

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

1. **CRM(M) No. 157/2025**

c/w

2. **Bail App No. 297/2024**

Reserved on: 01.08.2025

Pronounced on: 19.08.2025

Mohd. Aslam

.....Petitioner(s)

Through: Mr. Koshal Parihar, Advocate.

Vs.

UT of J&K

..... Respondent(s)

Through: Mr. Vishal Bharti, Dy. AG.

3. **WP(Crl) No. 87/2024**

.....Petitioner(s)

Hassan Din

Mr. Koshal Parihar, Advocate.

Through:

Mr. Vishal Bharti, Dy. AG.

Vs.

UT of J&K

....Respondent(s)

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

01. These three petitions are being disposed of by way of this composite judgment, as they trace the genesis in FIR No. 99/2024.

02. Petitioner-Mohd. Aslam has invoked inherent jurisdiction of this Court, under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 [BNSS], for quashment of order dated 28.10.2024, passed by learned Additional Sessions Judge, Samba [“the trial court”], vide which he came to be charged *inter alia* for offences under Sections 22 and 27-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 [“NDPS Act” for short] and order dated 02.12.2024, vide which his bail plea came to be declined.

03. Petitioner Hassan Din, registered owner of vehicle, is aggrieved of order dated 21.09.2024, whereby his application for release of Car; Maruti Sazuki Swift bearing registration No. JK09P/1912 came to be dismissed.

FACTUAL BACKGROUND

04. As factual narration of the present case would unfurl, a police party of Police Station, Vijaypur, headed by ASI Harjeet Singh, was on Nakka duty near 17 Miles, Vijaypur. At around 1848 hours, a car bearing registration no. JK09P/1912 came to be intercepted. Driver of the car made an attempt to give a slip, but he was overpowered and apprehended. He disclosed his name as Mohd. Aslam (the petitioner). Notice under Section 50 NDPS Act was served upon him. Naib Tehsildar, came to the spot. On frisking, heroine-like substance, weighing about 16-18 grams, wrapped in polythene, came to be recovered from the left pocket of the pant of the driver. Besides, cash amounting to Rs. 6,13,000/- and an electronic weighing machine came to be recovered from the dashboard of the car.

05. As per the investigating agency, the petitioner, when questioned, disclosed that he was a drug peddler. The Incharge naka, flashed a docket, through HC Krishan Lal, for registration of FIR for offences under Sections 8/21/22/27-A/60 NDPS Act. As a result, aforesaid FIR came to be registered and investigation was entrusted to PSI Ankush Sharma. The contraband during investigation weighed 16.82 grams, which alongwith cash amount and electronic weighing machine came to be seized and sealed in the presence of the Executive Magistrate. The sample of the contraband was sent for chemical examination and as per the FSL report “Diacetyl Morphin (Heroien)” was detected.

06. It surfaced during investigation that accused, namely Zakir Hussain, had earlier delivered a consignment of heroine. He sent his brother, petitioner Mohd. Aslam and accused Murad Ali, to collect the payment of previous consignment and deliver a new consignment. They collected Rs. 2.00 lacs from one Imam Hussain, Rs. 3.00 lacs from Baru Gujjar and Rs. 1.13 lacs from Baghu. On way

back, the petitioner came to be apprehended at the naka, whereupon, the contraband, cash and weighing machine came to be recovered.

07. According to the investigating agency, the recovery of cash amount from the possession of the petitioner indicated that he used to deal in cash transactions, therefore, offences under Sections 8/21/22/27-A/29/60 NDPS Act were established against the petitioner and co-accused Baru Gujjar, Imam Hussain, Baghu, Zakir Hussan and Murad Ali. The petitioner came to be arrested. The car used by the petitioner in the commission of offence also came to be seized.

08. The investigation against petitioner, Mohd. Aslam culminated in the presentation of final report in the trial court on 19.09.2024 and supplementary charge-sheet was sought to be presented against co-accused after their arrest and investigation.

09. Petitioner-Mohd. Aslam came to be charged by the trial court, *inter alia*, for offences under Sections 22 and 27-A of NDPS Act, vide impugned order dated 28.10.2024.

