

**IN THE COURT OF THE PRINCIPAL DISTRICT & SESSIONS  
JUDGE AND SPECIAL JUDGE (NDPS), AT : DAVANAGERE.**

Present

**Smt. GEETHA. K.B.,** M.A.LL.B.  
Principal District & Sessions Judge  
and Special Judge (NDPS), Davanagere.

*Dated this the 9<sup>th</sup> day of March, 2021*

**SPECIAL CASE (NDPS) NO.7/2020**

**Complainant:-**

State represented by PSI  
Channagiri Police Station.

*(By Learned Public Prosecutor,  
Davanagere.)*

**Versus**

**Accused:-**

Shafir Khan & others.

**Applicant:-**

Rathnamma W/o Kempaiah,  
Aged about 45 years,  
R/o Hattinagara, Vidyanagara,  
Shivamogga.

*(By Sri A.C.Raghavendra – Advocate)*

**ORDER ON APPLICATION FILED U/S.457 Cr.P.C., ON  
BEHALF OF APPLICANT**

1. The learned Advocate for the applicant who is RC owner of the seized vehicle has filed application under Sec.457 of Cr.P.C., praying for release the vehicle bearing

No.KA-51/P-1822 i.e., Innova Car seized in P.F.No.141/2020 dated 10-9-2020 to the interim custody of the applicant.

2. In the application, the learned counsel for the applicant stated that applicant is the RC owner of the seized vehicle. It is further stated that Channagiri Police have seized the said vehicle for involvement of the vehicle in the alleged offence. The police have mentioned the seizure of the vehicle in P.F.No.141/2020 dated 10-9-2020. It is further stated that there is likelihood of the said vehicle being damaged if it is kept idle in the open premises of the police station for sun light, rain and air. It is further stated that applicant is ready and willing to abide by any conditions that may be imposed by this Court; applicant is ready to furnish surety to the satisfaction of the Court and applicant will not change the colour of the vehicle and will not sell the vehicle and ready to execute the indemnity bond. Hence, prayed for allowing the application.

3. The learned Public Prosecutor has filed objections to the above application and contended that the IO has completed the investigation and submitted the charge sheet before this Court. The IO has seized vehicle bearing Reg.No.KA-51/P-1822 while transporting the ganja by the accused persons by drawing panchanama in the presence of panchas and which was used for commission of alleged offences. If the vehicle is released in favour of the applicant, she may alter its identity, he may change its colour and exchange the parts of the vehicle and also she may used the said vehicle for commission of similar offences. Hence, he prayed for dismissal of the same.

4. Heard arguments of both sides.

5. From the above facts, the point that arises for consideration is as follows:

*“Whether the applicant is entitled for release of the seized vehicle?”*

6. Findings of this Court on the above point is in the **negative** for the following-

**REASONS**

7. **Point No.1:-** The learned Counsel for applicant-Rathnamma has filed this application U/S.457 of Cr.P.C., for release of the seized vehicle i.e., Innova Car bearing Reg.No.KA-51/P-1822 mentioned in P.F.No. 141/2020.

8. The present case is registered against the accused persons alleging the offence punishable U/S.8(c), 20(b)(ii)(B) of NDPS Act. Thus, the provisions of NDPS Act are applicable to the present case and not the general provisions of Code of Criminal Procedure.

9. There is specific provision U/S.52-A of NDPS Act regarding disposal of the seized articles. Section 60(3) of NDPS Act specifies that any vehicle used for conveyance of narcotic drug shall be liable to be confiscation unless, the owner proves it was used without his knowledge or connivance of the owner or his agent. However, the said discretion cannot be used by this Court, because as per Section 52-A of the NDPS Act, the Central Government has formed the Drug Disposal Committee ('DDC' in short) and

any articles including the vehicle seized alleging the offence under NDPS Act, then the DDC has absolute power for disposal of such article.

10. In this regard, this Court relies upon the order passed by the Hon'ble High Court of Karnataka in **Criminal Petition No.4792 of 2020**, dated 24/11/2020, between **Zubaida and State of Intelligence Officer NCB, Bengaluru Zonal Unit** wherein their lordship has discussed in length about the judgment passed by the Hon'ble Supreme Court of India in the case of **Union of India Vs. Mohanlal and another [(2016)3 SCC 379]** and the Judgment passed by Hon'ble Keral H.C. in **Sha Jahan Vs. Inspector of Excise and others** reported in **(2019) 4 KLJ 407** and finally held that the Magistrate or Special Court designated for trial of NDPS Act has no competency/power to pass an order regarding the articles seized under NDPS Act, but only the DDC is having such power and thereby disposed off the said criminal petition.

