

NDPS : 11/2021 (CIS No. 11/2021)

CNR: WBWM01-004010-2021

Present: Smt. Mandakranta Saha (JO Code WB 0825)

Order No. 25, Dated: 04.02.2023

The accused, namely, Pintu Chakraborty is present by filing hazira.

The report of Sub-Inspector Narendranath Sadhu is received regarding returning of seized vehicle (Bolero Pick-up van) bearing No. WB-11E/9805.

Ld. Advocates for both sides are present.

Hence, the petition praying for return of vehicle is taken up for hearing.

Perused the report in details.

I.O, namely, S.I Narendranath Sadhu of Dantan P.S has submitted a report expressing his no objection for returning the seized vehicle (Bolero Pick-up van) bearing No. WB-11E/9805 to the registered owner, namely, Pintu Chakraborty, son of Samir Chakraborty of Village Chamrail Uttapara, Chamrail Liluah, Howrah. It is further stated that investigation is complete and charge sheet has been filed thereafter all documents in connection with the aforesaid vehicle were seized.

The F.I.R. in brief states that accused Rohit Sharma @ Rahul and Pritam Das @ Babu were travelling in a vehicle bearing registration no. (Bolero Pick-up van) bearing No. WB-11E/9805 and carrying with them 71.4 Kg. of Ganja. Police intercepted the vehicle, searched, recovered contraband substances, then arrested the accused persons and seized the vehicle. The judicial pronouncement of Hon'ble Apex Court as well as various Hon'ble High Courts of this country mandate for interim custody of seized vehicle to the registered owner only to secure welfare and proper maintenance of the vehicle so that it does not become scrap material at the time of confiscation proceeding.

Supreme Court of India in Sunderbhai Ambalal Desai Vs State of Gujarat 2002 SCR Page 39 has been pleased to observe "In our view, whatever be the situation, it is of no use to keep such seized vehicle at the police station 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 vehicle, it required at any point of time".

Again in Ashok Kumar Vs State of Bihar 2009 Vol-9 SCC page 718 it is held that even otherwise in the absence of any provision, which bars from release of any vehicle seized, there appears no reason to keep the vehicle in police custody until the conclusion of trial. There are various issues related with the upkeep of such articles specially a vehicle. The provision u/s 60 of N.D.P.S. Act does not debar from releasing a vehicle during pendency of trial. The provision of section 60 of N.D.P.S. Act and section 451 of Code of Criminal Procedure works/acts in different spheres. It is matter of interim custody only.

Orissa High Court in a case in between Kishor Kumar Choudhury Vs State of Orissa (Criminal Revision No. 71 of 2017) has dealt with the question of return of seized vehicle pending investigation of trial. In para -7 of the Judgment, it is stated that section 60 (3) of the N.D.P.S. Act is the provision for protecting the interest of an owner before confiscating his vehicle which supports the view that till an order of confiscation is passed the owner is entitled to interim custody of the vehicle, pending trial of the case. The object behind such view is, in case the property is not released and the trial continues for a long time, its value gets diminished due to damage caused by exposure to sun and rain and in that event whether or not the vehicle is confiscated, no body gains anything and, on the contrary, in the event of confiscation, the state would stand to lose and in the event of no confiscation, the owner will be the loser. No provision in the N.D.P.S. Act bars interim release of the vehicle where owner has been implicated in the offence as one of the accused. It is further observed that provision of section 60 of the N.D.P.S. Act is not applicable at the stage of consideration of interim release of the vehicle u/s 457 of Code of Criminal Procedure.

Himachal Pradesh High Court in Criminal Revision No. 249 of 2020 dated 29.07.2020 between NCB Vs Sangita Bhardwaj upheld the similar view that in no circumstances, I.O of case should keep seized articles such as vehicle in his custody for a longer period for the purpose of investigation. It is of no use to keep such vehicle at the police station for long period. Seized vehicle should not remain in the compound of police station exposed to heat and cold because the automobile is likely to be lose to all in such situation. Thus, custody of the vehicle should be given to the registered owner for the interim stage and this arrangement is only to be made till the stage when the court passes the order regarding disposal of the property on conclusion of the trial.