GROUNDS OF CHALLENGE

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10. Petitioner-Mohd. Aslam is aggrieved of the impugned order of charge, in particular charge for offences under Sections 22/27-A NDPS Act on the premise that mere allegation of selling a Narcotic drug or a Psychotropic substance does not fall within the purview of Section 27-A NDPS Act and there is nothing in the prosecution case that he harboured any offender. It is contention of the petitioner that involvement in a single or a solitary transaction relating to contraband items would not amount to financing or illicit traffic because “trafficking” connotes a continuous flow and there must be some degree of continuity and regularity in drug dealing before a person can be said to be trafficking in drugs. It is contended

that “trafficking” involves much more than mere sale or purchase of a contraband on a single occasion.

11. According to the petitioner, learned trial court has accepted the prosecution story as a gospel truth as impugned order of charge is conspicuously silent about any finding regarding financing of activities relating to narcotic drugs or psychotropic substances or harbouring the offenders, which renders the impugned order perverse and vitiated.

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12. Petitioner-Mohd. Aslam is also aggrieved of order dated 02.12.2024, passed by the trial court, by virtue of which his application for bail came to be rejected.

13. It is contention of the petitioner that there are reasonable grounds to believe that he is not guilty of offence under Section 27 A NDPS Act, as he neither financed any activity relating to the trafficking of narcotic drugs or psychotropic substances nor harboured any offender and since the contraband allegedly recovered from his possession is 16.82 grams of heroin, which falls under the category of intermediate quantity, Section 37 NDPS Act is not attracted. It is also contention of the petitioner that he has already undergone more than four months of incarceration; w.e.f. 23.07.2024, when he came to be arrested. He is entitled to Fundamental Right of speedy trial under Article 21 of the Constitution of India. The petitioner undertakes to abide by the terms and conditions to be imposed, in the event of his release on bail.

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14. Petitioner-Hassan Din, registered owner of the car has invoked inherent jurisdiction of this Court for quashment of order dated 21.09.2024, whereby his

application for release of vehicle came to be dismissed by the trial court, primarily on the ground that his vehicle is not involved in the commission of any offence.

15. The petitioner claims to have purchased the aforesaid vehicle from Jammu Motors Pvt. Ltd. Akhnoor in April 2024. He has placed on record registration certificate of the vehicle in his name. It is contention of the petitioner that vehicle was financed by Cholamandalam & Investment and Finance Co. Ltd., Kathua, which indicates that vehicle has not been purchased out of the proceeds of sale or purchase of Narcotics Drugs or Psychotropic Substance, as evident from the hypothecation entered over the registration certificate. He submits that accused Mohd. Aslam, who had taken his vehicle for domestic purpose is a neighbourer and later, he came to know that his vehicle came to be seized by the police in the impugned FIR, which has culminated in the presentation of charge-sheet against the said accused- Mohd. Aslam and others.

16. It is contention of the petitioner that neither any Drug or Psychotropic Substance has been recovered from his possession nor from the vehicle in question and it is admitted case of the prosecution that contraband was recovered from the personal possession of accused-Mohd. Aslam. Therefore, according to the petitioner, it can be reasonably presumed that he had no knowledge about the possession of the contraband by accused-Mohd. Aslam.

STAND OF THE RESPONDENT

17. All the petitions have been opposed by the respondent-UT primarily on the ground of the nature of accusations and gravity of the charge. It is contention of the respondent that scope of interference of this Court in exercise of inherent jurisdiction is limited and ought to be exercised sparingly.

ARGUMENTS

18. Having heard learned counsels for the parties and perused the record, I have carefully gone through the case law cited at bar.

19. Mr. Koshal Parihar, learned counsel for the petitioner has relied upon **Union of India vs. Prafulla Kumar Samal; (1979) 3 SCC 4** and **Chitresh Kumar Chopra v. State (NCT of Delhi); (2009) 16 SCC 605**, **State of W.B. vs. Rakesh Singh; 2022 SCC Online SC 828**, **Rhea Chakraborty vs. Union of India; AIR ONLINE 2020 BOM 1252**, **Sunderbhai Ambalal Desai Vs. State of Gujrat; (2002) 10 SCC 283** and **Sainaba v. the State of Kerala and Anr.; 2023 (1) RCR (Cr.) 869**, to reiterate the grounds urged in the memo of petitions.

