

18. Therefore, from the discussion made above, it is evident that right to speedy trial of an accused is a fundamental right enshrined under Article 21 of the Constitution of India and if Court finds that it has been violated then proceeding pending against the applicant should be quashed but only after considering following factors:-

- (i) whether delay can be attributed to the accused himself
- (ii) nature of offence
- (iii) whether quashing is in the interest of justice.
- (iv) whether inordinate delay can be termed as oppressive and unwarranted.

19. In case at hand, from the perusal of the record it appears that the inordinate delay in completion of the trial cannot be attributed to the accused applicant as order sheet suggests that he is regularly attending the court either in person or through his counsel and trial of the case relates to Section 39/49B of Electricity Act, which cannot be said to be a heinous crime and trial of the same is pending since the year 2004 i.e. for last about 18 years and prosecution failed to provide any exceptional circumstance to condone such inordinate delay. Therefore, unexplained inordinate delay of 18 years should be termed as oppressive and unwarranted. Therefore, under the facts and circumstances of the case, I am of the view that fundamental right to speedy trial of applicant has been violated.

20. From the discussion made above, this Court is of the view that further continuance of the criminal proceedings pending against the applicant is unwarranted, therefore, to secure the ends of justice proceeding pending against the

applicant in the present matter is hereby **quashed.**

21. The instant application stands **allowed.**

(2023) 2 ILRA 1137
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 11.01.2023

BEFORE

**THE HON'BLE MRS. SADHNA RANI
(THAKUR), J**

Application u/s 482 No. 9911 of 2022

Sonu Kumar Gupta ...Applicant
Versus
State of U.P. & Anr. ...Opp. Parties

Counsel for the Applicant:
Sri Alok Kumar

Counsel for the Opp. Parties:
G.A.

Criminal Law - Narcotic Drugs and Psychotropic Substances Act , 1985– Sections 1A, 53, 60 & 63- Code of Criminal Procedure, 1973-Sections 451 & 457-Release

Application of the vehicle impugned-FIR against 6 named accused-four accused persons caught in the three wheeler vehicle of the Applicant with certain bottles of cough syrup without any bill and voucher-Applicant not apprehended on the spot - he is the owner of the vehicle with all valid documents-falsely implicated-vehicles to be confiscated only after the accused is convicted or acquitted or discharged-after trial has been completed-Provisions of Cr.P.C. shall apply –no provision debarring the release of vehicle seized during trial-temporary release of the vehicle seized provided u/s 451 Cr.P.C.-vehicle is parked unattended –it will deteriorate as parked unattended since last more than 1 year and 10 months-if not given interim custody- the sun and rain would damage it-Applicant not charge sheeted yet-Vehicle to be released in favour of the Applicant.

Application allowed. (E-9)

List of Cases cited:

Sunderbhai Ambalal Desai Vs St. of Gujrat
2003(1) RCR (crl) 380

(Delivered by Hon'ble Mrs. Sadhna Rani
(Thakur), J.)

1. By moving this application under section 482 Cr.P.C. the applicants seek to invoke the inherent jurisdiction of this court to quash the order dated 24.3.2022 in criminal misc. case no. 44 of 2022, State Vs. Pawan Kumar and others, arising out of case crime no. 91 of 2021 under section 8/21 NDPS Act, police station Ghoorpur District Allahabad. A further prayer is made to release three wheeler vehicle no. UP-65-TD-9967 in favour of the applicant relating to the above mentioned case.

2. Heard learned counsel for the applicant, learned A.G.A. and perused the record.

3. Learned counsel for the applicant submits that the FIR was lodged against six named accused persons under section 8/21 NDPS Act on 11.3.2021 with the allegation that in three wheeler vehicle no. U.P.-65-TD-9967 four accused persons Pawan, Kuldeep Kumar, Mohd. Nasir and Sonu @ Mohd. Hasim were apprehended by the police with 49 boxes, total 5807 bottles of onerex cc cough syrup, without any bill and voucher, being transported from New Vridhi Farma Saptnagar Madagin, Varanasi to M/s Shyam medical store Gauhaniya Riva Road Jasra Prayagraj.

4. It is argued that each bottle contained 10 ml. codine phosphate. The total codine phosphate quantity could be said to be 580.7 g. which is much less than

the commercial quantity of 1 kg. The applicant was neither apprehended by the police on the spot in possession of any material relating to NDPS Act, nor the material was being supplied by him or it was for him. He is just the owner of the three wheeler no. U.P.-65-TD-9967 with all valid documents. He has been falsely implicated in the present case. He is an innocent, law abiding and peace loving person, having no criminal history. The applicant moved his release application before the trial court, which was dismissed vide order dated 24.3.2022.

5. His vehicle is parked at the premises of police station since 11.3.2021. He has complete documents of the vehicle. GST invoice and account statement of the syrup recovered are also annexed with the paper book. It is alleged by the police that no receipt was shown regarding the medicine recovered, whereas the police concerned did not consider the receipt of the medicines at the time of recovery.

6. Learned A.G.A. opposed the application and submitted that the bill placed before the court does not bear signature of any person. In the recovered syrup the quantity of codine was 580.7 kg. which is much higher than the permitted commercial quantity of 1 kg. The applicant is the vehicle owner, he is responsible for the things supplied in his vehicle, unless he proves otherwise. It is for him to establish prima facie that his vehicle was being used for transportation of the contraband substance without his knowledge.

