

Madhya Pradesh High Court

Golu @ Nirmal vs The State Of Madhya Pradesh on 12 May, 2022

Author: Rajendra Kumar (Verma)

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IN THE HIGH COURT OF MADHYA PRA
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE RAJENDRA K
ON THE 12th OF MAY

CRIMINAL REVISION No. 1848 o

Between:-

GOLU @ NIRMAL S/O MURARI LAL, AGED
ABOUT 42 YEARS, OCCUPATION: LABORER
GRAM KAROHAN NANAKHEDA DISTRICT
UJJAIN (MADHYA PRADESH)

(BY SHRI SACHIN PARMAR, ADVOCATE)

AND

THE STATE OF MADHYA PRADESH THR.PS.
NAGDA DISTRICT UJJAIN (MADHYA PRADES

(BY SHRI SANTOSH THAKUR, DY.GOV.T.ADV

This revision coming on for admission
following:

ORDER

Heard on the question of admission.

The applicant has filed the instant revision under Section 397 read with Section 401 of Cr.P.C. against the order dated 22.06.2020 passed by the learned Fourth Additional Session Judge, Ujjain (MP), in Special case No.2/2020, whereby the application filed by the applicant under Sections 451 & 457 of Cr.P.C. for handing over the motorcycle (Pulsar Bike) bearing registration No.MP-13-ET-1921 on supardginama has been rejected.

Signature Not VerifiedDigitally signed by
SAN REENA JOSEPH
Date: 2022.05.12

The applicant is the registered owner of the vehicle bearing registration 18:10:10 IST No. MP-13-ET-1921 that was seized in connection with Crime No.322/2019 registered at Police Station Nagda, District Ujjain in respect of offence punishable under Section 8/21(B), 29 of the NDPS Act. As per corresponding version, applicant was carrying 27 gram smack in the aforesaid vehicle.

Learned counsel for the applicant has submitted that the applicant is the registered owner by the aforesaid vehicle. It is further submitted by the learned counsel for the applicant that there is no criminal antecedent of the applicant. It is further submitted that the said vehicle which is now kept in the police station, be released on supurdginama otherwise due to its non-use, the same would be useless after sometime. There is no need to keep the said vehicle in custody. He further submitted that learned Judge committed mistake in rejecting the prayer of the applicant and not giving the said vehicle in custody.

On the other hand learned counsel for the State has opposed the prayer of the applicant and has submitted that the applicant's vehicle was found to be involved in a serious crime registered under NDPS Act and if the vehicle in question is handed over, the same would be used for commission of another offence. Accused/applicant is not entitled to get vehicle on Supurdginama. Learned counsel for the State also submits that aforesaid vehicle cannot be given on supurdginama under Section 52(A)(ii) of NDPS Act, in view of the principle laid down in the case of Union of India Vs. Mohanlal and others, Criminal Appeal No.652/2012 and Section 52(A) (ii) of NDPS Act.

Having considered the rival submissions made by the learned counsel for the parties and perusal of the record, this Court is of the considered opinion that the vehicle in question may be handed over to the applicant on supurdginama as applicant is the registered owner of the said vehicle and Signature Not VerifiedDigitally signed by SAN REENA JOSEPH Date: 2022.05.12 18:10:10 IST conclusion of trial is likely to take sufficient long time. No purpose would be served to keep the vehicle in question parked in the police station wherein it would run that risk of deterioration on account of weather and other facts. There is no provision in the NDPS Act to restrict the power of the trial Court to release the vehicle in interim custody. It has been held by this Court in the case of Pandurang Kadam Vs. State of M.P. 2005(2) ANJ MP 351 , that notwithstanding the fact that the vehicle is liable to be confiscated under Section 60 of the NDPS Act, it may be released in interim custody in appropriate cases. Thus, interim custody should not be denied to the owner of the vehicle, simply because it is liable to be confiscated under Section 60 of the NDPS Act. The High Court of Tripura, Agartala in the case of Sri Sankar Das Vs. State of Tripura (Cri. Petition No.9 of 2018, decided on 16.3.2018) has held in paras 9, 10, 11, 12 & 13 as under :-