20. *Per contra*, learned Dy. AG has relied upon **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra; 2021 SCC 315**, to emphasize the stand of the respondent-UT.

ANALYSIS

21. Petitioner-Mohd. Aslam is aggrieved of the impugned order, dated 28.10.2024, by virtue of which he came to be charged by the trial court, on the predominant premise that learned trial court has not returned any finding or observation charging him with the commission of offences under Sections 22 and 27-A NDPS Act. According to the petitioner, the prosecution story has been accepted by the trial court as a gospel truth. It is contention of the petitioner that, if the impugned order is evaluated on the touchstone of the principles of law expounded by the Apex Court, it is legally unsustainable. According to the petitioner, there is no allegation against him in the charge-sheet that he was ever involved in “financing” illicit traffic in relation to narcotic drugs or psychotropic substances or “harbouring” any offender and mere alleged sale of narcotic drugs

or psychotropic substance would not fall within the purview of Section 27-A of the Act.

22. True it is that trial courts at the stage of consideration of charge, cannot embark upon a roving enquiry or a mini trial to find out whether accused will ultimately be convicted for a particular offence or not. However, it is by far crystallized now that prosecution case cannot be accepted as a gospel truth. The trial courts while considering the plea of charge are obliged to analyze and evaluate the material brought on record by the prosecution in the final report, with a view to determine whether such material taken in entirety at its face value would constitute the ingredients of the offence(s) alleged against the accused or not. The court in exercise of this power is vested with the authority not only to sift and weigh the prosecution evidence, but also the documents and other material brought on record in the final report. This exercise is not an empty formality. The satisfaction of the court with respect to existence of essential constituents of the alleged offence(s) is a condition precedent because framing of charge is an exercise of judicial discretion. Reference made by learned counsel for the petitioner on **Prafulla Kumar, Chitresh Kumar Chopra, Amit Kapoor** and **Sajjan Kumar** in this regard is well founded.

23. The gravamen of charge against the petitioner is that, during the course of investigation, it surfaced that accused namely Zakir Hussain, had earlier delivered a consignment of heroine. He sent his brother, Petitioner-Mohd. Aslam and accused Murad Ali to collect the payment of previous consignment and deliver the new consignment. Pursuant thereto, the petitioner and accused-Mohd. Ali collected Rs. 2.00 lacs from one Imam Hussain, Rs. 3.00 lacs from Baru Gujjar and 1.13 lacs from Baghu. On way back home, petitioner came to be apprehended by the Naka party in the aforesaid car. On personal search, the contraband came to

be recovered from right pocket of his pant and cash amount along with a weighing machine came to be recovered from the dashboard of the car. Based on these allegations, the investigating agency arrived at the conclusion that petitioner was dealing in cash transactions, therefore, he came to be charged *inter alia* for offence under Section 27-A of NDPS Act.

24. Let us have a look at Section 27-A:-

"27A. Punishment for financing illicit traffic and harbouring offenders –

Whoever indulges in financing, directly or indirectly, any of the activities specified in sub-clauses (i) to (v) of [clause (viii) of section 2] or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

25. It is evident from a bare look at Section 27A that it is required to be interpreted in harmony with Section 2(viii)(i) to (v) of the Act, which is set out hereunder:

2. Definitions.- In this Act, unless the context otherwise requires,

xxx xxx xxx
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xxx xxx xxx

[(viii)] "illicit traffic", in relation to narcotic drugs and psychotropic substances, means-

- i. cultivating any coca plant or gathering any portion of coca plant;
- ii. cultivating the opium poppy or any cannabis plant;
- iii. **engaging in the production, manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psychotropic substances;**
- iv. dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in sub-clauses (i) to (iii); or
- v. handling or letting out any premises for the carrying on of any of the activities referred to in sub-clauses (i) to (iv);
other than those permitted under this Act, or any rule or order made, or any condition of any licence, term or authorization issued, thereunder, and includes—
 - (1) financing, directly or indirectly, any of the aforementioned activities;**
 - (2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and**
 - (3) harbouring persons engaged in any of the aforementioned activities;]"**

(Emphasis Supplied)