In Abhijeet Kumar Vs State of Uttarakhand (2019 SCC Online Utt, 265 dated 10.04.2019), it has been observed by the Uttaranchal High Court that interim custody of the vehicle should be given to the registered owner and provision of section 60 of the Act at all does

administration has no infrastructure for up-keeping of the vehicle.

The ratio of decisions discussed above clearly enshrine that no seized vehicle in a proceeding under the N.D.P.S. Act should be kept in police station pending investigation and trial for an indefinite period thereby causing loss to the State or the registered owner as by keeping vehicle in police compound without any maintenance and care, it will become unfit for operation or use. Accordingly, the prayer for return of vehicle is allowed.

The vehicle (Bolero Pick-up van) bearing No. WB-11E/9805 to the registered owner, namely, Pintu Chakraborty, son of Samir Chakraborty of Village Chamrail Uttapara, Chamrail Liluah, Howrah may be returned to him in his interim custody on furnishing bond of Rs. 20,00,000/- (Twenty Lakh only,) with one surety of like amount with the following conditions:

1. The owner shall not change the colour, nature and character of the vehicle or any parts thereof including chassis number, engine number etc. at any time without leave of the Court
2. The owner shall positively produce the vehicle as and when called for by this Court or any other authority in connection with or in furtherance of the instant proceeding.
3. The owner shall not dispose of the vehicle or create any third party interest in any manner or transfer ownership of the vehicle without leave of the Court.
4. The vehicle shall be released in favour of the owner only after taking two coloured photographs thereof keeping the registration number visible in the presence of the Inspector-in-Charge, Dantan 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 owner and one of the said photographs should be kept in the CD and the other should be filed before the Court .
5. The petitioner shall not allow the vehicle to be used in the commission of any offence.
6. The petitioner shall keep the vehicle insured at all times till the conclusion of trial and produce the insurance certificate as well as maintained the vehicle with proper pollution check, fitness of vehicle and produce the insurance certificate and other relating documents in c/w maintenance of the vehicle before the trial court as an when required.

Let a copy of this order be sent to the IC, Dantan PS as well as I.O , namely, Narendranath Sadhu attached to the P.S for information and necessary action after furnishing bond as above.

Dictated & Corrected by me.

Sd/- M. Saha
Judge, NDPS Act.
4th Court , Paschim Medinipur.

Sd/- M. Saha
Judge, NDPS Act.
4th Court , Paschim Medinipur.

Later /Order No. 25 dated 04.02.2023

Today is fixed for appearance and consideration of charge.

Accused person, namely, Pintu Chakraborty on Court bail is present and file hazira.

Ld. P.P.-in-charge and Ld. Advocate for the accused are present.

Record is taken up for consideration of charge on consent of both sides.
Perused the case record including all the relevant papers u/s 172 of Cr.P.C.

Heard Learned Counsel for both sides.

Upon consideration of the record of the case and the documents submitted therewith and after hearing submissions of the prosecution and accused in this behalf, there is ground for presuming that the accused persons have committed an

NDPS : 11/2021 (CIS No. 11/2021)
CNR: WBWM01-004010-2021
Present: Smt. Mandakranta Saha (JO Code WB 0825)

Contd.....

Later/ Order No. 25, Dated: 04.02.2023

offence which is exclusively triable by this court, accordingly, charge is framed u/s **20 (b)(ii)(C) /25/29 of N.D.P.S. Act** are framed against accused Pintu Chakraborty. The content of charge is read over and explained in vernacular to the accused person to which he pleaded not guilty and claimed to be tried.

Fix **22.03.2023** and **23.03.2023** for appearance and evidence .

The prosecution to furnish the summons in the meantime.

Dict. & Corr. by me.

Judge, Special Court
N.D.P.S. Act,
Paschim Medinipur

Judge, Special Court
N.D.P.S. Act,
Paschim Medinipur

- 1.
- 2.