

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.9 of 2022

Arising Out of PS. Case No.-464 Year-2021 Thana- AHYAPUR District- Muzaffarpur

Smt.Sheelu Jha @ Sheelu Jha, wife of Vijay Jha, R/O Village- Pirauchha
Kanta Raghopur Katra, P.S.- Gaighat, District- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sunil Kumar Pandey, Advocate
For the State : Mr. Ram Anurag Singh, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 08-08-2025

Introduction

The present revision petition has been preferred against the impugned order dated 30.10.2021 passed by learned 5th Additional Sessions Judge, Muzaffarpur, in N.D.P.S. Case No. 97 of 2021, arising out of Ahiyapur P.S. Case No. 464 of 2021, whereby learned Court below has rejected the application of the petitioner for releasing the Pulsar 150 CC Motorcycle bearing Registration No. BR06BT-2837, Engine No. DHYRJD 26606, which was seized in connection with Ahiyapur P.S. Case No. 464 of 2021 registered on 16.07.2021 for offence punishable under Section 414 read with Section 34 of the Indian Penal Code and Section 8/20(b)(ii)(B) of N.D.P.S. Act.

Factual Background

2. As per the prosecution case, the informant/Police Officer along with other Police Personnel saw three accused



persons viz. Keshav Kumar, Saurav Kumar and Rahul Kumar coming on two Motorcycles. But, on seeing the Police, they tried to flee away, but with the help of Police Personnel, they were apprehended. Keshav Kumar was riding the Motorcycle in question bearing Registration No. BR06BT-2837, Engine No. DHYRJD 26606, whereas co-accused Saurav Kumar and Rahul Kumar were riding another Motorcycle, but that Motorcycle was not bearing any Registration number. However, the Chassis number of that Motorcycle bears MD2A13EY6KCL11042, Engine No. DKYCKL-81583. On search, 60 sachets of Smack wrapped in white paper were recovered from the pocket of the pant which accused Keshav Kumar was wearing, besides one Mobile. 45 sachets of Smack were also recovered from the person of the co-accused Saurav Kumar and 35 sachets of Smack from the person of the co-accused Rahul Kumar. Both the Motorcycles were also seized including one which is subject matter of this case. On the basis of the search and seizure, the FIR was lodged on 16.07.2021 bearing Ahiyapur P.S. Case No. 464 of 2021 against Keshav Kumar, Saurav Kumar and Rahul Kumar leading to registration of NDPS Case No. 97 of 2021 in the Special Court of NDPS Act.

3. The petitioner herein/Sheelu Jha moved an



application before the Special Court, NDPS, under Section 457 Cr.PC to release the vehicle. However, the same was rejected by learned Special Court, by the impugned order, holding as follows:-

“From the records of the case, it appears that the Pulsor 150 CC motorcycle Regn. No. BR06BT-2837, Engine No. DHYRJD 26606 has been seized in connection with Ahiyapur P.S. Case no. 464/2021 dated 16.07.2021 U/s 414/34 of I.P.C. and U/s 8/20(b)(ii)(B) ND.P.S. Act. Keshav Kumar S/o Vijay Jha has been apprehended with the said motorcycle when he was trying to escape and from him 60 sachet of smack has been recovered

Reports have been called from D.T.O., concerned P.S. and D.M. Muzaffarpur in this regard. From the report of D.T.O. it appears that the motorcycle bearing registration No. BR06BT-2837 has been registered in name of Sheelu Jha W/o Vijay Jha, having chasis No. MD2411CY9JRD01756, Engine No. DHYRJD266606. Same and similar report has also been submitted from the concerned P.S. By letter No. 2716 dated 14.09.2021. It has been communicated by the office of Collector, Muzaffarpur that proposal of forfeiture of aforesaid motorcycle BR06BT-2837 has yet not received by him from S.S.P, Muzaffarpur/concerned P.S.

It has not been disclosed by the petitioner about the source of income by which the motorcycle in question has been purchased. It appears from the FIR that it was being used as conveyance in dealing with smack.

Considering the aforesaid facts, I am not inclined to release the motorcycle Regn. No. BR06BT-2837. Hence, petition dated 02.08.2021 preferred by Smt. Sheelu Jha stands rejected.”

