

NDPS Case No.16 of 2021
JO CODE No.WB00766
CNR No.WBUD01-000670-2021

Order No.11
07.06.2021

Today is fixed for appearance and IO's report.
Both the accused persons namely, 1. Dipak Dubedi and 2. Md. Yusuf on interim bail are present.
No report has yet been received from the IO.
Fix 04.09.2021 for appearance and IO's report.

At this stage one petition is filed by Dipak Dubedi, accused/petitioner/Constituted Attorney of registered owner, Manju Chakraborty in respect of the vehicle bearing no.WB-73F/2938 (Maruti Suzuki Swift Dzire) praying for returned of the said vehicle.

I.O gave his report dated 07.05.2021 stating that he has no objection in the matter of returning of the vehicle including the connected papers to the Constituted Attorney of its registered owner Dipak Dubedi.

The Ld Advocate for the petitioner as well as the Ld PP-in-charge is heard.

The Ld PP-in-charge raises objection regarding return of vehicle as seized vehicle is the alamat of this case.

Let us now consider the law settled by the Hon'ble superior Courts on this subject.

In ***Sunderbhai Ambalal Desai v. State of Gujarat, AIR 2003 SC 638***, while discussing the provisions of Section 451 of the Code of Criminal Procedure, 1973 (for short "the Code") which deals with order for custody and disposal of property pending trial, the Hon'ble Supreme Court observed –

"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 article in safe custody;*
- 3. If the proper panchnama 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."*

As regards return of vehicles seized by the police, the Hon'ble Apex Court further observed –

"In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles."

Following the judgement of the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai*** (supra), the Hon'ble Calcutta High Court in *Tridip Mitra Vs State of West Bengal*, (2006) 1 C.Cr.L.Rs.(Cal) 96, inter alia, held that a vehicle kept at thana or court compound open to sky for indefinite period it would become scrap material within a year or two for want of maintenance and a scrape materials cannot fetch such money which a good condition vehicle would fetch. The Hon'ble Court further held if the owner of the vehicle agrees to give written undertaking and affidavit and conditions are imposed that the vehicle would not be used or involved in future in activities of committing any offence under the NDPS Act and also the condition that the owner will produce the vehicle in the Court during trial or any other authority as may be directed by the Court such prayer ought to be considered by the Special Judge by exercising his jurisdiction judicially. It was further held that the confiscation proceeding, if any, can only be started after conclusion of trial and at the trial stage the main question before the Court would be the production of the vehicle on the dates of the trial. Be it stated that this was a case where the accused against whom there was allegation of committing an offence under the NDPS Act himself was the owner of the vehicle by which the contraband was being carried.

In subsequent decision *Kamaluddin Mandal Vs State*, 2008(1) CLJ (Cal) 790 and 2. *Unknown Vs. The State of West Bengal* (C.R.R 382/2018, date of judgement 18.01.2019, the Hon'ble Court reiterated the

principle as laid down in **Sunderbhai's case and in Tridip Mitra's case**.

IO has made no objection regarding the return of the vehicle to the petitioner Dipak Dubedi who is the Constuted Attorney of the registered owner of seized vehicle bearing no.WB-73F/2938, Manju Chakraborty.

In the light of the foregoing discussion and borrowing wisdom from the decision of the Hon'ble Apex Court and the Hon'ble High Court in my considered view, the interim custody of the seized Maruti Suzuki vehicle **being no. WB-73F/2938** may be given to the petitioner Dipak Dubedi, Constituted Attorney of the registered owner of the vehicle, Manu Chakraborty on proper verification and identification subject to the following conditions:

1. **The petitioner shall furnish bond of Rs.10,00,000/-.**
2. The petitioner shall produce the seized vehicle before this court as and when called for during the trial and also during the confiscation proceeding if any such proceeding is initiated.
3. To facilitate the production of the seized vehicle **in course of trial and in confiscation** proceeding, if any such proceeding is initiated without prior permission of this court. before this court.
4. The petitioner shall not alienet the seized vehicle or change its nature and character during pendency of this case.
5. The seized vehicle shall not be used for the commission of any offence.
6. The vehicle shall be released in favour of the petitioner **Dipak Dubedi** only after taking two coloured photographs thereof keeping the registration number visible in the presence of the **IC, Itahar PS** or any other police officer of the said PS of the rank of SI of police duly authorized by him and the owner and both the photos should be signed by such police officer and counter signed by the **petitioner** and one of the said photographs should be kept in the CD and the other should be filed before the Court .

Send a copy of the order to **the IC, Itahar PS for information and necessary action** after furnishing bond as above.

To-date (04.09.2021).

Dictated & Corrected
by me.

Special Judge(NDPS)
Raiganj, U/D

Special Judge(NDPS),

Raiganj, U/D.