26. Sub clause (viii b) of Section 2 NDPS Act defines “illicit traffic” in relation to narcotic drugs and psychotropic substances delineated in clauses (i) to (v). If sub clause (iii) and sub clause (v) (1) and (3) of Section 2 (viii b), emphasized above, are closely scrutinized, it is manifest that engagement in the possession, sale purchase, transportation, warehousing, concealment, etc. of ‘illicit traffic’ in relation to narcotic drug and psychotropic substances is different from direct or indirect “financing” of the contrabands and “harboring” persons engaged in the activities. Be it noted that activities enumerated in sub-section (iii) of Section 2 (viii b) of the Act are punishable under Sections 20, 21, 22 and 23 of the Act, whereas “financing” of illicit traffic and “harboring offenders” is punishable under Section 27A of the Act. Therefore, there is clear distinction between engagement in the sale, purchase, transportation, ware-house, concealment, etc. of narcotic drugs and psychotropic substances from “financing” of illicit traffic and “harboring” of the offenders.

27. The expressions, “Financing” and “Harbouring” have not been defined anywhere in NDPS Act.

28. Bombay High Court in **Rhea Chakraborty** (Supra) and Kerala High Court in **K. K. Ashraf** (supra) by reference to the statements of objects and reasons of the NDPS Act, which came to be amended w.e.f. 29.05.1989, and by reference to the definitions of financing as they emerge in various dictionaries, has aptly discussed the scope and import of Section 27A NDPS Act.

29. “Finance”, in **Black’s Law Dictionary** has been defined as “to raise or provide funds”. The meaning of “finance” in **Chambers dictionary** is “to manage financially; to provide or support with money.” The **Concise Oxford Dictionary** defines the word ‘finance’ as “(i) the management of (esp. public) money; (ii)

monetary support for an enterprise, (iii) money resources of a State, Company, or person, to provide capital for (a person or enterprise)”.

30. It is evident from the aforesaid definitions that all the activities mentioned in clause 2 (viii b) (iii), and Section 27A NDPS Act involve monetary transactions. In other words, there is use of money in sale and purchase as also in financing. However, financing, in common parlance, would mean providing monetary support or provide funds, for facilitating the activities contained in sub clauses (i) to (v) of clause (viii b) of Section 2 of NDPS Act. It is not related to sale consideration and involves the activities other than sale or purchase of narcotic drugs or psychotropic substances.

31. A Financer being skilled in financial transactions would often lend, invest or raise capital to manage and sustain a particular activity. He is not privy to the activity or a sale transaction. “Finance”, in essence means to facilitate economic activity and growth by enabling somebody to secure the funding, he needs to operate and expand an activity. On the other hand, a sale consideration or a payment made for a particular transaction would not tantamount to “financing”.

32. It also needs to be understood that financing of “illicit traffic” is punishable under Section 27-A NDPS Act and trafficking connotes continuous flow. Calcutta High Court in **Rakesh Singh @ Rakesh Kumar Singh v. State of West Bengal; 2021 (1) Cal LT 308** has rightly observed that involvement in one solitary transaction concerning contraband items will not amount to financing illicit trafficking in Narcotics. Therefore, finance of ‘illicit traffic’, within the meaning of Section 27-A of NDPS Act, connotes drug peddling on regular and continuous basis, different from illicit sale/purchase of contraband items.

33. Similarly, “harbouring” requires an element of protecting or shielding a drug trafficker from legal action.

34. If the present case is approached with the aforesaid principle of law, there is no prima facie evidence to support Section 27-A charge, as the material available do not meet the direct threshold. I do not find the factual foundation to verify the allegation that petitioner, at any point of time, directly or indirectly indulged in financing the activities specified in sub clauses (i) to (v) of clause (viii) of Section 2 NDPS or harboured any person engaged in such activities.

35. Viewed thus, I am of the considered opinion that Section 27A NDPS Act is not attracted in the case, therefore, impugned order dated 28.10.2024, propounded by the trial court, is liable to be set-aside.

36. Since offence under Section 27A NDPS is not made out and 16.82 grams of heroin allegedly recovered from the possession of the petitioner is intermediate quantity, rigor of Section 37 NDPS Act is not attracted in the case. Petitioner is in custody since 23.07.2024, i.e. for more than a year now and charge-sheet is already filed in the competent court, further incarceration of the petitioner shall not serve any purpose of the prosecuting agency.

