

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.434 of 2022

Arising Out of PS. Case No.-11 Year-2019 Thana- D.R.I District- Patna

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Nurul Hasan Khan, son of late Abdul Rauf Khan Resident of Kalami Mohalla
Near Mazar, P.S.- Aurangabad (T), District – Aurangabad.

... .. Petitioner

Versus

1. Union of India through the Director General, Directorate of Revenue Intelligence (D.R.I) New Delhi New Delhi
2. The Assistant Director, Directorate of Revenue Intelligence, Regional Unit, Patna. Bihar
3. The Intelligence Officer, D.R.I., Regional Unit, Patna. Bihar

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Sajid Salim Khan, Sr. Advocate Mr. Ram Pravesh Nath Tiwari, Advocate Mr. Soobiya Mushtaque, Advocate
For the Respondent	:	Mr. K.N. Singh, Addl. S.G. Mr. Anshuman Singh, Sr. C.G.C.

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
C.A.V. JUDGMENT
Date : 17-10-2025

Heard Mr. Sajid Salim Khan, learned Senior Counsel for the petitioner and Mr. K.N. Singh, learned Additional Solicitor General of India duly assisted by Mr. Anshuman Singh, learned counsel for the Union of India.

2. This criminal writ application has been filed for a direction upon the respondent authorities to pay appropriate compensation to the petitioner for arbitrarily and illegally disposing/selling of the crane of the petitioner bearing registration No. BR2H 6948. According to the petitioner, the action of the respondent authorities in illegally disposing / selling of the said crane was in complete violation of the



provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “N.D.P.S. Act”) as well as the settled principle of law.

3. In this case, Interlocutory Application No. 2 of 2022 was filed by the petitioner for amending the prayer portion of the main writ petition *inter alia* for quashing the order dated 03.08.2019 passed in Special Case No.59 of 2019, by which the learned trial Judge has allowed the petition of pre-trial disposal of the crane of the petitioner and consequently, the same was auction sold for a sum of Rs.2,55,000/-.

4. For the reasons stated in the interlocutory application no.02 of 2022, it is allowed and the averments made in the interlocutory application will be treated to be the part of the main writ petition.

5. It is the case of the petitioner that he is the owner of a crane bearing registration no. BR2H 6948, which was used for towing vehicles as his source of income. According to the petitioner, on 06.06.2019, the *Chowkidar* of Aurangabad (M) Police Station called the petitioner for towing a Bolero Pickup van which had met with an accident at Karhara More, G.T. road *en route* to Patna and upon his request, the petitioner provided his crane for towing of the said Bolero to



Patna.

6. It is submitted by learned Senior Counsel for the petitioner that based upon a secret information, the Directorate of Revenue Intelligence intercepted the Bolero Pick-up van bearing registration No. BR-6GD/5751 near D.R.M. Office, Danapur Station, Saguna More Road, Patna, which was being towed by the crane belonging to the petitioner. In the crane, two persons were present namely, Md. Salamat Murtuza, who was the driver of the said crane and Md. Faiz, who was the *khalasi* (helper) of the said crane. Upon search of the Bolero pickup Van which was being towed by the petitioner's crane, the D.R.I. officials seized 47 crates of mangoes and 06 jute and 28 plastics sacks containing a total of 141 brown coloured packets containing substance believed to be *ganja* from the said Bolero Pick up van.

7. It is also submitted by learned Senior Counsel that thereafter the statements of said two persons namely, Salamat Murtuza and Md. Faiz were recorded under section 67 of the N.D.P.S. Act, wherein they had stated that they did not have any knowledge about the recovered *ganja* and the same was not recovered from their conscious possession and they were merely towing the Bolero pickup van on the direction



of the owner of the said crane. On being called by the D.R.I officials, the petitioner appeared in the D.R.I office and his statement was also recorded under section 67 of the N.D.P.S. Act, in which he had stated that he did not have any knowledge about the said *ganja* recovered from the Bolero pick-up van which had met with an accident and he was told that mangoes were loaded on it.

