



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Criminal Misc(Pet.) No. 4670/2021

Narcotics Control Bureau, Zonal Unit, Sector - 18E, Chopasani  
Housing Board, Jodhpur.

----Petitioner

Versus

Bhanwar Lal S/o Mukna Ram Vishnoi, R/o Arvind Nagar, Airforce,  
Jodhpur Through General Power Of Attorney Holder Sarwan S/o  
Mukna Ram Vishnoi, R/o 82/1 - Raiko Ki Dhani, Bhatiy Ki Dhani,  
Tehsil Merta, District Nagaur (Raj.)

----Respondent

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|-------------------|---|-----------------------------------------------------------------------|
| For Petitioner(s) | : | Mr. MR Pareek (Spl. P.P.)                                             |
| For Respondent(s) | : | Mr. Dharendra Singh Sr. Advocate<br>assisted by Mr. Ram Niwas Vishnoi |

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**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI**

**Order**

**Reportable**

**18/07/2022**

Learned Senior Counsel Mr. Dharendra Singh assisted by Mr. Ram Niwas Vishnoi appearing on behalf of the respondent submits that fate of the seized vehicle in NDPS law shall depend upon the merits of the case and once a vehicle has been released by the learned trial court as per procedure of Cr.P.C. then the restoration of the custody to the Narcotics Control Bureau cannot be permitted. Learned Senior Counsel further submits that a valid and lawful procedure of Cr.P.C. has been adopted and thereafter, the vehicle was to be released to the respondent and thus, any challenge to the same is contrary to the law. Learned Senior Counsel also submits that the fate of the vehicle has to be decided while keeping in purview Section 60, 61, 62 & 63 of NDPS Act.



Learned counsel for the petitioner Mr. M.R. Pareek however, submits that the Section 51 of the NDPS Act clearly prohibits operation of Cr.P.C., particularly, when it is inconsistent with the provision of this act. The Section 51 of NDPS Act reads as follows :-

*"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. "*

Learned counsel for the petitioner further submits that Section 52 is an interim measure for disposal of the seized narcotic drug of substance and other associated seized articles including the vehicle conveyance and can be exercised without going into the merits of the case.

Learned counsel for the petitioner further submits that Section 52-A of NDPS Act, 1985 has been amended by the parliament in the year 2014 of which notification has been issued in the year 2015 and after this amendment, the departmental authorities have been given power to dispose of the conveyance seized with contraband after its verification and in the present case, the inventor verification under Section 52-A of NDPS Act is complete.

Learned counsel for the petitioner also submits that when any provision is already present in the special act, the provisions of other act cannot prevail over it. Thus, Section 457 & 451 of Cr.P.C. cannot prevail over the provision of NDPS Act. The Section 51 of NDPS Act speaks that provisions of NDPS Act shall prevail over the provisions of other Act in search and seizure proceedings.





Learned counsel for the petitioner fairly submits that the issue in question is squarely covered by the judgment passed by this Court in **Narcotics Control Board Bureau Vs. Shoyab Khan (S.B. Criminal Appeal No.1918/2017)** decided on 13.07.2022, the relevant portion reads as under :-

*"This Court after hearing counsel for the parties is of the firm opinion that Section 52A has a different legislative intent than Section 60, 61, 62 & 63. The legislative intent of Section 52A is not of confiscation but simply of disposal of seized vehicle or substance to save it from hazardous nature, theft, substitution, constraint of proper storage space or any other relevant consideration.*

*The legislative intention is very clear from a bare reading of Section 52A of NDPS Act and it does not prejudice the rights of the owner of vehicle or any substance to defeat confiscation proceedings under Sections 60, 61, 62 & 63 whereby final rights of such proceeds can be determined. 52A is an interim measure and is only to enable NCB to overcome the constraints of hazardous nature, theft, substitution, constraint of proper storage space or any other relevant consideration, which are already mentioned in Section 52A of NDPS Act. However, proceeds arising out of Section 52A shall remain with the NCB in capacity of custodian until a final decision is taken by the competent court regarding the final ownership which shall be in accordance with Sections 60, 61, 62 & 63.*

*The Notification though subsequent but would apply because no new definition of crime has been carved out nor any substantive change has been made and merely a procedure has been prescribed and the procedure for such auction of seized substance has to be applied whenever such satisfaction is recorded by the Authority to dispose of the seized substance. Since the final determination of rights of owner/claimant vis-a-vis the NCB has to be done in the confiscation proceedings therefore, the summary proceedings of Section 52A would not require any further safeguards then what are already available under Section 52A as well as in the Notification dated 16.01.2015.*

*In light of aforesaid observations, the application is allowed. The applicant-NCB is given liberty to proceed under Section 52A of NDPS Act. The auction amount*





*shall remain subject to final outcome of the appeal/proceedings under Sections 60, 61, 62 & 63 of NDPS Act. "*

This Court, upon hearing the learned counsel for the parties at length, is of the firm opinion that wherever there is inconsistency between the Cr.P.C. and the NDPS Act, Section 51 of NDPS Act shall operate and the Cr.P.C. shall have to take a back seat, thus, in the present case, the release of the vehicle even when it was opposed by the Narcotics Control Board on count of Section 52A could not have been allowed by the learned court below. The Section 51 of NDPS Act settles the law as far as any inconsistency between the two law is concerned and this ought not to be gone into unless of-course the validity of Section 51 goes away.

This Court is convinced that power is there with the NCB under Section 52A of NDPS Act, which has been brought into operation by the concerned amendment and also by the Gazette Notification dated 16.01.2015, relevant paragraphs being 2, 4, 5 & 9 of Gazette Notification.

The submission made by learned Senior Counsel for the respondent pertaining to Section 60, 61, 62 & 63 of NDPS Act whereby the owner has a chance to redeem the proceeds or the vehicle or the conveyance will come into affect only after trial is over. The legislative intention of Section 52A of NDPS Act is interim in nature and does not prejudice the rights of the parties regarding the vehicle in question and the respondent shall be at liberty to raise all their issues when the Section 60, 61, 62 & 63 come into operation finally in the litigation in question, thus, the auction of the vehicle being opposed is contrary to law. The



precedent law of Narcotics Control Board Bureau Vs. Shoyab Khan (supra) is absolutely applicable.

In view of the above, the petition is allowed and the impugned order dated 05.08.2021 passed by learned Special Judge, NDPS Cases, Chittorgarh in session case no.565/2021 is quashed and set aside and the vehicle is directed to be released to the Narcotics Control Bureau to be disposed of strictly in accordance with Section 52A of NDPS Act.

All pending applications also stand disposed of accordingly.

**(DR.PUSHPENDRA SINGH BHATI), J.**

74-Sudheer/-