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37. This petition has been moved by registered owner of the vehicle; Marauti Sazuki Swift car bearing registration No. JK09P/1912, for release of the vehicle, primarily on the ground that his vehicle is not involved in the commission of any offence and no confiscation proceedings have been initiated by the competent authority.

38. The prosecution case is that the naka party intercepted the vehicle in question, which at the relevant time was being driven by accused Mohd. Aslam. On checking, 16.82 grams of heroin came to be recovered from the left pocket of his pant and cash amount with a weighing machine was recovered from the dashboard of the vehicle. It is pertinent to underline that final report, on

culmination of investigation has already been filed in the competent court and petitioner Hasan Din, registered owner of the vehicle, is not found involved in the commission of any offence.

39. The petitioner approached the trial court for release of the vehicle, however, his application came to be dismissed primarily on the ground that investigating officer had already initiated an enquiry in terms of Section 68-E NDPS Act and issued notice to accused Mohd. Aslam under Section 68-F of the Act. Learned trial court is of the opinion that since confiscation proceedings have already been initiated by the competent authority, it lacked jurisdiction to entertain the application and grant the relief prayed for.

40. According to the petitioner, learned trial court has committed a grave illegality in treating the notices under Sections 68-E and 68-F of NDPS Act issued by SHO, Police Station Vijaypur, as proceedings of confiscation by the competent authority. According to the petitioner said notices are issued by the enquiry officer/investigating officer/empowered officer for the purpose of ascertaining the links and examining books of account in order to reach at a reasonable conclusion as to whether the property in question was acquired from the sale proceeds of the contraband.

41. It is further contention of the petitioner that competent authority has not passed any order or made any declaration in terms of Chapter V(A) NDPS Act and it is only when such declaration or order is passed by the competent authority or by the appellate tribunal that jurisdiction of the trial is ousted. In any other case, where no such order or show cause notice under Section 68-H NDPS Act is issued, provisions of Section 497 BNSS are attracted and trial court retains the jurisdiction to consider the application for interim custody of the vehicle pending

trial. According to the petitioner, the trial court has failed to exercise the jurisdiction vested in it under law.

42. Chapter (v) A of the NDPS Act does not postulate confiscation proceedings. It provides for forfeiture of illegally acquired property.

43. The officer incharge of a police station or officer empowered under Section 53 NDPS Act in terms of Section 68 E of the Act, is empowered only to identify the illegally acquired property and proceed to seize or freeze such illegally acquired property under Section 68 F of the Act. The official incharge of Police Station or any investigating officer under proviso to Section 68 F is also obliged to duly inform the competent authority, as defined under Section 68 D of the Act, of any order made and send a copy of such order to him. The competent authority under Section 68 H is obliged to issue notice to a person affected, calling upon him, within 30 days specified in the notice, to indicate the source of his income, earnings or assets, by mean of which he has acquired the property and eventually it is the competent authority who is vested with the jurisdiction to forfeit the property in terms of Section 68-I NDPS Act. It is evident, as such, that neither an officer incharge of the police station or the investigating officer is the authority competent nor the competent authority, as defined under Section 68-D of the Act, is vested with the power to initiate the confiscation proceedings.

44. Section 60 NPDS provides for liability of illicit drugs, substances, plants, articles and conveyance to its confiscation. In terms of sub-section 3 of Section 60 of the Act, any animal or conveyance used in carrying any narcotic drug or psychotropic substances or controlled substance or any article liable to confiscation under sub-sections 1 or 2 shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without his knowledge or the knowledge or connivance of his agent or the person incharge

thereof and that they had taken reasonable precautions against such use. Section 63 of the Act lays down the procedure in making the confiscation. Therefore, by virtue of Section 60 of the Act, any conveyance used for the commission of the offence under the Act is liable to confiscation as per the procedure provided in Section 63 of the Act after hearing the person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim. Be it noted that confiscation order can be made in terms of Section 1 of Section 63 NDPS Act on the culmination of the trial, regardless of the conviction, acquittal or discharge of the accused.

