

In the court of Principal Sessions Judge Ganderbal
Present : Raja Shujat Ali Khan

In the case of :

Hilal Ahmad Dar S/o Bashir Ahmad Dar
R/o Shahgund Sonawari

(Petitioner)

V/S

State through SHO Police Station Safapora
(Respondent)

Case FIR NO 01/2016 P/S Safapora
Under Section 8/21 NDPS

Application for release of Motor Cycle
bearing Registration No JK01L/7688

O R D E R

Through the medium of present application release of Motor Cycle bearing Registration No JK01L/7688 is sought which stands seized by police station Safapora for allegedly having been used for the commission of the offences punishable under section 8/21 NDPS Act inter-alia on the grounds that the applicant is the rightful owner of the said seized motor cycle. The Motor cycle has been seized by the police allegedly having been used for carrying Narcotic substances. That the motor cycle was bonafidely and without any intention handed over to the accused for the purpose of using the same. The said vehicle has been allegedly used for transportation of contraband items without permission and knowledge of the applicant. That the motor cycle has been kept in open place and if allowed to remain there continuously there is every chance that the machinery of the Motor cycle will get deteriorated and the applicant will suffer irreparable loss which can not be compensated later on. The applicant is ready to abide by all the terms and conditions which shall be imposed by the Hon'ble court in case the Motor cycle is released.

The said motion is resisted by prosecution on the grounds that the Motor cycle which is sought to be

in FIR No 72 of 2016 for transporting the banned drug as such is liable to be confiscated under section 25 NDPS Act. That the owner of the motor cycle knowingly permitted his Motor cycle for the use and commission of the said offence. That there is cogent evidence regarding the usage of the motor cycle in the commission of the offences as such the application is liable to be rejected. That the motor cycle has not been transferred in the name of the applicant, as such he has no authority to claim its release. The grounds taken in the application are factually wrong and legally not tenable.

The case of the prosecution very precisely is that three of the accused persons including present two petitioners were riding on two different motor cycles bearing registration No JK01L/7688 and JK15/4146 who were on their way from Kondbal to Safapora and were intercepted by routine Naka Checking party. Motor cycle bearing registration No JK15/4146 was driven by one Ubaid Hussain Baba S/o Farooq Ahmad R/o Plan Bandipora while as other Motor cycle bearing registration No JK01L/7688 was driven by accused Irshad Ahmad and Bilal Ahmad Dar was as a pillion rider. From the accused Ubaid Hussain Baba some Manufactured drugs including Spasmoproxyan plus & Rancof syrup was recovered whereas from the present accused Irshad Ahmad and Bilal Ahmad Dar 800 grms of Bang leaves including top and seeds were recovered and seized. Accordingly FIR came to be registered in police station Safapora under FIR No 1 /2016 of P/S Safapora in terms of section 8/21 NDPS read with 207 M.V.Act. During investigation sample of seized substances were taken and sent to FSL Srinagar where from report is awaited. The accused were taken into custody on the same day i.e 8/02/2016 and are presently lodged in central Jail Srinagar, the investigation of the case

I have heard the ld. counsel for the applicant and Ld PP for the state at great length and also perused the charge-sheet which stands already presented in the court. The relevant provision of law under NDPS Act which deals with the confiscation of the seized property has been described under section 60(3) of NDPS Act which is reproduced as under .

"(3)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) shall be liable to confiscation, unless the owner of the animal or 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."

On the touch stone of this provision of law any conveyance used for carrying any Narcotic drug or contraband substance is liable to be confiscated. However there is exception provided in this general rule and that is if such conveyance has been used with-out knowledge and connivance of the owner himself or his agent if any, in that eventuality it is not liable to be confiscated.

In the case in hand admittedly, it has been alleged that the contraband drugs were recovered from the accused Irshad Ahmad Dar who was driving the said motor cycle . The claim of the applicant is that the said vehicle belongs to him and he is the owner of the said Motor cycle and he has given this motor cycle to accused bonafidely and without any bad intention as being his friend for using and has in no way has given any permission or has any sort of knowledge that the accused will use the said motor cycle for carrying contraband drugs. Applicant has placed on record an affidavit which discloses that the applicant has

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So from the perusal of the charge-sheet which has already been presented before this court and record placed on the file by the applicant it stands established that applicant is claiming to be the owner of the seized Motor Cycle for which he has placed on record Photostat copy of the duly sworn affidavit. Now the question arises whether said Motor cycle has been used for transportation of the contraband items without his knowledge and permission as claimed by the applicant. The same can be seen at the stage of trial or when confiscation proceedings would be initiated, against the accused person and at this stage prima-faice it is on the file that the applicant was not boarding the said Motor cycle nor it is established by the prosecution that he had any knowledge about the use of the same for the transportation of the contraband items. Applicant has also submitted that in case his Motor cycle is not released, it would be subjected to deterioration as it is lying open in the police station safapora as such he will suffer great loss. The prosecution has also no objection to the claim of the applicant that the said Motor Cycle was used without his knowledge.

In view of what has been stated herein above, the application is allowed and the seized Motor Cycle bearing Registration No JK01L/7688 is directed to be released in favour of its registered owner after retaining the RC of the Motor cycle with the following conditions:

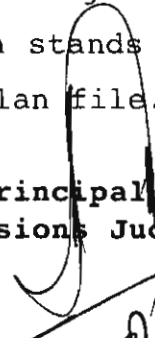
1. That the superdar shall not dispose of or alienate the said motor cycle without permission of this court.
2. That the said Motor cycle would not be used for the transportation of the contraband in future.

court. The superdnama shall be executed before SHO concerned who before release of the Motor cycle shall take close photographs of the same from three different dimensions and shall deposit the same with this court along-with the superdnama and on deposition of the same by SHO concerned, same shall be taken on record of the case.

This order shall have no effect on confiscation proceedings, initiated at any stage during or after the conclusion of trial. The application stands disposed of and shall form part of the main challan file.

Announced
28/12/2016

Principal
Sessions Judge Gbl.


28/12/16

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