

JO Code No.WB00885
T R Case No. 19 of 2023

Order No. 20 Dated: 12.10.2023

Today is fixed for production of the accused persons and I/O report.

All three accused persons on CB namely Inshan Laskar, Manowara Bibi and Arjun Manna are produced from Howrah District Correctional Home.

A bail petition filed on behalf of accused Arjun Manna.

An application is filed on behalf of one Riya Dholey, praying for returned of seized Maruti vehicle bearing registration no. WB95-6234 on the ground that she is its registered owner.

A prayer for jail interrogation of the accused persons is filed on behalf of the prosecution.

No I/O report has been filed.

It transpires from the record that one Riya Dholey had filed an application before this court on 03.08.2023 for return of seized Maruti vehicle bearing registration no. WB95/6234. The I/O filed a report in this connection on 29.08.2023.

The I/O opposed the prayer for return of the seized vehicle that on the ground that investigation is still in progress and that she had hired accused Arjun Manna as a driver of such vehicle. However, the I/O did admit that the vehicle in question is registered in the name of the petitioner Riya Dholey.

Heard the Ld. Counsel for the prosecution as well as the Ld. Counsel for the Petitioner.

It is also manifest on scrutiny of the record that on 08.10.2023, the I/O had submitted a report in respect of seized vehicle, bearing no. WB95-6234, endorsing strong objection to the release of the concerned vehicle.

Investigation is still in progress in this case.

As such, section 457 of the Cr.P.C will be applicable. The same is reproduced below:

457. Procedure by police upon seizure of property.

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is

unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.”

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 this regard, this court is fortified by the decision of the Hon’ble Apex Court, in **Rajasthan State Transport Corporation and others vs Mohar Singh (2008) 5 SCC 542**.

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 there is no use 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. The whole idea behind such observation of the Hon'ble court is that the owner of the vehicle should not suffer because of it lying unused or by its misappropriation,. No other provision of the NDPS Act has been brought to the notice of this court, which bars interim release of the vehicle, even where the owner has been implicated in the offence as one of the accused. At the cost of repetition, section 60(3) of the NDPS Act is no bar for interim release of a vehicle, since such provision is only substantive in nature and speaks of the liability of the vehicle to be confiscated, where the owner fails to prove that such vehicle was used without his knowledge.

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 Riya Dholey, who is admittedly the owner of the seized vehicle bearing no. WB95-6234 is allowed.

Let intermediate custody of the seized vehicle, being a white colour Maruti tour-S bearing registration no. WB95-6234 be given to the petitioner Riya Dholey, after proper identification and verification on his furnishing a bond of Rs.10,00,000/-, with further conditions as follows:

i) The petitioner shall produce the original registration certificate, insurance papers, before the concerned police station which shall be verified properly and through attested copies shall be retained by the I/O of this case;

ii) the petitioner shall keep the vehicle insured at all times till the conclusion of the trial and produce the insurance certificate before this court, as and when require;

iii) The petitioner shall not change the colour or any part of the engine or chassis numbers of the vehicle;

iv) the petitioner shall furnish to photographs of the vehicle before the court, prior to taking delivery of such vehicle.

v) The petitioner shall not transfer the ownership and possession of the vehicle in favour of any other person.

vi) The petitioner produce the vehicle before the court, as and when, called upon to do so.

vii) The petitioner shall not allow the vehicle to be used in the commission of any offence.

The petition filed by Riya Dholey dated 03.08.2023 is accordingly disposed off.

The application filed by Riya Dholey on this day is a replica of the one filed on 03.08.2023. The concerned application is accordingly disposed off.

So far as the bail petition of accused Arjun Manna is concerned, it is contended by the Ld. Counsel by the defence that the concerned accused person is merely a driver of the seized vehicle and had no nexus in the alleged offence. It is said that Arjun Manna is the sole bread earner of his family and has been falsely implicated in this case.

The Ld. Counsel for the prosecution has opposed for the prayer for bail on the ground that the accused person was found in conscious possession of commercial quantity of contraband, which creates an embargo upon the court u/s. 37 of the NDPS Act.

30 kgs of ganja was purportedly seized from the possession of the accused/petitioner and his associates. Investigation is still in progress. The FSL report confirms that the seized alamats were in fact ganja. Considering the incriminating materials in the CD as well as the rigors of section 37 of the NDPS Act, prayer for bail of accused Arjun Manna is rejected.

As far as the prayer of the I/O for jail interrogation of the three accused persons, this court opines that investigation is still in progress and interrogative the accused persons may come in aid of the I/O in proving its case. The application for jail interrogation of all three accused persons namely Arjun Manna, Insan Laskar and Manuyara Bibi is allowed, subject to the conditions laid down in section 41D of the Cr.P.C.

The Superintendent Howrah District Correctional Home is directed to facilitate interrogation of the accused persons at the correctional home at a date(s) convenient to the I/O.

Let a copy of this order be sent to the Superintendent Howrah District Correctional Home as well as to the I/O.

Fix 30.11.2023 for I/O report.

To date for production of the accused persons.

Dictated & Corrected by me,
Special Judge,

Judge, Special Court under
N.D.P.S Act, Howrah.