11. In **Union of India Vs. Mohanlal and another**

[(**2016**)**3 SCC 379**], their lordship held as follows:-

**30.3.** Cases in which the proceedings are still pending before the Courts at the level of trial Court, appellate Court or before the Supreme Court: in such cases the heads of the department concerned shall ensure that appropriate applications are moved by the officers competent to do so under Notification dated 16/01/2015 before the Drugs Disposal Committee concerned and steps for disposal of such narcotic drugs and psychotropic and controlled substances and conveyances taken without any further loss of time.

**31.1.** No sooner the seizure of any narcotic drugs and psychotropic and controlled substance and conveyances is effected, he same shall be forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the magistrate with an application under Section 52-A(2) of the Act, which shall be allowed by the Magistrate as soon as may be required under sub-section (3) of

Section 52-A, as discussed by us in the body of this judgment under the heading 'seizure and sampling'. The sampling shall be done under the supervision of the Magistrate as discussed in paras 15 to 19 of this order.

**31.2.** The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities for the exclusive storage of seized narcotic drugs and psychotropic and controlled substances and conveyance duly equipped with vaults and double locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No.1 of 1989 to ensure proper security against theft, pilferage or replacement of the seized drugs.

**31.3.** The Central Government and the State Government shall be free to set up a

storage facility for each district in the States and depending upon the extent of seizure and store required, one storage facility for more than one districts.

**31.4.** Disposal of the seized drugs currently lying in the Police Malkhanas and other places used for storage shall be carried out by the DDCs concerned in terms of the directions issued by us in the body of the judgment under the heading 'disposal of drugs'."

12. In **Sha Jahan Vs. Inspector of Excise and others** reported in **(2019)4 KLJ 407**, their Lordship held in para Nos.5 & 7, which reads as follows:-

**“5.** The main contention urged by the learned Counsel for petitioners is that the conveyances involved in transportation of narcotic drugs or psychotropic substances may not belong to the actual transporter, in which event confiscation and destruction by the competent officer without any inquiry in that regard may affect the rights of the owner of such vehicle. In fact, S.63 of the Act had provided for a procedure in making

confiscation. S.63 given the power to the Court to decide whether any articles or thing seized under the Act is liable to be confiscated in terms of Sections 60, 61 or 62 of the Act. Before the amendment to Section 52-A, conveyance was no included as an item which should be seized and disposed. The very fact that conveyance had been incorporated in the amendment itself indicates that the Government intended to provide a special procedure to deal with such conveyance, while taking into count the fact that most of the transportation are done in conveyances which itself is defined U/s. 2(viii) as meaning 'a conveyance of any description whatsoever including any aircraft, vehicle or vessel.' Therefore, if any vehicle is involved in transportation of narcotic drug, psychotropic substance or controlled substance, such vehicles also could be seized and disposed of in terms of S.52-A(1) of the Act. S.63 was a special procedure available at the inception of the Act and when the statute had been amended giving the power of disposal of narcotic drugs, psychotropic substances, controlled substances or conveyances to a

special officer, he will have to act in accordance with the procedure prescribed under the Act or the Rules framed thereunder.

7. In the light of the aforesaid law laid down by the Apex Court, the said procedure has to be followed in every case and here is no two way of looking at it. Apparently, in such instances, going by the statutory provision under the Special Act, the power of Magistrate to consider a claim U/S.451 of Cr.P.C., stands denuded. Reference is answered accordingly.”

13. Relying on the judgments of the Hon'ble Apex Court and Hon'ble High Court of Kerala which were relied by our own Hon'ble High Court of Karnataka, this Court holds that this Court has no power to dispose of the properties seized under NDPS Act. Hence, the present application is liable to be rejected. The applicant can approach the DDC for release of the vehicle in question which may be considered by the Committee. Accordingly, the point under consideration is answered in **negative** and this Court proceeds to pass the following:-

**ORDER**

The application filed by the applicant i.e., the RC owner of the seized vehicle bearing Reg.No.KA-51/P-1822 U/S.457 of Cr.P.C., is hereby rejected.

(Dictated to the Judgement writer, after his transcription, corrected and revised, signed and then pronounced by me in the open Court on this the 9<sup>th</sup> day of March, 2021)

**(GEETHA.K.B.)**

Principal District & Sessions Judge,  
Davanagere.