4. I heard learned counsel for the petitioner and learned APP for the State.

Submissions on behalf of the Petitioner

5. Learned counsel for the petitioner submits that the petitioner is innocent and no way involved in the alleged



offence. She is not even accused in the case. He further submits that in the alleged facts and circumstances, the vehicle in question could not be held to have been used in the commission of the alleged offence. The contraband, 60 sachets of Smack, was recovered from the person of the accused Keshav Kumar i.e. from the pocket of the pant, the accused Keshav Kumar was wearing. It is not a case of the prosecution that the contraband was concealed in the Motorcycle. Hence, the Motorcycle could not be held to have used in conveyance of the contraband. Hence, the vehicle was no way liable to be seized, let alone confiscation. He also submits that the petitioner is a bona fide owner of the vehicle and admittedly, she is registered owner of the vehicle.

6. Hence, in view of learned counsel for the petitioner, the impugned order is not sustainable in the eye of law. The petitioner is entitled to get interim custody of the vehicle during pendency of the trial before the Special Court.

Submissions on behalf of the State

7. However, learned APP for the State defends the impugned order submitting that the vehicle in question has been seized for offence committed under the NDPS Act and under the NDPS Act, there is no provision for interim release of the



vehicle and provisions of the Criminal Procedure Code regarding release of the vehicle to interim custody of the owner of the vehicle not applicable.

8. He also submits that the vehicle in question is also liable to confiscation and hence, it cannot be released to the petitioner, even if she is registered owner of the vehicle.

Consideration

9. I considered the submissions advanced by both the parties and perused the relevant materials on record.

10. Before I proceed, it would be desirable to discuss the relevant law regarding seizure, confiscation and disposal of the vehicle involved in the commission of the offence under NDPS Act and jurisdiction of the Special Court to release the vehicle to interim custody of the bonafide owner during trial or inquiry.

Seizure and Confiscation of Vehicles under the NDPS Act

11. **Section 60 of the NDPS Act** deals with liability of illicit drugs, substances, plants, articles and conveyances to confiscation. **Sub-Section-3 of Section 60** provides that any animal or conveyance used in carrying any narcotic drug or psychotropic substance or any article liable to confiscation under **Sub-Section 1 or Sub-Section 2** shall be liable to



confiscation 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. In other words, if the owner of the vehicle/conveyance proves that his vehicle was used in the commission of the offence without his knowledge or connivance and he has taken all reasonable precautions against such use, the conveyance cannot be confiscated despite it being used in the commission of the alleged offence under the NDPS Act. **Section 60 the NDPS Act** read as follows:-

“Section 60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation-(1)

Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance or controlled substances lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance or controlled substances which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance or controlled substances, materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance 2[or controlled substances], or any article liable to confiscation under



sub-section (1) or sub-section (2) shall be liable to confiscation, 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.”

(Emphasis supplied)

12. The procedure in making confiscation has been provided in **Section 63 of the NDPS Act**. As per **Sub-Section 1 of Section 63** of the Act, irrespective of conviction, acquittal or discharge of the accused, the Special Court is required to decide whether any article or thing seized under this Act is liable to confiscation. If the court decides that the article is so liable, it may order confiscation accordingly. It implies that decision regarding confiscation of any article can be taken only by the Special Court and only after conviction, acquittal or discharge.

13. **Sub-Section 2 of Section 63 of the NDPS Act** provides 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. It implies that if within one month of the seizure of an article or thing, if any body claims that he is a *bona fide* owner and he has right to possess the article or



thing, the court is bound to hear him before deciding the liability of the article or thing to confiscation.

14. Section 63 of the NDPS Act reads as follows-

“Section 63. Procedure in making confiscations.—

(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 under section 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 under section 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, [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.”

(Emphasis supplied)

15. From the conjoint reading of Sections 60 and 63 of the NDPS Act, it emerges that it is the Special court established under NDPS Act which decides liability of any article or thing including vehicle to confiscation and not



police or any authority like Drugs Disposal Committee constituted under **Section 52A of the NDPS Act**. It also emerges that when any person claims any right to the vehicle seized, the vehicle is liable to confiscation only when its owner fails to prove that it was used in the commission of the offence without his knowledge and connivance and he had taken all precautions against such use.

Procedure for Disposal of Confiscated Vehicles

16. The procedure of disposal has been provided in **Section 52A of the NDPS Act** and the notifications issued by the Central Government under it. This Section has been inserted in 1989 providing for disposal of contraband drugs. However, in 2014, conveyance was also added in this Section. **Section 52A of the NDPS Act** reads as follows:

“52A. Disposal of seized narcotic drugs and psychotropic substances.