7. From the perusal of the record, it is found that from three wheeler of the applicant, the police had recovered 5807 bottles, each bottle containing 100 ml. onerex cough syrup on the spot. The person

on the three wheeler could not show the bill and voucher of this cough syrup. Each bottle of cough syrup contained 10 ml codine phosphate and thus, total 58.07 kg codine phosphate was found wherein its permissible commercial quantity is 1 kg. Admittedly, the applicant was not apprehended by the police on the spot. He is said to be the owner of the vehicle, wherein this contraband substance is said to have recovered. The prayer is made to release vehicle no. UP-65-TD-9967. His release application before the trial court is said to have been rejected on 24.3.2022.

8. The trial court found that as the contraband was recovered from the vehicle of the applicant, so it is the presumption that the applicant had the knowledge of transportation of this contraband substance, unless he proves otherwise. Admittedly, the driver of the three wheeler vehicle has been granted bail.

9. The provision regarding the release of the vehicle in NDPS Act 1985 are sections 52-A, 53, 60 and 63. Section 63 of NDPS Act runs as under :-

63. Procedure in making confiscations.

(1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62 and, if it decides that the article is so liable, it may order confiscation accordingly

(2) Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found,

the court may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of an article or thing shall 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:

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance, 1[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; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale

10. Thus, the vehicle is to be confiscated only after the accused is convicted or acquitted or discharged that means that his trial has been completed.

11. Now the question arises that during trial whether the vehicle can be given in temporary custody of the real owner of the vehicle. NDPS Act is silent about the interim custody of the vehicle, while in the code of criminal procedure sections 451 and 457 speak of the custody and disposal of the property pending trial. Now the question arises whether these sections of code of criminal procedure can be applied to the interim custody of vehicle seized under NDPS Act ? In this regard, it is apposite to look into section 51 of NDPS Act which runs as under;

51. Provisions of the Code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and seizures:- The

provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act.

12. Thus, the provisions of the code of criminal procedure shall apply with regard to seizure of any article or things regarding NDPS Act, if they are not inconsistent of provisions of the NDPS Act and in NDPS Act, there is no provision debarring the release of vehicle seized under the act during trial as per provisions of Cr.P.C. Thus the provision of section 451 of Cr.P.C. cannot be said to be inconsistent with any specific provision under NDPS Act, so this section of code of criminal procedure will apply to the temporary release of the vehicle seized under NDPS Act as per the mandate under section 51 of the NDPS Act. Section 451 Cr.P.C. runs as under;

451. Order for custody and disposal of property pending trial in certain cases:- When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

13. Section 457 Cr.P.C. described the procedure of police upon seizure of property. This section runs as under;

"457. Procedure by police upon seizure of property.- (1) Whenever the

seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

14. The land mark judgment relating to the disposal of seized vehicles and articles is **Sunderbhai Ambalal Desai Vs State of Gujrat 2003(1) RCR (crl) 380** wherein the Apex Court held that "if the powers under section 451 Cr.P.C. are judiciously exercised, the owner of the property would not suffer because of its remaining unused or by its misappropriation. Further the court or the police would not be required to keep the articles in safe custody. If proper panchanama before handing over the possession of the articles is prepared, that can be used in evidence instead of its production of article before the court during trial."

15. The Apex Court further held that "there was no use to keep such seized

vehicle in police station for long period and directed the judicial magistrates to exercise their powers under section 451 Cr.P.C. expeditiously and judicially and entrusted interim custody of the articles and vehicles seized to the owner of the property or to the person who is entitled to be in possession of the property.

16. In the present case also the vehicle is lying in police station since 11.3.2021 and when the vehicle is parked unattended the valuable parts of the vehicle are taken away or stolen. The vehicle also occupies larger space causing inconvenience to the police department and if during trial the vehicle is kept in open it would be specifically deteriorated and if the court finally finds that the vehicle was unused in the offence or if it was used in the offence not within the knowledge of the owner of the vehicle, the owner will have to collect only scraps of the vehicle. Thus, nobody is getting to be benefited if the vehicle got parked totally unattended at police station. Thus the three wheeler of the applicant which is said to be not confiscated yet and is parked in police station in open since last more than one year and ten months, if it is not given in the interim custody of the applicant, the sun and rain would certainly damage its tyres, colour, machinery and battery and also the interior, which is neither in the interest of nation nor in the interest of the applicant. Admittedly the applicant has not been chargesheeted in the case thus, it is not yet proved that the vehicle was being used in the offence within the knowledge of the applicant. So in the opinion of the court, the vehicle of the applicant needs to be released in favour of the applicant during trial. The order of the trial court in not releasing the vehicle in favour of the applicant even after one year of its seizure is legally unsustainable, hence, the order dated 24.3.2022 is quashed

17. Let the vehicle no. UP-65-TD-9967 be released in favour of the applicant, the owner of the vehicle, subject to the production of all necessary documents, on furnishing a personal bond of Rs. one lakh and two sureties of Rs. one lakh each to the satisfaction of the court concerned on the following conditions;

1. The applicant will not dispose of the vehicle during the pendency of the trial.

2. The applicant will produce the vehicle before the court at his own cost, whenever and wherever, ordered by the court.

3. The applicant shall not alienate or change the nature of the vehicle in any manner.

4. The release of the vehicle shall also remain subject to confiscation proceedings, if any.

18. The application 482 Cr.P.C. is allowed in above mentioned terms.

(2023) 2 ILRA 1141
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.01.2023

BEFORE

THE HON'BLE UMESH CHANDRA SHARMA, J.

Application u/s 482 No. 22250 of 2022

Bilal & Ors.		...Applicants
	Versus	
State of U.P. & Ors.		...Opp. Parties

Counsel for the Applicants:
 Sri Ravi Prakash Singh

Counsel for the Opp. Parties:
 G.A.

Criminal Law - Code of Criminal Procedure, 1973 - Section 482-Cross case