"[9] Substantively, directions in Union of India vs. Mohanlal (supra) are concerned with the storage and disposal of the narcotic drugs and psychotropic substances. However, in Para-31.2 of the said decision in respect of storage, the reference has been made to conveyance as well. Similarly, in the notification dated 16.01.2015 the provision has been made for disposal of the narcotic drugs and psychotropic substances, controlled substances or the conveyances under Section 52A of the NDPS Act. Clause 4 of the said notification provides as under:

"4. Manner of disposal - (1) Where any narcotic drug, psychotropic substance, controlled substance or conveyance has been seized and forwarded to the officer-in-charge of the nearest Signature Not VerifiedDigitally signed by SAN REENA JOSEPH Date: 2022.05.12 18:10:10 IST police station or to the officer empowered under section 53 of the said Act or if it is seized by such an officer

himself, he shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances as per Annexure 1 to this notification and apply to any Magistrate under sub-section 9(2) of section 52A of the said Act as per Annexure 2 to this notification within thirty days from the date of receipt of chemical analysis report of seized narcotic drugs, psychotropic substances or controlled substances.

(2) After the Magistrate allows the application under sub-section (3) of section 52A of the said Act, the officer mentioned in sub- paragraph (1) shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit details of the seized items to the Chairman of the Drug Disposal Committee for a decision by the Committee on the disposal, and the aforesaid officer shall send a copy of the details along with the items seized to the officer- in-charge of the godown."

[10] The question, therefore, emerges is that whether the Magistrate under sub Section 52A (2) has any authority to direct disposal?

Bare reading of the said provision would show no such direct authority has given to the Magistrate. According to the said notification dated 16.01.2015 power of the Drug Disposal Committee has been authorized to dispose [see para-7] but no reference in respect of the disposal of the conveyance is available except to include the word 'conveyance'. That perhaps be the reason why the Signature Not VerifiedDigitally signed by SAN REENA JOSEPH Date: 2022.05.12 18:10:10 IST special court has refused to release the vehicle. But the authority can be derived if Section 60(3) and Section 63 of the NDPS Act are read for this purpose.

[11] Let us further examine whether the said provision is self- contained code. From the reading of the entire notification dated 16.01.2015, it would appear that the Drug Disposal Committee has no other power except to act in the mode as prescribed for disposal, as provided in Para-9(5) (e). The following mode has been provided:

"(e) seized conveyances shall be sold off by way of tender or auction as determined by the Drug Disposal Committee." Such disposal in terms of the Para-9(5)(e) only be possible after the confiscation proceeding is complete. Without confiscation, the disposal of the seized conveyance within the scheme of the NDPS Act, 1985 cannot be visualized and as such, the ancillary question that emerges is that whether the said notification has provided a mechanism for disposal without confiscation inasmuch as Section 60(3) has clearly provided that 'any animal or conveyance used in carrying any narcotic drug or psychotropic substance or controlled substance or any article liable to confiscation under sub Section (1) or sub Section (2) of Section 60 shall be liable to confiscation unless the owner of the animal or the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent if any and the person in charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use. [12] It is thus apparent that Section 60(3) of the NDPS Act has Signature Not VerifiedDigitally signed by SAN REENA JOSEPH made provision for protecting the interest of an innocent owner Date: 2022.05.12 18:10:10 IST before confiscating his vehicle. The procedure of confiscation has been made under

Section 60(3) of the NDPS Act which provides that in the trial of offences under the NDPS Act, whether the accused is convicted or acquitted or discharged the Special Court shall decide whether any article or thing seized under this act is liable to confiscation under Sections 60,61 or 62 and if it decides that that the seized articles or things are liable to be confiscated it may order confiscation accordingly. The procedure for confiscation has been further elaborated under sub Section 2 of Section 63 of the NDPS Act. A substantive reading of Section 63 read with Section 60(3) of the NDPS Act would provide that until the trial is over the confiscation proceeding cannot be initiated. However, exception has been carved out in proviso-es to sub Section 2 of Section 63 of the NDPS Act. The first proviso provides that no order of confiscation of an article or thing shall made be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim. The second proviso to sub-Section 2 of Section 63 of the NDPS Act provides further that if any such article or thing, other than a narcotic drug, psychotropic substance, controlled substance, the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold.

