

Order No. 12 Dated 27.02.2023

Today is fixed for report from the I/O regarding prayer for intermediate custody of the seized vehicle by one Sk. Israil.

Report is received from the I/O of this case regarding the seized Hyundai i10 car.

An application is filed on behalf of one Sk. Israil, claiming himself to be the owner of seized vehicle, being a Hyundai i10 car bearing registration no. WB30AE-5123, praying for return of the same.

Copy served.

The record is then taken up for hearing.

The petitioner Sk. Israil had, on 10.02.2023 filed an application calling for a report from the I/O regarding return of the seized i10 car bearing registration No, WB30AE-5123. Pursuant to such application, a report was called from the I/O. Today, a report has been received from the I/O unequivocally stating that the petitioner Sk. Israil is in fact the registered owner of seized Hyundai i10 car bearing registration no. WB30AE-5123, but the said Sk. Israil failed to produce any authorisation certificate issued in favour of accused Pallab Senapati, from whose exclusive possession the concerned vehicle was allegedly seized.

The petitioner's application for intermediate custody of seized Hyundai i10 car bearing registration no. WB30AE-5123, is then taken up for hearing.

Perused the impugned application as well as other materials on record.

Heard the Ld. Counsel for the petitioner, who submits that he is the registered owner of the seized vehicle, being a Hyundai i10 car bearing registration no. WB30AE-5123 and that the I/O has admitted that he is in fact, the owner of such vehicle.

The Ld. Counsel for the prosecution has raised strong objection against the return of the said vehicle, contending inter alia, such vehicle was involved in the commission of the alleged offence, and if the same is released, there is possibility of the same being tampered.

Since Charge sheet has already been submitted in this case, section 451 of the Cr.P.C would come into play. The same is reproduced below:

“s 451. Order for custody and disposal of property pending trial in certain cases.- When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court

may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of. Explanation.- For the purposes of this section, "property" includes-

(a) property of any kind or document which is produced before the Court or which is in its custody,

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.”

Section 60 of the NDPS Act provides for confiscation of vehicles seized in the commission of offences, punishable under the NDPS Act. However, the said provision does not provide for confiscation of any vehicle, immediately upon its seizure. Confiscation is a separate procedure, unconnected with the conviction/acquittal/discharge of an accused. As such, by virtue of section 60 of NDPS Act, any conveyance used for the commission of an offence punishable under the said act, is liable for confiscation in accordance with section 63 of the NDPS Act, after hearing the person, who may claim any right thereto.

The provisions of the Cr.P.C. have been made applicable, by virtue of section 51 of the NDPS Act, so far as they are not inconsistent with the provisions of the NDPS Act, to all warrants issued, arrests, searches and seizures made under the said act. Since the provision contained in section 451 of the Cr.P.C. relates to an order for interim custody of a conveyance, pending the conclusion of trial, it can not be said to be inconsistent with any of the provisions of the NDPS Act, including section 60(3) and section 63 of the NDPS Act. However, by amendment of act number 2 of 1989, the NDPS Act was amended and section 36C was inserted in the act, making the provisions of the Cr.P.C applicable to the proceedings before the Special Court. Once the Cr.P.C has been made applicable, the provisions therein contained in section 451/457 of the Cr.P.C would automatically be attracted. Therefore, an application under section 451/457 of the Cr.P.C for interim custody of a vehicle seized in connection with an offence punishable under the NDPS Act would be maintainable and this court is empowered to consider an application u/s. 451/457 of the Cr.P.C on merit. In fact, in **Rajasthan State Transport Corporation and others vs Mohar Singh, (2008) 5 SCC 542**, their Lordships of the Hon'ble Apex Court have also corroborated the said proposition of law.

I find it pertinent to mention herein that since the provisions of the Cr.P.C, including section 451/457 of the Cr.P.C have been expressly made applicable by virtue of section 36C of the NDPS Act, to proceedings under such Act, there is no express bar for grant of interim custody and merely because the vehicle is liable for confiscation of section 60 of the NDPS Act, it can not be a ground for not granting interim custody of such vehicle, even if the same has been seized for commission of offences punishable under the NDPS Act. Even the Hon'ble Calcutta High Court in

Md. Ainul Haque vs State of West Bengal (CRR 1152 of 2015) and subsequently in **Raju Singha vs the State of West Bengal (CRR 3987 of 2015)**, has corroborated the said ratio. Even in **Tridip Mitra vs State of West Bengal, 2006 (2) CHN 198**, the Hon'ble Calcutta High Court was pleased to observe that a Special Court under the NDPS Act has jurisdiction u/s. 451 and section 457 of the Cr.P.C to pass necessary order for return of the seized vehicle as an interim custody.

In the landmark decision of **Sunderbhai Ambalal Desai vs State of Gujrat, (2002) 10 SCC 283**, the Hon'ble Apex Court laid down broad parameters for considering an application for interim custody of a vehicle. It is now a settled principle that it is frivolous to keep a seized vehicle in the PS, for an indefinite period and the courts are required to return the said vehicle, subject to conditions that they may impose.

Therefore, regard been had to the settled proposition of law and the arguments advanced on behalf of the rival parties, this court opines that the prayer of the petitioner Sk. Israil, who is admittedly the registered owner of the seized vehicle, being a Hyundai i10 car bearing registration no. WB30AE-5123, should be allowed.

Let the seized vehicle, being a Hyundai i10 car bearing registration no. WB30AE-5123, be returned to the petitioner Sk. Israil, after proper identification and verification on her furnishing a bond of Rs.8,00,000/-, with further condition that he will not change its nature and character or alienate the same and produce the same before this court, as and when called for.

Prior to this exercise, the I/O is directed to comply with all formalities regarding release of the said vehicle, after observing the necessary guidelines, as laid down in **Sunderbhai Ambalal Desai (Supra)** and report compliance thereof by the date fixed.

To date (28.02.2023) for hearing of bail petition dated 15.02.2023.

Dict & corrected by me.

SPJ

Judge, Special Court -Cum-
Additional Sessions Judge,
3rd Court, Howrah.