



Crl.O.P.No.32070 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2025

CORAM:

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.32070 of 2025

Kalaiyarasi

... Petitioner

Vs.

The State represented by,
The Inspector of Police,
Paradarami Police Station,
Vellore District.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, to set aside the return docket order dated 04.11.2025, passed in unnumbered CMP.No.... of 2025 in Crime No.163 of 2025 by the learned Additional District Judge and Presiding Officer, Special Court under EC Court, Salem.

For Petitioner : Mr.SP.Chockalingam

For Respondent : Mr.R.Vinothraja
Government Advocate (Criminal Side)



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ORDER

The present Criminal Original Petition has been filed seeking to set aside the docket order dated 04.11.2025, returning the petition filed by the petitioner seeking interim custody of the vehicle bearing registration No.TN 52 K 7398.

2. The submissions of the learned counsel appearing for the petitioner are as follows:-

2.1. The petitioner is the owner of the vehicle viz., a Ashok Leyland Taurus Lorry bearing registration No.TN 52 K 7398, which was seized by the respondent Police in connection with Crime No.163 of 2025 registered on the file of the respondent for the offences under Sections 8(c), 20(b)(ii)(B), 25 and 29(1) of the Narcotic Drugs and Psychotropic Substances Act.

2.2. Thereafter, the petitioner filed a petition under Section 497 of the BNSS, 2023 seeking interim custody of her vehicle, whereas, the learned Additional District Judge and Presiding Officer, Special Court under EC Court, Salem, has returned the petition on 04.11.2025.



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2.3. As per the Judgment passed by the Hon'ble Apex Court in

Denash vs. The State of Tamil Nadu, reported in 2025 SCC OnLine SC 2276, the petition seeking interim custody of the vehicle is maintainable. Hence, he prayed that the order of return dated 04.11.2025 may be set aside.

3. Learned Government Advocate (Criminal Side) submitted that though the petitioner is the owner of the vehicle, she is not an accused in this case.

4. Heard both sides and perused the materials available on record.

5. In *Denash (supra)*, the Hon'ble Apex Court had passed an order of interim custody of the vehicle to the owner, however, subject to four scenarios in which the contraband is seized from the conveyance. Thereby, the petition for interim custody of the vehicle in an NDPS case is maintainable. The relevant paragraphs of the judgment in *Denash (supra)*, are extracted hereunder:-

“29. Accordingly, we have no hesitation in holding that the



Rules of 2022 cannot be interpreted as divesting the Special Courts of their jurisdiction to entertain an application for interim custody or release of a seized conveyance under Sections 451 and 457 of CrPC [Sections 497 and 503 of BNSS]. The authority of the Special Court to pass appropriate orders for interim custody during the pendency of the trial, as well as to make final determination upon its conclusion, continues to operate independently of the disposal mechanism envisaged under the said Rules. Any interpretation to the contrary would lead to anomalous and unjust consequences by depriving a bona fide owner of his property without judicial scrutiny or an opportunity of hearing, an outcome wholly inconsistent with the statutory scheme of the NDPS Act and contrary to the fundamental principles of natural justice.

30. Hence, we are of the considered view that the interpretation given by the High Court, holding that pursuant to the promulgation of the Rules of 2022, all other forums, including the Special Court, are divested of the jurisdiction to decide the fate of a seized conveyance under the NDPS Act and that the aggrieved person must necessarily approach the Drug Disposal Committee, is unsustainable in the eyes of law.

31. In the present case, it is manifest that the appellant is the true owner of the vehicle, having valid documents. The vehicle was lawfully engaged for transportation of iron sheets weighing 29,400 MT. The seized drug, i.e., 6 kilograms Ganja was found in possession of the four accused persons present in the vehicle. Neither was the appellant chargesheeted in the matter nor did the prosecution allege him to be acting in conspiracy. As a necessary corollary, it can safely be presumed that the said contraband must have been procured by the drivers and/or the khalasis without the knowledge or connivance of the appellant.

32. Having regard to the valuable consignment being transported and the high value of the vehicle, it does not stand to reason that the appellant, being the owner thereof, would knowingly jeopardize his business and property by permitting the



transportation of 6 kilograms of Ganja alongside such valuable cargo.

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33. The situation at hand may be examined with reference to the principles enunciated by this Court in paragraphs 29 and 30 of *Bishwajit Dey (supra)*, wherein four scenarios were delineated concerning the seizure of contraband from a conveyance, along with the general approach to be adopted by Courts while considering the question of interim release of such conveyances. Paragraphs 29 and 30 of *Bishwajit Dey (supra)*, are extracted herein below for ready reference: -

“29. 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.

30. 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



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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.

*31. 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.*** (Emphasis Supplied)”

34. Although, on a superficial reading, the present case might appear to fall within the second scenario delineated in Bishwajit Dey (supra), where contraband is recovered from the owner's agent (driver) who is arrayed as an accused, however, the application of criminal law cannot be reduced to a rigid or mechanical formula. Each case must be examined in light of its peculiar facts and circumstances. In the present matter, a holistic consideration of the record reveals that the facts do not align strictly with the said category for the following reasons:-

- i. Firstly, the appellant is the lawful owner with valid documents, and the vehicle was commercially engaged in transporting a valuable consignment of 29,400 MT of iron sheets. It is highly improbable to believe that he would risk both the costly vehicle and the high value consigned goods and his business goodwill by knowingly allowing narcotics to be transported along with the cargo.*
- ii. Secondly, the contraband, i.e., 6 kilograms of Ganja was recovered from the four chargesheeted accused persons.*
- iii. Thirdly, the appellant was not arraigned as an accused and the chargesheet contains no material suggesting that*



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the appellant had knowledge of or connived in the offence.

iv- It can thus, safely be presumed that the said contraband must have been procured by the drivers and/or the khalasis without the knowledge or connivance of the appellant.

35. In view of the above, while the present case may technically correspond to the second scenario as enumerated in paragraph 29 of Bishwajit Dey (supra), the peculiar factual matrix warrants a more pragmatic approach. It would, therefore, be expedient in the interest of justice to grant interim custody of the vehicle to the appellant, as the overall circumstances clearly indicate his bonafides and absence of any involvement in the drugs being carried in the vehicle.”

6. In view of the above, this Criminal Original Petition stands allowed. The order of return passed by the learned Additional District Judge and Presiding Officer, Special Court under EC Court, Salem, dated 04.11.2025, is set aside. The learned Judge is directed to number the petition filed under Section 497 of BNSS and pass orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

25.11.2025

Neutral Citation: Yes/No
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1. The Additional District Judge and Presiding Officer,
Special Court under EC Court, Salem

2. The Inspector of Police,
Paradarami Police Station,
Vellore District.

3. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA, J.

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