

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66490 of 2024

Arising Out of PS. Case No.-736 Year-2023 Thana- KRITYANAND NAGAR District-
Purnia

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Md. Isaruddin @ Md. Isruddin Son of Md. Idrish R/o Chhoti Masjid, Sipahi
Tola, P.S.- K.Hat, District- Purnea

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Wasi Akhtar, Adv

For the Opposite Party/s : Mr. Satya Nand Shukla, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 17-03-2025

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
30.07.2024 passed by learned Special Judge (NDPS Act)
Purnea in connection with K. Nagar P.S. Case No. 736 of
2023 registered for the offences under Sections 8 (C),
21(C) and 25 of the NDPS Act.

3. The brief facts of this case is that one pick-up
van bearing Reg. No. BR 43 GA 2055 belongs to this
petitioner found carrying 4700 bottles each of 100 ml of



“codeine” cough syrup, where one of the important constituent was “codeine” a prohibited drug in view of NDPS Act 1985. Aforesaid vehicle of petitioner was seized on 27.12.2023 at about 9 PM.

4. On the basis of aforesaid written complaint, a F.I.R. bearing K.Nagar P.S. Case No. 736/2023 dated 27.12.2023 was registered for the offence under the aforesaid provisions of the NDPS Act.

5. A petition for release of aforesaid pick-up van was filed before learned Special Judge (N.D.P.S. Act) Purnea, where it was rejected on 06.03.2024 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. *codeine* cough syrup.

6. 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 and he is ready to produce the same before the Trial Court as and when directed.

7. It is further submitted that in view of fact, as



petitioner not appears connected in any manner with recovered *codeine* cough syrup 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, 2025 SCC OnLine SC 40.**

8. 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.**

9. It is further submitted that name of petitioner has been transpired in this case being registered owner of the pick-up van in issue.

10. Learned A.P.P. for the State, while opposing the quashing petition, submitted that petitioner is the registered owner of the pick-up van bearing Reg. No. BR 43 GA 2055 and the same has been kept in the premises of K.Nagar Police Station, where confiscation is yet to be made.

11. 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!

12. 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.”

13. Consequently, the present application stands allowed with directions to the trial Court to release the Vehicle in question in the interim on superdari after preparing a video and still photographs of the vehicle and 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 he 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.

14. Considering the aforesaid, the order dated 30.07.2024 as passed in K.Nagar P.S. Case No.736 of 2023 by learned Special Judge (NDPS Act) Purnea is hereby quashed and set aside.

15. Accordingly the seized pick-up van with aforesaid condition as discussed in para-13 (supra) be released in favour of petitioner on furnishing proper sureties to the satisfaction of the learned Special Judge (NDPS Act) Purnea in connection with K.Nagar P.S. Case No.736 of 2023.

16. The application stands allowed.

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

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	NAFR
CAV DATE	N/A
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