[13] A conjoint reading of proviso-es as referred above would Signature Not VerifiedDigitally signed by SAN REENA JOSEPH Date: 2022.05.12 18:10:10 IST certainly allow a prudent person to infer that immediate disposal would mean the disposal after expiry of one month and that would apply to articles or things other than the narcotic drugs, psychotropic substance, controlled substances, the opium poppy, coca plant or cannabis plant which are liable to speedy and natural decay. If the court is of the opinion that sale would be beneficial for its owner it may any time direct it to be sold. In that event the Drug Disposal Committee shall make all arrangements for sale of those things or articles. So far the conveyance [of which ownership has been claimed] is concerned, its involvement in carrying out the offence has to be proved in the trial and on such proof, the proceeding for confiscation may ensue in terms of Section 63(1) of the NDPS Act and the confiscation only be made after affording a reasonable opportunity of being heard to the person who has any right or claim over the said conveyance. Such confiscation can be done only after the trial is complete and the Special Court decides for confiscation as the court is to see that the vehicle or conveyance which was used for commission of offence under the NDPS Act is not made available to the person or persons who indulged in the blameworthy act. If the owner of the vehicle is not an accused in that case, a separate and independent proceeding has to be drawn for confiscation in terms of the express provisions in Section 60(3) of the NDPS Act to protect an innocent owner before confiscating his vehicle or conveyance. Thus, there is a right to the owner who claimed within 30[thirty] days from the day of seizure, his title over Signature Not VerifiedDigitally signed by SAN REENA JOSEPH the vehicle to have interim custody of the said vehicle subject to the Date: 2022.05.12 18:10:10 IST adequate security till completion of the trial. In absence of any contrary provision in Union of India vs. Mohanlal (supra), this Court is of the view that the vehicle bearing registration No.TR-01-AT-0341 as seized in connection with Khowai P.S. Case No. No.2017/KHW/128 may be released to its registered owner till completion of the trial."

So, it is evident that trial Court is empowered to release the vehicle on supurdginama in pending trial.

There is no evidence on record to show that applicant has criminal past and he was involved in similar crimes in the past too. If the seized vehicle is kept lying at the Police Station, the value of the said vehicle would be diminished and the parts of the vehicle would be destroyed.

Accordingly, the present application is allowed and the impugned order dated 22.06.2020 passed by the learned Fourth Additional Session Judge, Ujjain (MP) is hereby set aside. It is directed that the vehicle of the applicant bearing registration No. MP-13-ET-1921 be released on following terms & conditions :-

1. That, applicant-Golu @ Nirmal S/o Murari Lal shall furnish Supurdginama in the sum of Rs.50,000/-(Rupees Fifty Thousand) with one surety in the like amount to the satisfaction of the concerned CJM/trial Court, for releasing the seized said vehicle vide Crime No.322/2019 registered at Police Station Nagda, District Ujjain for offences punishable under Section 8/21(B), 29 of NDPS Act.

2. That, the applicant shall produce necessary documents like original registration certificate, sale-letter etc. before the trial Court.

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3. That, the applicant shall get the vehicle photographs showing the 18:10:10 IST registration number as well as chassis number of the said vehicle. Such photographs shall be taken in the presence of the responsible officer, who will be deputed by the trial Court and to be kept in the file of the case.

4. That, the photographs of the applicant as well as surety must have been placed in the personal bond and bond of surety. Further, the photograph of person identifying him before the Court must also have been placed in the personal bond. The applicant surety and person identifying shall carry their full residential proof.

5. The applicant shall undertake not to transfer the ownership of the vehicle and shall not lease it to anyone and not make or allow any changes in it to be made so as to make unidentifiable.

6. The applicant will not allow the vehicle to be used in any anti-social activities.

7. In the event of confiscation order of the Court competent, the applicant shall keep the vehicle present positively for confiscation.

It is further directed that before releasing the vehicle in interim custody of applicant, the S.H.O. of concerning police station shall get photographs size 18 x 12 inches of the concerned vehicle taken from all sides and also the photographs showing engine and chassis numbers. Such photographs shall be filed in the trial Court to be kept along with the record.

With the aforesaid directions, this petition stands disposed of. Certified copy as per rules.

(RAJENDRA KUMAR (VERMA)) Signature Not Verified VerifiedDigitally Digitally signed by
JUDGE SAN REENA JOSEPH Date: 2022.05.12 RJ 18:10:10 IST