

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JUNE, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.2296/2021

BETWEEN

NAUFAL,
S/O G ISMAIL,
AGED ABOUT 30 YEARS,
R/AT 3-216/1,
SULKHAN KATTE HOUSE,
NAVOOR POST,
BANTWAL TQ,
D K DISTRICT - 575 144.

... PETITIONER

[BY SRI.DHANANJAY KUMAR, ADVOCATE]

AND

UNION OF INDIA,
REPRESENTED BY I.O NARCOTICS
CONTROL BUREAU,
MHA GOVERNMENT OF INDIA,
BANGALORE ZONAL UNIT,
BANGALORE - 560 063,
REPRESENTED BY S.P.P.,
HIGH COURT OF KARNATAKA,
BANGALORE - 560 001.

... RESPONDENT

[BY SRI.MADHUKAR DESHPANDE, SPL.P.P.,]

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE ORDER DATED 17.03.2020 PASSED IN SPL.C.C.NO.1413/2019 ON THE FILE OF XXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE FOR NDPS CASES, BENGALURU REGISTERED BY THE RESPONDENT POLICE FOR THE OFFENCE P/U/S 8(c) R/W 20(b)(ii)(C), 21(b), 22(c), 27(a), 27(b), 28, 29 OF N.D.P.S. ACT.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question an order dated 17.03.2020 passed by the XXXIII Additional City Civil and Sessions Judge and Special Judge for NDPS Act cases at Bangalore in Spl.C.C.No.1413/2019, wherein the petitioner is alleged of offences punishable under Sections 8(c) read with Sections 20(b)(ii)(C), 21(b), 22(c), 27(A), 27(b), 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act').

2. What drives the petitioner to this Court is rejection of an application filed under Sections 451 and 457

of Cr.P.C., seeking release of the vehicle involved in the alleged crime.

3. The learned Special judge by his order dated 17.03.2020 holds that the Court has no power to release the vehicle and therefore, turns down the application.

4. An identical issue had been referred before the Division Bench of this Court in Crl.P.No.3571/2021 and connected matters, disposed of on 17.05.2022, wherein the Division Bench has held as follows:

"Thereby, the law laid down by the Hon'ble Supreme Court in Sunderbhai Ambalal Desai's case stated supra will apply to the vehicles seized under the NDPS Act as well. Any contrary view taken by the Courts of law would be against the interest of the owner of the vehicles, the public at large and the State.

48. By virtue of Section 36-C of the NDPS Act, "Save as otherwise provided in this Act", the

provisions of the Cr.P.C. have been made applicable to the Special Court constituted under the provisions of the NDPS Act by Armendment Act No.2 of 1989 with Simu effect from 29.5.1989. "Save as otherwise provided in the Act", employed in Section 36-C of the NDPS Act, is indicative of/reflection of the word "exception" intended to exclude some provisions of the Cr.P.C like Section 360 Cr.P.C. etc., which have been expressively excluded by the NDPS Act by Sections 32A and 33 of the NDPS Act. As such, the above stated phrase has qualified the operation of the Cr.P.C. in the proceedings before the Special Court to the extent provided in the NDPS Act. Once the Code of Criminal Procedure has been made applicable, the provisions of the Cr.P.C. contained in Sections 451 and 457 of the Cr.P.C. would automatically be attracted. As such, with effect from 29.5.1989, the Cr.P.C. as a whole, subject to the exception craved out as noticed herein-above, has been made applicable to the proceeding before the Special Court (NDPS) and therefore, application under Sections 451 and 457 of the Cr.P.C. for interim

custody of the vehicle seized in commission of offence punishable under the NDPS Act would be maintainable and the Special Judge (NDPS) is empowered to consider the application under Section 451/457 of the Cr.P.C. on merit.

58. In the judgments relied upon by the learned Counsel for the respondents in the case of **Shajahan -vs- Inspector of Excise and Others reported in 2019 SCC OnLine Kerala 3685 (DB) (paragraph-3) and Union of India -vs- Mohanlal and Another reported in (2016)3 SCC 379**, there was no occasion to consider the application for release of the interim custody of the vehicle (conveyance) and in that view of the matter, the said judgment relied upon by the learned Counsel for the respondents to the effect that Drug Disposal Committee has power and not the Magistrate or the Special Court under the NDPS Act, have no application to the facts and circumstances of the present petitions.

XI Conclusion

59. For the reasons stated above, we answer the Reference as under:

- i) The Magistrate or the Special Court is conferred with the power/jurisdiction to consider the application for interim consideration of the conveyance/vehicle under the provisions of Sections 451 and 457 of the Code of Criminal Procedure in cases arising out of the provisions of NDPS Act; and
- ii) The Drug Disposal Committee constituted under the Notification dated 16.1.2015 issued by the Central Government under the provisions of Section 52A of the NDPS Act has no authority to consider the application for release of interim custody of the conveyance/vehicle;

60. Place the matters before the learned Single Judge having roster to dispose of the same on merits and in accordance with law in the light of the decision on the reference made by this Court

stated supra with prior approval from the Hon'ble Chief Justice."

Therefore, in the light of the afore-extracted order, the Special Judge has power to consider such an application for release of material under Sections 451 or 457 of Cr.P.C in cases arising out of the provisions of the NDPS Act.

5. In the light of the judgment of the Division Bench *supra*, the Special Judge will have to consider the matter on its merit.

6. For the aforesaid reasons, the following:

ORDER

- i. Criminal Petition is allowed.
- ii. The impugned order dated 17.03.2020 passed by the XXXIII Additional City Civil and Sessions Judge and Special Judge for NDPS Act Cases, Bengaluru stands quashed.

- iii. The matter is remitted back to the hands of the learned Special Judge to consider the application filed under Sections 451 and 457 of Cr.P.C., on its merit.

Ordered accordingly.

**Sd/-
JUDGE**

DS