45. If sub-section 3 of Section 60 and Section 63 NDPS Act are carefully glanced over, it is evident that a conveyance or a vehicle seized under NDPS Act shall be liable to confiscation only, when the owner of the vehicle or the conveyance was given an opportunity by the competent court and he could not prove that the said vehicle/conveyance was used without his knowledge or connivance or knowledge or connivance of his agent or the person incharge thereof. It is the exclusive domain of the trial court to decide whether a vehicle seized under NDPS Act is liable to confiscation on the conclusion of the trial, regardless of the discharge, acquittal or conviction of the accused. There is nothing in the NDPS Act to restrict the power of the trial court to release the vehicle on interim custody notwithstanding the fact that vehicle is liable to confiscation under Section 60 NDPS Act.

46. It is pertinent to underline that by virtue of Section 51 of NDPS Act, provisions of CrPC, insofar as they are not inconsistent with the provisions of NDPS Act, have been made applicable to all warrants issued and arrest search and seizure made under the Act. The provisions contained in Sections 497 (1) BNSS (corresponding to Section 451 CrPC) and 503 BNSS (corresponding to Section

457 CrPC), which provide for custody and disposal of property pending trial, are not inconsistent with the provisions of NDPS Act, including sub-section 3 of Section 60 and Section 63 of NDPS Act. Now, once the provisions contained in CrPC have been made applicable to NDPS Act, the aforesaid provisions of BNSS, regarding disposal of property pending trial, would automatically be attracted. Therefore, an application of the owner of a conveyance or a vehicle allegedly used in carrying any narcotic drug or psychotropic substances, for interim custody would be maintainable and special court is empowered to consider the application in appropriate cases. Since there is no express bar in the NDPS Act for the grant of interim custody of a conveyance, it cannot be said that a vehicle seized for the alleged commission of an offence under NDPS Act, cannot be released on interim custody merely because it is liable to confiscation on the conclusion of the trial because jurisdiction of a criminal court has to be construed strictly unless expressly excluded.

47. I am fortified in my view by a recent pronouncement of Hon'ble Supreme Court rendered in **Bishwajit Dey v. State of Assam; 2025 SCC Online SC 40**. Relevant excerpt of the judgment captured in Para 21, 22 and 23, for the ease of reference are extracted below:-

"21. Upon a reading of the NDPS Act, this Court is of the view that the seized vehicles can be confiscated by the trial court only on conclusion of the trial when the accused is convicted or acquitted or discharged. Further, even where the Court is of the view that the vehicle is liable for confiscation, it must give an opportunity of hearing to the person who may claim any right to the seized vehicle before passing an order of confiscation. However, the seized vehicle is not liable to confiscation if the owner of the seized vehicle can prove that the vehicle was used by the accused person without the owner's knowledge or connivance and that he had taken all reasonable precautions against such use of the seized vehicle by the accused person.

22. This Court is further of the opinion that there is no specific bar/restriction under the provisions of the NDPS Act for return of any seized vehicle used for transporting narcotic drug or psychotropic substance in the interim pending disposal of the criminal case.

23. In the absence of any specific bar under the NDPS Act and in view of Section 51 of NDPS Act, the Court can invoke the general power under Sections 451 and 457 of the Cr.P.C. for return of the seized vehicle pending final decision of the criminal case. Consequently, the trial Court has the discretion to release the vehicle in the interim.

However, this power would have to be exercised in accordance with law in the facts and circumstances of each case.”

48. A similar observation was made by Hon’ble Supreme Court in **Sainaba vs. The State of Kerala and Anr; (2022) (7) KHC 273**), relevant excerpt whereof reads as below:-

“6. The appellant has urged inter alia that as per Section 36-C read with Section 51 of the NDPS Act, Criminal Procedure Code would be applicable for proceedings by a Special Court under NDPS Act and Section 451 has an inbuilt provision to impose any specific condition on the appellant while releasing the vehicle. The appellant is undoubtedly the registered owner of the vehicle but had not participated in the offence as alleged by the prosecution nor had knowledge of the alleged transaction.

*7. Learned counsel seeks to rely on the judgment of this Court in **Sunderbhai Ambalal Desai v. State of Gujarat- (2022) 10 SCC 283** opining that it is no use to keep such seized vehicles at police station for a long period and it is open to the Magistrate to pass appropriate orders immediately by taking a bond and a guarantee as well as security for return of the said vehicle, if required at any point of time.*

8. On hearing learned counsel for the parties and in the conspectus of the facts and circumstances of the case, and the legal provisions referred aforesaid, we are of the view that this is an appropriate case for release of the vehicle on terms and conditions to be determined by the Special Court.”

