

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.64805 of 2024**

Arising Out of PS. Case No.-238 Year-2024 Thana- KHAJANCHI HAT District- Purnia

Sunita Devi wife of Late Ashok Singh Village- Bhaskar Nagar, Ward No 07,  
PO- Polytechnic PS- K. Hat, Distt- Purnea

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rajeshwar Ram, S/o Bhagwan Ram Posted as sub Inspector, K.Hat P.S., P.S.  
- K. Hat, Distt.- Purnea. Permanent Address R/o Village- Amrunha, P.S.-  
Chouri, Distt.- Bhojpur, Bihar

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr. Bijendra Kumar Singh, Adv.  
For the Opposite Party/s : Mr. Md. Matloob Rab, Adv.

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA**  
**ORAL JUDGMENT**

**Date : 03-04-2025**

Heard learned counsel for the petitioner and  
learned A.P.P. for the State.

**2.** The present quashing petition has been filed on behalf of the petitioner for quashing the order dated 02.07.2024 as passed by learned Addl. Sessions Judge IV th, Purnea in connection with K. Hat P.S. Case No. 238 of 2024 registered for the offences punishable under Sections 8 (C), 21(a) and 25 of the NDPS Act, where petition of petitioner as to release his Scooty bearing registration no. BR11BB1257 and mobile phone bearing IMEI No. 860153069758957 and



860153069258940 was rejected by learned Addl. Sessions Judge IV th, Purnea.

**3.** At the outset, in view of disputed report regarding ownership of mobile, as it was reported by Superintendent of Police, Purnea through letter no. 31 dated 18.01.2025 that same is registered in the name of Shivam Kumar Son of Ashok Singh, learned counsel appearing for the petitioner did not press his prayer for release of mobile phone, for the present. Hence, petition is limited with dealing of release of Scooty bearing registration no. BR11BB1257.

**4.** The brief facts of this case is that one Red Black Colour Scooty bearing Reg. No. BR11BB1257 which belongs to this petitioner found involved in carrying 4.75 gram “Smack” and so from apprehended accused who was driving Scooty, one VIVO Company Golden color mobile, a black Knife from waist, ATM card of UCO Bank was recovered. The “Smack” is a prohibited drug in view of NDPS Act 1985.

**5.** For the aforesaid occurrence, on the basis of a written complaint, F.I.R. bearing K. Hat P.S. Case No. 238 of 2024 was registered under section 21/22 of the NDPS Act.



**6.** A petition for release of aforesaid Scooty was filed before learned Addl. Sessions Judge IV th, Purnea, by petitioner, which was rejected on 02.07.2024 by considering the provision of Section 60 of the N.D.P.S. Act, as the vehicle in issue was used for carrying contraband i.e. *Smack* and thus same is subject to confiscation.

**7.** Learned counsel appearing on behalf of the petitioner submitted that confiscation of vehicle in issue is yet to be made and keeping vehicle in police station shall not serve any judicial purpose, where petitioner is ready to produce the same before the Trial Court as and when directed, upon release against adequate sureties as directed by the Court.

**8.** It is further submitted that in view of fact, as petitioner not appears connected in any manner with recovered “Smack” his vehicle cannot be confiscated. In support of his submission learned counsel relied upon the the judgment of Hon’ble Supreme Court in the case of ***Bishwajit Dey Vs. The State of Assam*** as reported in ***2025 SCC OnLine SC 40.***



9. In this context, learned counsel also relied upon the legal report of Hon'ble Supreme Court as available through ***Sunderbhai Ambalal Desai vs. State of Gujarat*** as reported in ***(2002)10 SCC 283***.

10. It is further submitted that name of petitioner has been transpired in this case being registered owner of the Scooty in issue.

11. Learned A.P.P. for the State, while opposing the quashing petition, submitted that petitioner is the registered owner of Scooty bearing Reg. No. BR11BB1257 and the same has been kept in the premises of K. Hat Police Station, where confiscation is yet to be made.

12. At this stage, it would further be apposite to reproduce the para nos. 21, 22, 23 and 26 of the ***Bishwajit Dey Case (supra)***, which reads as under:-

*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.*

**26.** *If the respondent-State's interpretation is accepted, then in a case where an accused is arrested carrying heroin in a private plane or a private bus or a private ship without the knowledge and consent of the management and staff of the private plane or bus or ship, the plane/bus/ship would have to be seized till the trial is over!*

**13.** It would also be apposite to reproduce the para no. 21 of the ***Sunderbhai Ambalal Desai Case*** (*supra*), which reads as under:-

**"21.** *However, these powers are to be exercised by the Magistrate concerned. We hope and trust that the Magistrate concerned would take immediate action for seeing that powers under Section 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than*



*fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly.”*

**14.** Consequently, the present application stands allowed with directions to the trial Court to release the Vehicle in question in the interim on *superdari* in favor of petitioner/ rightful owner after preparing a video and still photographs of the vehicle i.e., Scooty bearing registration No. BR11BB1257 after obtaining all information/documents necessary for identification of the vehicle, which shall be authenticated by the Investigating Officer, owner of the Vehicle and accused by signing the same. Further, the petitioner shall not sell or part with the ownership of the Vehicle till conclusion of the trial and shall furnish an undertaking to the trial court that she shall surrender the Vehicle within one week of being so directed and/or pay the value of the Vehicle (determined according to Income Tax law on the date of its release), if so ultimately directed by the Court.

**15.** Considering the aforesaid, the order dated 02.07.2024 passed by learned Addl. Sessions Judge IV<sup>th</sup>,



Purnea in connection with K. Hat P.S. Case No. 238 of 2024 is hereby quashed and set aside.

**16.** Accordingly the seized Scooty with aforesaid condition as discussed in para-14 (supra) be released in favour of petitioner/rightful owner on furnishing proper sureties to the satisfaction of the learned Addl. Sessions Judge IV th, Purnea in connection with K. Hat P.S. Case No. 238 of 2024.

**17.** The application stands allowed.

**18.** Let a coy of this judgment be communicated to the learned Trial Court forthwith.

**(Chandra Shekhar Jha, J)**

Sudha/-

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