8. It is submitted by learned Senior Counsel for the petitioner that the crane of the petitioner was seized on 07.06.2019 and the statement of the petitioner was recorded on the same day and thereafter the prosecution report was submitted on 08.06.2019 (Annexure-2) wherein it has categorically been stated that based on the evidence gathered during the proceedings and the statements of the petitioner, his driver and *khalasi*(heloper), it was found that neither the petitioner nor his driver or *khalasi* were involved in the illicit trade of *ganja* but on 01.08.2019, the same officer i.e. respondent no. 3, filed an application for pre-trial disposal of the said crane besides the Bolero Pick up without any intimation or notice to the petitioner and ultimately, by an order dated 03.08.2019 passed by the court of learned Special Judge, Patna in Special Case No. 59 of 2019, the respondent no.3 was granted



permission for disposing the crane of the petitioner. Therefore, it is submitted that the crane of the petitioner was unlawfully auction sold by the respondents.

9. It has further been submitted by learned Senior Counsel for the petitioner that since the petitioner or his driver and *Khalasi* (helper) were not made accused in the instant case by the D.R.I., it was incumbent upon the DRI to release the crane of petitioner seized by them since it was not liable to be confiscated. Thus, the respondents by seizing the crane, after coming to the conclusion that the petitioner was not involved in the present case, have committed a gross illegality.

10. It is also submitted by learned Senior Counsel for the petitioner that the respondents while disposing of the crane of the petitioner have grossly violated section 52A of the N.D.P.S. Act, which deals with disposal of narcotic drugs and psychotic substance. Therefore, it is the submission of the petitioner that the respondents in the garb of seized narcotics drugs and psychotic substance have disposed of the crane of the petitioner by way of auction sold, which admittedly as per their own version was not involved in illicit trade of *ganja*.

11. It is the further submission of learned Senior Counsel for the petitioner that prior to disposing the crane of the



petitioner, neither the respondents issued/served any notice to the petitioner nor gave any opportunity of being heard. Moreover, the DRI also did not inform the trial court that neither the petitioner nor his driver and *khalasi* were found to be involved in the present case and thus the DRI also mislead the trial court and obtained the order dated 03.08.2019 by suppressing the material fact, by which the pre-trial disposal of the crane of the petitioner was allowed. Further, the respondents in their counter affidavit have categorically admitted that the involvement of the petitioner in the illicit trade of *ganja* was not established but the respondents still went ahead and auction sold the crane of the petitioner.

12. It is also the submission of learned Senior Counsel for the petitioner that section 52A of the N.D.P.S. Act deals with disposal of seized narcotic drugs and psychotropic substance and in view of the aforesaid section, the action of respondent in disposing of the crane of the petitioner is absolutely illegal, unwarranted and against the provision of the Act.

13. It is further submitted that as per the inventory of the seized crane prepared, which is annexed as Annexure-4, the crane was found in good condition, still the



respondents under-valued the crane for Rs. 3,00,000/- and sold it on a throw away price. The respondents have disposed of the crane of the petitioner and this fact came to the knowledge of the petitioner only after passing of the order dated 02.12.2021. Therefore, the action of respondents in auction selling of the crane of the petitioner is blatantly illegal, arbitrary and has caused great suffering to the petitioner as well as affected his livelihood as the operation of crane was his source of income and same has caused physical, mental agony and financial loss to the petitioner. Thus, it is submitted that the petitioner is liable to be fairly and adequately compensated by the respondents for illegally and arbitrarily auction selling his crane.

14. In this case, a counter affidavit has been filed on behalf of the respondent - D.R.I. wherein the facts relating to the N.D.P.S. has been mentioned and thereafter, it has been stated that based on the evidences gathered such as, CDRs. of the petitioner, his driver and *khalasi* were scientifically analyzed and on the basis of the analysis it was found that no connection could be established between the petitioner, his driver and *khalasi* and the actual owner of the seized contraband i.e. *ganja*.