(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any narcotic drugs, psychotropic substances, controlled substances or conveyances has



been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in subsection (1) shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs, psychotropic substances, controlled substances or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in subsection (1) may consider relevant to the identity of the narcotic drugs, psychotropic substances, controlled substances or conveyances in any proceedings under this Act and make an application, to any Magistrate for the purpose of

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such Magistrate, photographs of such drugs or substances or conveyances and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under subsection (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of narcotic drugs, psychotropic substances, controlled substances or conveyances and any list of samples drawn under subsection (2) and certified by the Magistrate, as primary evidence in respect of such offence.”

17. As per Section 52 A, Central Government is authorized to determine the procedure to dispose of contraband drugs and conveyances and accordingly, the Central Government has issued **four Standing Orders**, namely, (1) 1/88 dated 15.03.1988, (2) 2/88 dated 11.04.1988



and (3) 1/89 dated 13.06.1989 and Notifications have also been issued by the Central Government, namely, (1) Notification dated 10.05.2007, Ministry of Finance, (2) Notification dated 26.03.2013, Ministry of Finance, (3) Notification dated 16.01.2015, Ministry of Finance and (4) Notification dated 23.12.2022, issued by Ministry of Finance (Department of Revenue).

18. However, it is relevant to note that the Standing Order 1/89 dated 13.06.1989 was superseded by Notification dated 10.05.2007. Notification dated 10.05.2007 was superseded by Notification dated 16.01.2015. Even Notification dated 16.01.2015 has been superseded by a Notification dated 23.12.2022. As such, only Notification dated 23.12.2022 is in operation.

19. From the aforesaid provisions of Standing Order bearing no. 1/88 and Standing Order 2/88, it transpires that approval of Special Court was required for disposal of contraband drugs or conveyance. However, as per Notifications dated 16.01.2015 or 23.12.2022, there is no such requirement for disposal of contraband drugs or conveyances. Only the prepared inventory of the contraband drugs and conveyance is required to be certified by any



Magistrate before disposal. In other words, as per the Notification dated 16.01.2015 and 23.12.2022, pre-trial disposal of contraband drugs and conveyances has been provided without approval of the Special Court. However, such provision of the Notification cannot be read in isolation. It has to be read with **Sections 60 and Section 63 of the NDPS Act**. As per **Section 60(3)**, any animal or conveyance is liable to confiscation only if the owner thereof fails to prove that it was used without his knowledge or connivance and he had not taken all reasonable precautions against such use. **Sub-Section 2 of Section 63** also provides that no order of confiscation or article or thing shall be made until the expiry of one month from the date of seizure or without hearing any person who made claim any right thereto and the evidence if any which he produces in respect of his claim.

20. As such, as per conjoint reading of **Sections 60 and 63 of the NDPS Act** and the Notification dated 23.12.2022, it transpires that pre-trial disposal of conveyance/vehicles is possible under Notification dated 23.12.2022 only if no one claims right to possession and interim release of vehicle under the provision of **Section 60 and 63 of the NDPS Act**. If anybody claims for release of the



vehicle, the Special Court has to hear him to decide liability of the vehicle to confiscation and if it is proved by the claimant that he has right to possess the vehicle and it has not been used in commission of the offence with his knowledge or connivance and he had taken all precautions against such use, the vehicle cannot be confiscated and disposed of by the Drug Disposal Committee. This position of law is not affected even by the judgment of Hon'ble Supreme Court in **Mohan Lal v. Union of India** as reported in (2016) 3 SCC 379 dealing with handling and disposal of seized Narcotic Drugs and Psychotropic Substance, giving directions to prevent re-circulation of seized contraband drugs into the system.

21. The aforesaid discussions clearly shows that in case of any article, thing or conveyance/vehicle is claimed by any person as provided under **Sections 60 and 63 of the NDPS Act**, the Special Court is duty bound to decide the liability of that thing, article or vehicles to confiscation and only if it is decided by the Special Court that such article, thing or vehicle is liable to confiscation, the Drug Disposal Committee can dispose it by sale or auction or otherwise.



**Jurisdiction of Special Court to release vehicle to
interim custody of Bonafide owner**
(Applicability of Sections 451 and 457 Cr.PC)

22. However, there is no provision under the NDPS Act for passing any order by the Special Court for interim release of vehicles/articles during pendency of the trial or inquiry in regard to the liability of the vehicle to confiscation before itself. In such a situation, now question is whether Special Court has any jurisdiction to pass any order to release vehicle/article to interim custody of the rightful owner or not.