49. An identical view was expressed by Apex Court in **Sunderbhai Ambalal Desai** (supra).

50. It is evident from various provisions and scheme of the Act as also from the scheme of CrPC, now BNSS, when read in conjunction, that a property, which is subject matter of an offence ought not to be retained in the custody of the court or police for an indefinite property and render it useless. Similarly, a vehicle liable to confiscation under the provisions of NDPS Act cannot be a ground to deny its interim custody to the registered owner or a bonfide purchaser/holder of a vehicle in justified circumstances, subject of course to the reasonable conditions. Reference in this respect can be made to **2023 Cr.L.J 3142 Orissa, 2002 Cr.L.J 2605 Delhi** and **2005 (2) Cr. Court Cases 903 Rajasthan**.

51. Back to the case on hand, a perusal of the registration certificate placed on record by the petitioner reveals that vehicle in question was financed by Choramandalam & Investment and Finance Co. Ltd., Kathua as evident from the hypothecation entered over the certificate, which is sufficient to prima facie

indicate that vehicle in question has not been purchased, out of the proceeds of sale or purchase of narcotic drugs or psychotropic substances.

52. Having regard to the aforesaid discussion what comes to the fore is that consumption related offences are different from “financing” and “harbouring”, which are more serious in nature. Section 27-A NDPS Act plays a critical role in India’s fight against drug trafficking. It imposes strict penalties for financing drug related activities and for harbouring the drug traffickers. The Section sends a strong message that supporting drug operations in any form financially or physically harbouring the offenders will invite serious ramifications. The Section carries stringent punishments, including rigorous imprisonment for a minimum of 10 years which may extend to 20 years alongwith hefty fine. It applies not only to the drug traffickers but also to those who indirectly assist them. However, mere sale or purchase of drugs does not automatically qualify as “financing illicit traffic”. The law enforcement agencies must clearly establish financial links and intent of the drug trafficker to support trafficking networks to invoke Section 27-A NDPS Act.

53. The provisions provided for forfeiture of the illegally acquired property and confiscation of contrabands as also of conveyance at the conclusion of the trial, do not in any way inhibit the jurisdiction of the trial courts to consider the release of a conveyance or a vehicle on interim custody in favour of registered owner or a bona fide purchaser/holder of a vehicle in justified circumstances.

54. For the foregoing reasons, the petitions are allowed. Impugned order dated 28.10.2024, passed by the trial court, charging the petitioner for offence under Section 27-A NDPS Act is set-aside and he is directed to be released on bail on his furnishing a surety bond in the amount of Rs. 1.00 lac to the satisfaction of the trial court and a bond of personal recognizance to the satisfaction of

Superintendent of the concerned jail, subject however, to the following conditions that:-

- (i) he is not involved in any other offence, in particular, offence punishable with death or life imprisonment;
- (ii) he shall not leave territorial jurisdiction without prior permission of the trial court;
- (iii) he shall remain punctual during the trial and appear on each and every date of hearing; and
- (iv) he shall not jump over bail and make an attempt to threaten the prosecution witnesses and tamper with the prosecution evidence.

55. Impugned order dated 21.09.2024, passed by the trial court, is also set-aside and the vehicle in question i.e. Maruti Sazuki Swift bearing registration No. JK09P/1912 is directed to be released on the superdnama of the petitioner, subject, however to the following conditions that:-

- (i) he shall not dispose or alienate the vehicle in any manner till the disposal of case or till the conclusion of the confiscation proceedings, if any undertaken;
- (ii) he shall cooperate in the confiscation proceedings, if any;
- (iii) he shall produce photographs of the vehicle from different angles and the said photographs along with the compact disk should be kept in the trial court record. The trial court shall prepare a punchnama with respect to the vehicle, which can be used in evidence;
- (iv) he shall submit a copy of the Registration Certificate, duly certified by the Judicial Magistrate in the trial court.

56. Disposed of.

(Rajesh Sekhri)
Judge

Jammu
19.08.2025
Abinash

Whether the judgment is speaking? **Yes**
Whether the judgment is reportable? **Yes**