15. It will be relevant to quote paragraph no.9 of the counter affidavit, which reads as under:-

“9. *That under the circumstances explained*



above, on the basis of evidences gathered during the whole proceedings and as per statement of the above said persons drawn under Section 67 of the NDPS Act, 1985, conscious involvement of the above said persons namely Salamat Murutza (driver of the disputed vehicle) and Md. Faiz (khalasi of the disputed vehicle) as well as Nurul Hasan Khan, owner of the said crane in the illicit trade of the Ganja could not be established. Hence, the driver of the crane, his cousin brother and the owner of the crane was not arrested. Hence, they were accordingly released without causing any loss or injury to them with their consent that as and when their presence will be required in course of the investigation of the case, they will accordingly cooperate in the investigation. Intimation for recovery of ganja was prepared and the same was duly intimated to the Court of Sessions Judge-cum-Special (N.D.P.S. Act) Patna on 10.06.2019.”

16. It has been submitted by learned counsel for the respondents that after passing of the order dated 03.08.2019, the D.R.I. had forwarded the matter to the Customs Department to auction the seized goods and thereafter as per the procedure, the reserved price of the crane was fixed on 13.08.2019 by the Joint Pricing Committee. Thereafter, in terms of the provisions



of the Disposal Manual, 2019 the aforesaid crane was e-auctioned in favour M/s. Kushwaha Enterprises being the highest bidder and accordingly, the sale was confirmed. Therefore, it is pointed out that the Customs Department did nothing but carry out the orders dated 03.08.2019 of the trial court as per the procedure of the Disposal Manual, 2019.

17. It is also the submission of the respondents that the petitioner had approached the trial court for the release of his crane after passing of the order dated 03.08.2019 for pre-trial disposal of the crane. Further, no procedural irregularity has been pointed out in the e-auction process which was done as per by Disposal Manual, 2019. Moreover, the crane of the petitioner was towing the Bolero pickup van, in which narcotic substance i.e. *ganja* was recovered and as such, the crane was the conveyance, which was used to transport the narcotic substance which is liable to be confiscated under section 60(3) of the N.D.P.S. Act and a similar provision is there under section 115(2) of the Customs Act, 1962.

18. It has also been submitted that the petitioner has never denied that his crane was not transporting/towing the Bolero pickup van from which contraband *ganja* was recovered and the trial of the case is still gong on and the matter is sub-



judice. The crane of the petitioner was auction sold under the order of pre-trial disposal and as such, after completion of the trial, the trial court may order for deposit of the sale amount or its confiscation, on completion of trial and as such, payment of the amount to the petitioner may not be made and if at all ordered, the same may be done after taking appropriate security awaiting the final decision of the trial court.

19. Lastly, it has been submitted that order dated 03.08.2019 by which the pre-trial disposal of the crane of the petitioner was allowed has been belatedly challenged by way of filing an interlocutory application before this Court and the order dated 02.02.2021 by which the trial court has rejected the petition of the petitioner for release of his crane remains unchallenged till date and as such, the relief, as prayed for, is untenable.

20. The learned counsel for the respondents has relied on a decision of the Hon'ble Supreme Court in the case of *Union of India vs. Mohanlal and Anr.* reported as **(2016) 3 SCC 379**.

21. Pursuant to the order dated 14.11.2022 passed by a coordinate Bench of this Court, an affidavit has been sworn and filed by the Joint Commissioner, Customs



wherein the procedure adopted for auctioning the crane of the petitioner has been brought on record.

22. A counter affidavit has been filed by the Assistant Commissioner (Legal, Customs (P), Patna. Paragraph nos. 13 to 16 of the aforesaid counter affidavit reads as under:-

“13. That Notification No.75/2003-Customs (N.T.) dated 12.09.2003 has been issued under Section 27A of the Customs Act, 1962 which stipulates the rate of interest payable by the Department to the applicant on any delayed refund beyond 3 months payable by the Department.

14. That it is further humbly stated that Notification No.33/2016-Customs (N.T.) dated 01.03.2016, which prescribes the applicable rate of interest payable by a person liable to pay any duty under the Customs Act, 1962, shall, in addition to such duty be liable to pay interest, if any, at the rate fixed on delayed payment which has been fixed vide the aforesaid Notification and is being respectfully submitted for the kind perusal and consideration of this Hon'ble Court.

