On Line Kerala 3685 (DB) (paragrapi-3)** and **Union of India -vs- Mohanlal and Another** reported in. **(2016)3 SCC 379**, there was no occasion to consider the application for release of the interim custody of the vehicle (conveyance) and in that view of the matter, the said judgment relied upon by the learned Counsel for the respondents to the effect that Drug Disposal Committee has power and not the Magistrate or the Special Court under the NDPS Act, have no application to the facts and circumstances of the present petitions".*



"59. For the reasons stated above, we answer the Reference as under:

- i) The Magistrate or the Special Court is conferred with the power/jurisdiction to Consider the application for interim custody of the conveyance/vehicle under the provisions of Sections 451 and 457 of the Code of Criminal Procedure in cases arising out of the provisions of NDPS Act; and*
- ii) The Drug Disposal committee constituted under the Notification dated 16.1.2015 issued by the Central Government under the provisions of Section 52A of the NDPS Act has no authority to consider the application for release of interim custody of the conveyance/vehicle;"*

11. Based upon order of the Division Bench of this Court, the Courts started disposing the applications under Sections 451 and 457 of Cr.P.C. But, in view of the fresh notification issued by the Central Government dated 23.12.2022, though, the earlier notification dated 16.01.2015 has been repealed, there is no clarification for release of the vehicle for interim custody. These rules were framed by the Central Government by exercising the power under Section 76 r/w 52(a) of the NDPS Act. The Central Government has power under Section 76 of the NDPS Act for framing of rules and Section 52(a) provides



guidelines for disposal of the seized narcotic drugs and psychotropic substances. The Central Government has issued new notification only for further clarification. But, there is no clarification in respect of the release of the vehicle for interim custody.

12. Section 60(3) and Section 63 of the NDPS Act read as under:

"Section 60(3): Any animal or conveyance used in carrying any narcotic drug or psychotropic substance ²[or controlled substances], 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."

"Section 63: 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."



13. A bare reading of Section 63 would go to show that the confiscation order shall be passed by the Trial Court. In this case, the trial is not yet begun. The DDC is meant for disposing the drugs and for release of conveyance, there is no rule framed by the Central Government for release of the vehicle for interim custody either in the earlier notification dated 16.01.2015 or the new notification dated 23.12.2022.

14. Such being the case, the judgment of the Division Bench of this Court in the aforesaid case continues to apply, even to the present notification dated 23.12.2022. Therefore, the Special Court/Magistrate has power to release the vehicle in question for interim custody under Sections 451 and 457 of Cr.P.C. and the owner of the shall take defence and he shall prove that the vehicle was used without his knowledge by the person transporting the drugs. Such being the case, until the conclusion of the case, whether with or without the knowledge of the owner, the driver transported the drugs, the conviction or acquittal or discharge will not come in the way of



confiscation of drugs and in respect of the conveyance, it has to be decided by the trial Court.

15. Therefore, I am of the view that the Trial Court has committed an error in dismissing the application holding that it has no power. On the other hand, the judgment of the Division Bench of this Court is applicable for the release of the vehicle for interim custody. The Court always has the power for release of the vehicle for interim custody, till disposal of the main case. Therefore, I am of the view that the order passed by the Trial Court is liable to set aside.

ORDER

Accordingly, the petition is allowed.

The order of the Sessions Judge passed under Section 457 of Cr.P.C. is hereby set aside. The application filed by the petitioner is allowed. The concerned authority/DDC/RO is hereby directed to release the vehicle along with the goods shifted under 12 invoices to the interim custody of the petitioner, subject to the following conditions:

- (i) The petitioner shall execute indemnity bond for Rs.15.00 lakhs with two sureties for the likesum to satisfaction of the Trial Court/investigation officer.
- (ii) The investigation officer shall take the photographs of the vehicle from all the angles



including the goods transported in the vehicle,
for the purpose of future identification of the
vehicle.

- (iii) The owner of the goods transported is entitled
for delivery of the goods from the petitioner.
- (iv) The petitioner shall produce the vehicle as and
when called for the purpose of identification or
in case of confiscation.
- (v) He shall not change the identity of the vehicle
or its nature or the colour of the vehicle, until
disposal of the main case.

Sd/-
(K NATARAJAN)
JUDGE

NJ
CT:SI
List No.: 1 SI No.: 46