23. Here, **Sections 36C of the NDPS Act**, becomes relevant. It reads as follows-

“**Section 36C. Application of Code to proceedings before a Special Court**-Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.”

24. As per **Section 36 C**, the provisions of the CrPC is applicable if it is not inconsistent or contrary to the provisions of the NDPS Act which is a special enactment.

25. **Section 5 of the CrPC** also provides that the provisions of CrPC is applicable in case of special enactments only if there is such provisions in that special enactment. It reads as follows-



“Section 5. Saving- Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

26. In such situation, chapter-XXXIV comprising Section 451 to Section 459 of the Cr.PC, 1973, becomes applicable to the proceeding before the Special Court established under NDPS Act.

27. Even in the recent judgment of **Bishwajit Dey v. State of Assam**, as reported in **(2025) 3 SCC 241**, Hon’ble Supreme Court has clearly held that Special Court has jurisdiction to release the vehicle to interim custody to his owner during pendency of the trial under **Sections 451 and 457 Cr.PC**, which deals with interim custody of case property. The relevant part of judgment reads as follows:

“26. 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.

27. In the absence of any specific bar under the NDPS Act and in view of Section 51 of the NDPS Act, the Court can invoke the general power under Sections 451 and 457CrPC 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.”

28. In **Bhola Singh @ Ayush Singh Vs. State of**



Bihar (2024 SCC OnLine Pat 855) and Md. Hakim Khan @ Hakim Khan Vs. State of Bihar (2024 SCC OnLine Pat 5977), this Court, after discussing relevant provisions of NDPS Act and the judicial precedents, has also held that during pendency of the trial or inquiry in regard to liability of the vehicle to confiscation, the Special Court is empowered to release the vehicle to interim custody of the rightful owner, subject to required conditions. The following cases may be also referred to wherein similar view has been expressed by different High Courts -

- i. **Baldhir vs. State of UP, 2025 SCC Online All 1234**
- ii. **Sudharsan vs. State, MANU/TN/1328/2024**
- iii. **Rathnamma Vs. State of Karnataka**
(CRL. P No. 3571 of 2021, decided on 17.06.2021 by Karnataka High Court)
- iv. **Tikeshwar Singh Vs. State of Chhattisgarh**
(2020 SCC Online Chh 2473)
- v. **Tej Singh Vs. State of Haryana** (2020 SCC OnLine P& H 4679)
- vi. **Gurbinder Singh Vs. State of Punjab**
(2017 SCC OnLine P&H 16026)
- vii. **Abhijeet Kumar Vs. State of Uttarakhand**
(2019 SCC OnLine Utt 265)
- viii. **Waish Ahmed Vs. The State of West Bengal**
(MANU/WB/0073/2019)
- ix. **Aniul Haque Vs. State of West Bengal**
(2015 SCC ONLINE CAL 1612)
- x. **Tridip Mitra Vs. State of West Bengal**
(2005 SCC OnLine Cal 551)
- xi. **Manoj Kumar Pandey Vs. State of M.P.**
(2019 SCC OnLine MP 2315)
- xii. **Sri Sankar Das Vs. The State of Tripura**
(Crl. Petn No. 9 of 2018 decided on 16.03. 2018)



**Extent and Scope of jurisdiction under Sections
451 ad 457 Cr.PC**

29. The celebrated judgment of **Sunderbhai Ambalal Desai v. State of Gujarat, [(2002) 10 SCC 283]** is a leading case on the subject and still holding the field. In this case, Hon'ble Supreme Court has explained the extent and scope of jurisdiction under Section 451 Cr.PC and how it should be exercised. The relevant parts of the judgment are as follows:

“ 5. Section 451 clearly empowers the court to pass appropriate orders with regard to such property, such as:

(1) for the proper custody pending conclusion of the inquiry or trial;

(2) to order it to be sold or otherwise disposed of, after recording such evidence as it thinks necessary;

(3) if the property is subject to speedy and natural decay, to dispose of the same.

.....
7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. court or the police would not be required to keep the article in safe custody;

3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

.....
10. To avoid such a situation, in our view, powers under Section 451 CrPC should be exercised promptly and at the earliest.

Valuable articles and currency notes

11. With regard to valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such



articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, the Magistrate should pass appropriate orders as contemplated under Section 451 CrPC at the earliest.

12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:

(1) preparing detailed proper panchnama of such articles;

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security.