15. That it is further humbly stated that the Hon'ble Bombay High Court in the matter of M/s Ajay Industrial Corporation Ltd. Vs. Deputy Commissioner of Customs (writ petition No. 13314 of 2024) vide Judgment dated 15.10.2024 were please to grant 6%



interest.

16. That the Department undertakes to ensure that such lapses do not reoccur in future and necessary steps are being taken to streamline internal communication processes. Necessary Department action has been initiated against the officers concerned for grave lapses.”

23. I have considered the submissions of the parties and perused the materials on record.

24. In the present case, the D.R.I. had intercepted a Bolero vehicle was being towed by the crane of the petitioner and from the aforesaid Bolero vehicle *ganja* was recovered. Consequently, a criminal case was initiated under the N.D.P.S. Act wherein along with seized articles, the crane of the petitioner was also seized. After an investigation, the role of the petitioner and his driver / helper was not found in the crime. Consequently, they were not arrayed as an accused.

25. The order passed by the learned Special Court in Special Case No.59 of 2019 dated 13.06.2019 and 27.06.2019 reveal that a typographical error had crept in the records relating to the registration number of the vehicle and the same was duly corrected. On 01.08.2019, the Spl. P.P. had moved an application before the trial court for disposal of the



vehicles including the crane of the petitioner. Thereafter, the trial court passed the order dated 03.08.2019 in the aforesaid Special Case No.59 of 2019, which is reproduced herein below:-

“A petition dated 01.08.2019 filed on behalf of the prosecution has been moved today praying therein to pre-trial disposal of (1) Bolero Pick-up bearing Registration No. BR 06GD-5157 along with the Crane bearing Registration No. BR 2H-6948 on which crates of mangoes was found loaded. (2) 683.8500 Kg Ganja (3) 540 Kg Mangoes, seized in this case, on the basis of authorization of Directorate of Revenue Intelligence (DRI) to the Sp.LPP for obtaining pre-trial disposal order, in which certification of seized goods (Narcotic drugs) had already been done, from the Court's concerned.

Heard Sri Krishna Kant Tiwari, the learned Spl.P.P.

From perusal of the recved, it transpires that certification of the recovered Narcotic substance and other articles including the vehicles has already been done by Sri Sukul Ram, ACJM-13, Patna whose report, in this regard is already on record. Hence, in the light of submission as prayed for, prayer is allowed.

It is therefore, ordered that the concerned authorities are permitted to dispose of the (1) Bolero Pick-up bearing Registration No. BR 06GD-5157 as well as Crane bearing Registration No. BR 2H-6948, (2) 683.8500 Kg Ganja (3) 541 Kg Mangoes, seized in this



case, as per rule.”

26. Pertinently, the petitioner was not arrayed as an accused in the N.D.P.S. case. Being unaware of such an order for disposing of his crane, being passed, the petitioner moved before the trial court seeking release of his vehicle and at that time he came to know about disposal of his crane. The order dated 02.12.2021 passed in Special Case No.59 of 2019 is reproduced herein below:-

“Learned counsel for the petitioner Nurul Hasan submits that in this case a crane bearing registration no. BR 2H 6948 has been seized by DRI Regional Unit Patna on the ground that unclaimed ganja was recovered from accidental Bolero pickup bearing registration no. BR 06GB 5197 which was towed by the crane. It has also been submitted that the crane has no concern with the alleged ganja and during investigation the petitioner was not found liable to be arrested and was accordingly released by the intelligence officer. In the light of these submissions, it has been prayed that the crane be allowed to be released.

Learned Spl. P.P. opposes the prayer by submitting that the petition is not maintainable because this court vide its order dated 03.08.2019 has ordered for disposal of the said crane and Bolero Pickup and along with the seized ganja and all of these have



already been disposed of. The said crane has been auctioned sold. Therefore, its release is not possible.

On perusal of the second is clear that this court vide its order dated 03.08.2019 itself has allowed for disposal of the said crane. Once the crane has been disposed of it can not be a subject matter of release. As far as the question of realization of amount of sale by its lawful owner is concerned then the petitioner is at liberty to file proper petition at appropriate form. With this observation the petition is disposed off.”

