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**(2002) 02 DEL CK 0015**

**In the Delhi High Court**

**Case No : Criminal M. (M) 2872 of 2001**

Madan Lal

APPELLANT

Vs

State, National Capital Territory of Delhi

RESPONDENT

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**Date of Decision : 05-02-2002**

**Acts Referred:**

**Citation :** (2002) 4 AD 177(2) : (2002) CriLJ 2605(2) : (2002) 96 DLT 803 :  
(2002) 62 DRJ 210 : (2002) 82 ECC 522 : (2002) 2 RCR(Criminal) 827

**Hon'ble Judges :** Kripa Shankar Gupta, J

**Bench :** Single Bench

**Advocate :** Jitender Sethi, for the Appellant; M.N. Dudeja, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

K.S. Gupta, J.—In this petition u/s 482 Cr.P.C. it is alleged that Tempo bearing registration No. DL-1LC-8270 was purchased by the petitioner on hire purchase basis from Tata Finance Ltd for a sum of Rs. 1,90,000/- Now 4 Installments of Rs. 46,000/- only remain to be paid to the said company. Dev Narain was employed as driver to ply the tempo. It is stated that on 20th April 2001 said tempo while going towards Azadpur Mandi was intercepted by the police and one polythene bag containing 400 grams of smack was recovered from inside the cabin of the seat of driver. Chargesheet based on said recovery has been filed against said Dev Narain. It is further alleged that after filing of chargesheet, tempo has been seized by the investigating officer and it is now lying at the police station. Application filed for released of tempo on superdari by the petitioner has been declined by the trial court by the order dated 31st July 2001. In case the tempo is .not released in favor of petitioner it would further get damaged. It is prayed that said order dated 31st July 2001 be set aside and tempo may be ordered to be given on superdari to the petitioner.

2. I have heard Sh. Jitender Sethi for petitioner and Sh. M.N. Dudeja for State.

3. For deciding the controversy in hand the provisions contained in Sub-section

(3) of Section 60, 63 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the "Act") as also Section 451 Cr.P.C> are material. Sub-section (3) of Section 60 provides as under:-

"Any animal or conveyance used in carrying any narcotic drug or psychotropic Substances or controlled substance, or any article liable to confiscation under Sub-section (1) or Sub-section (2) shall be liable to confiscations, 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."

4. Section 63 runs as under:-

"(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 u/s 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 u/s 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 or 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.

(3) Any person not convicted who claims any right to property which has been confiscated under this section may appeal to the Court of Sessions against the order of confiscation."

5. Section 451 Cr.P.C. runs, as follows:-

"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.

Explanation: For the purpose of this section, "property" includes-

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence."

6. On a combined reading of Sections 60(3) and 63 it is clear that any conveyance used or carrying any narcotic drug or psychotropic substance is liable to confiscation after hearing the person who may claim any right thereto and considering the evidence, if any, which he may produce, in support of the claim and confiscation order can be made only at the end of trial. Neither of the said two sections or any other section contained in the Act empowers the trial court to make an order for proper custody of such a conveyance pending trial. To be noted that by virtue of Section 51, the provisions of Code of Criminal Procedure 1973 have been made applicable in so far as they are not inconsistent with the provisions of the Act, to all warrants issued and arrests, searches and seizures made under the Act. Obviously, provision made in said Section 451 Cr.P.C. is so far as it relates to passing of order for proper custody of conveyance pending conclusion of trial, is not inconsistent with any of the sections of the Act including Sections 60(3) and 63. Thus, in appropriate cases order for release of conveyance used for carrying contraband pending conclusion of trial can be made under said Section 451 by the court. In this view of mine I am supported by the decision in *B.S. Rawant v. Shaikhabdul Karim and Anr.* 1989 Cri.L.J. 1998. Decision in *Smt. Narender Kaur v. Arun Sheoran*, Intelligence Officer, Narcotics Control Bureau, 87 (2000) DLT 155 on which reliance was placed on behalf of State is of no help as release of vehicle was declined in the backdrop of peculiar facts noticed in Para No. 16 of the judgment (Page 163). Indisputably, petitioner is registered owner of said tempo DL-1LC-8270. Trial against Dev Narain, driver is not likely to conclude in near future. In case said tempo is not released on superdari it will get further damaged because of its disuse. For proper custody thereof pending trial an order needs to be made. Impugned order which does not record any reason(s) declining to release the tempo in favor of petitioner, thus, deserves to be set aside u/s 482 Cr.P.C. being abuse of process of court.

7. Consequently, the petition is allowed, order dated 31st July 2001 is set aside and aforesaid Tempo is released in favor of the petitioner on his furnishing bond in the sum of Rs. 1,75,000/- to the satisfaction of trial court that pending trial tempo will not be alienated and made available as and when required by the court.