13. For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition.

14. In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the court may direct that such articles be kept in bank lockers. Similarly, if articles are required to be kept in police custody, it would be open to the SHO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the court may direct that such articles be handed back to the investigating officer for further investigation and identification. However, in no set of circumstances, the investigating officer should keep such articles in custody for a longer period for the purposes of investigation and identification. For currency notes, similar procedure can be followed.

.....

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be



done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

19. For articles such as seized liquor also, prompt action should be taken in disposing of it after preparing necessary panchnama. If sample is required to be taken, sample may be kept properly after sending it to the Chemical Analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing.

20. Similarly for the narcotic drugs also, for its identification, procedure under Section 451 CrPC should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same.

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.

30. In **Bishwajit Dey case** (supra), **Hon'ble Supreme Court** has also held that if there is no allegation



made against the owner of the vehicle or his agent, the vehicle should normally be released to his interim custody, subject to furnishing bond that he would produce the vehicle as and when directed by the Court and/or he would pay the value of the vehicle as determined by the Court on the date of the release, if the Court finally opines that vehicle needs to be confiscated. The relevant part of the judgment reads as follows:-

“Broadly speaking there are four scenarios

33. Though seizure of drugs/substances from conveyances can take place in a number of situations, yet broadly speaking there are four scenarios in which the drug or substance is seized from a conveyance. Firstly, where the owner of the vehicle is the person from whom the possession of contraband drugs/substance is recovered. Secondly, where the contraband is recovered from the possession of the agent of the owner i.e. like driver or cleaner hired by the owner. Thirdly, where the vehicle has been stolen by the accused and contraband is recovered from such stolen vehicle. Fourthly, where the contraband is seized/recovered from a third-party occupant (with or without consideration) of the vehicle without any allegation by the police that the contraband was stored and transported in the vehicle with the owner's knowledge and connivance. In the first two scenarios, the owner of the vehicle and/or his agent would necessarily be arrayed as an accused. In the third and fourth scenario, the owner of the vehicle and/or his agent would not be arrayed as an accused.

34. This Court is of the view that criminal law has not to be applied in a vacuum but to the facts of each case. Consequently, it is only in the first two scenarios that the vehicle may not be released on superdari till reverse burden of proof is discharged by the accused owner. However, in the third and fourth scenarios, where no allegation has been made in the charge-sheet against the owner and/or his agent, the vehicle should normally be released in the interim on superdari subject to the owner furnishing a bond that he would produce the



vehicle as and when directed by the Court and/or he would pay the value of the vehicle as determined by the Court on the date of the release, if the Court is finally of the opinion that the vehicle needs to be confiscated.

35. This Court clarifies that the aforesaid discussion should not be taken as laying down a rigid formula as it will be open to the trial courts to take a different view, if the facts of the case so warrant.

Supreme Court in similar facts in Sainabav.State of Kerala [Sainaba v. State of Kerala, (2024) 13 SCC 382 has released the vehicle.”

(Emphasis supplied)

Present Case

31. Coming to the case on hand, I find that undisputedly, the petitioner herein is the registered owner of the vehicle, but she is not an accused in the subject FIR. It is Keshav Kumar, who was riding the motorcycle, is accused on account of recovery of 60 sachet of Smack from the pant which he was wearing. It is not the case of the prosecution that the contraband was concealed in any part of the vehicle. In such facts and circumstances, by no imagination, the vehicle could be held to have been used in transportation/conveyance of the contraband.

32. The word “use” which has come in Section 60(3) of the NDPS Act, cannot be given liberal or expansive meaning. It has to be interpreted strictly as it has penal consequences.

Kerala High Court in Wilson C.C. Vs. State of Kerala [2022 LiveLaw (Ker) 627] has expressed similar view, wherein a



person was driving a vehicle and 0.06 grams of LSD Stamp was recovered from wallet kept in his pocket. Kerala High Court held that it could not be said that the vehicle was used for conveyance of the contraband. The vehicle was not held subject to confiscation.

33. In Thausif Ahammad Bengre Vs. State of Kerala [MANU/KE/0426/2018], the vehicle was being driven by the driver and 40 grams *Ganja* was recovered from his possession. In that situation, **Kerala High Court** again held that it is really fallacious to contend that the vehicle was used for carrying the contraband.