27. From the perusal of the afore-quoted orders, it is clear that the present petitioner, who is the owner of the crane in this case, had not been heard before his vehicle i.e. the seized crane in question, was disposed and was subsequently auction sold. The order dated 03.08.2019 wherein the application dated 01.08.2019 was considered only records the appearance of the learned Spl. P.P. therein and neither notice had been issued to the owner of the crane i.e. the present petitioner nor any opportunity has been afforded to him.

28. It would be relevant to quote section 60 of the N.D.P.S. Act, which reads as under:-

“60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.- (1) Whenever any offence



punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

- (2) *Any narcotic drug or psychotropic substance or controlled substances lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance or controlled substances which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance or controlled substances, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.*

- (3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance or controlled substances, 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.”

29. Section 60(3) of the N.D.P.S provides for confiscation only when the vehicle in question was knowingly being used for illicit purposes. Section 60 provides that any conveyance used in carrying any narcotic drug or psychotropic 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 conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent or any person in-charge of the conveyance and that all such persons had taken all reasonable precautions against such use. In other words, if the owner of the vehicle/conveyance proves that his vehicle was used in the commission of the offence without his knowledge or connivance and he has taken all reasonable precautions against such use, the conveyance cannot be confiscated despite it being used in the commission of the alleged offense under the NDPS Act.



30. Moreover, the Article 300A of the Constitution of India also protects the property of the petitioner and he cannot be deprived of his property save and except in accordance with law.

31. In the counter affidavit filed by the D.R.I. it has categorically been stated that upon investigation it was found that the petitioner and his driver/*khalasi* (helper) were not involved in the illicit trade of *ganja* and therefore, none of them were arrayed as an accused.

32. Since the petitioner was not an accused in the N.D.P.S. case, it was the duty of the prosecuting agency to bring this fact to the notice of the trial court that the owner of the crane in question was not before it while the court was considering the application for pre-trial disposal of the crane of the petitioner and therefore, the order dated 03.08.2019 ought not to have been passed without hearing the petitioner who is the *bona fide* owner of the crane in question.

33. Considering the aforesaid facts, I am of the considered view that the order dated 03.08.2019 passed in Special Case No.59 of 2019, by which the crane of the petitioner was auction sold, is bad in law and therefore, it is unsustainable. However, since the crane of the petitioner has



already been auction sold, which is irreversible at this belated stage, this Court deems it appropriate to compensate the petitioner in view of unlawful auction of his crane.

34. Considering the fact that the petitioner was deprived of his vehicle (crane) unlawfully which was his source of income and livelihood and the crane of the petitioner was sold behind his back without following the due process of law, this Court deems it appropriate and in the interest of justice that it is a fit case to compensate the petitioner reasonably. Accordingly, this Court directs the respondent authorities to pay an amount of Rs.3,00,000/- which has been valued by the respondent authorities (Annexure-2) with interest at the rate of 8% per annum from the date on which the vehicle has been seized. The payment must be made in favour of the petitioner within eight weeks from today.

35. This Court has noticed that the respondents on the one hand had found that the petitioner or his driver/helper were not involved in the crime and on the other hand they have moved an application for pre-trial disposal of the crane of the petitioner. Therefore, this Court finds that the action of the respondents in disposing the crane of the petitioner without any notice to him as wholly arbitrary. The respondents have further



failed to inform the learned trial court that the actual owner of the crane, having not been arrayed as an accused, was not before it and the order of the disposal of the crane was passed to the prejudice of the petitioner.

36. In view of the above, this Court directs the respondent authorities to pay a cost of Rs.1,00,000/- (Rupees One Lakh) in addition to the aforementioned amount, as indicated in the proceeding paragraph, to the petitioner within a period of eight weeks from today.

37. With the aforesaid observations and directions, this criminal writ petition is allowed.

38. Let the original records of Special Case No.59 of 2019 be transmitted to the concerned trial court.

(Sandeep Kumar, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	28.07.2025
Uploading Date	17.10.2025
Transmission Date	17.10.2025