34. Similar view has been expressed by a Division Bench of this Court, of which I was a part, in the context of Bihar Prohibition and Excise Act, 2016 in **Binit Kumar Vs. State of Bihar (2024 SCC OnLine Pat 850)**, wherein 180 ml. liquor was recovered from the pant of the petitioner and it was held that Motorcycle could not be held to have been used in carrying the illicit liquor, which was recovered from the person of the petitioner. At most, the accused could be prosecuted for illegal possession of the contraband, but vehicle was not liable to be seized or confiscated. Similar view has been also expressed by the same Division Bench in **Sunaina @ Suneina**



Vs. The State of Bihar and Ors. (2024 SCC OnLine Pat 851).

35. As such, in the case on hand, the seizure of the vehicle in question was not permissible under the N.D.P.S. Act. If such seizure is allowed, it may lead to absurd situations, requiring even aircraft, train or any public transport to be seized and confiscated if a passenger therein is found to be carrying some contraband on his person without the knowledge of the owner of the carrier. There can be never such object of the N.D.P.S. Act. The provision for confiscation of vehicles under the N.D.P.S. Act has been made to discourage the owner of any vehicle from using his vehicle or permitting it to be used with his consent or connivance in illegal trade of contraband under the N.D.P.S. Act. However, such purpose may not be served if any vehicle is confiscated, which was neither used by the owner or allowed by him with consent or connivance to transport the contraband under the N.D.P.S. Act. It may only lead to harassment of the innocent owners and wastage of national resources. The seized vehicles generally turn into waste/junk in course of time on account of corrosion and decay.

36. As such, the seizure of the vehicle in question was not only arbitrary, but also violative of Article 300A of the Constitution. Had the petitioner moved this Court invoking writ



jurisdiction, the petitioner could have got not only unconditional/absolute custody of the vehicle, but even compensation on account of violation of his constitutional rights to hold property, which could not be deprived of except as per the procedure as established by law, as Division Bench of this Court, of which I was a part, has held in the cases of **Binit Kumar Vs. State of Bihar (2024 SCC OnLine Pat 850)** and **Sunaina @ Suneina Vs. The State of Bihar and Ors. (2024 SCC OnLine Pat 851)**.

37. Moreover, I have already found that even in case of use of vehicle in transportation of contraband under the N.D.P.S. Act, the bonafide owner is entitled to get interim custody of the vehicle during trial or inquiry if he claims right to the vehicle before the Special Court. The Drugs Disposal Committee has no jurisdiction to dispose of such vehicle forthwith by way of sale or auction just after seizure of the vehicle in view of the claim of the owner for return of the vehicle. Only after Special Court holds after conclusion of the trial that the vehicle is liable to confiscation, the vehicle could be disposed of by the Drugs Disposal Committee by way of sale/auction under Section 52 of the N.D.P.S. Act read with notification dated 23.12.2022 issued by the Central



Government.

Order

38. Hence, I find that there was no reason to the Special Court, NDPS to reject the application of the petitioner for release of the vehicle in question to her interim custody, subject to the required conditions to ensure production of vehicle to the Court as and when required during pendency of the Trial and Confiscation Proceedings. Even, the ground given by learned Special Court that the Petitioner had not disclosed the source of income by which the vehicle was purchased is not sustainable. The ownership of the vehicle is not disputed, nor anybody else has been claiming to the custody of the vehicle as bonafide owner.

39. Hence, the impugned order is set aside and the Motorcycle in question is directed to be released to the interim custody of the Petitioner, subject to the following conditions:

(i) The petitioner shall furnish bank guarantee of rupees twenty five thousand before the Special Court.

(ii) The petitioner shall produce the seized vehicle before the Special Court as and when called for during investigation, inquiry or the trial and also during the confiscation proceeding if any such proceeding is initiated.



(iii) The petitioner shall not alienate the seized vehicle or change its nature and character during the pendency of the case.

(iv) The seized vehicle shall not be used for the commission of any offence.

(v) The vehicle, before its release, should be properly photographed and the photograph will be made part of record. Engine number and chassis number of the motorcycle should be also noted for future reference.

40. The petition stands allowed, accordingly. Pending applications, if any, stand disposed of. Send a copy of this judgment to the Court below for information and needful.

41. Before I part with, it is clarified that the Petitioner is still at liberty to file appropriate writ petition for unconditional/absolute custody of his vehicle and compensation for arbitrary seizure of the vehicle and violation of Article 300A of the Constitution of India.

(Jitendra Kumar, J.)

Ravishankar/
Shoaib/
S. Ali/Chandan

AFR/NAFR	AFR
CAV DATE	04.08.2025
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