



CRL RC(MD)No.188 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 29.08.2025

PRONOUNCED ON : 27.11.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.188 of 2024

and

CRL MP(MD)No.2100 of 2024

Marimuthu

... Petitioner

Vs.

State, Rep. by
The Sub Inspector of Police,
Thanjavur West Police Station,
Thanjavur District.
(Crime No.294/2023)

... Respondent

PRAYER: Criminal Revision Petition is filed under Sections 397 r/ 401 Cr.P.C., 1973, to call for the records from the lower Court and set aside the order passed in Cr.M.P No.8149 of 2023 dated 09.01.2024 on the file of the learned Additional District Judge/ Presiding Officer, Special Court Under Essential Commodities Act, Thanjavur District and consequently hand over the interim custody of the vehicle to the petitioner herein.

For Petitioner : Mr.K.Prabhu

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor



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ORDER

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Preface:

This Criminal Revision Case is directed against the order dated 09.01.2024 passed in Cr.M.P.No.8149 of 2023 by the learned Additional District Judge / Presiding Officer, Special Court under Essential Commodities Act, Thanjavur, refusing interim custody of the petitioner's heavy goods vehicle, viz., Ashok Leyland TAARAS lorry bearing Registration No. TN-76-AV-5563, seized in Crime No.294 of 2023 for offences under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act, 1985.

Case of the Prosecution:

2. According to the prosecution, on 06.03.2023, the respondent police attached to Thanjavur West Police Station intercepted an Ashok Leyland TAARAS lorry bearing Reg. No. TN-76-AV-5563, which was allegedly being used to transport ganja in commercial quantity. The vehicle was stated to be on a trip carrying rice from Andhra Pradesh towards Kerala. During inspection, contraband ganja was allegedly found concealed in the load area of the lorry.



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3. A case in Crime No.294 of 2023 was registered for offences under Section 8(c) r/w 20(b)(ii)(C) of the NDPS Act. The vehicle was seized as the conveyance used in the commission of the alleged offence. The seized vehicle was produced before the jurisdictional Court and kept in custody as case property. The prosecution asserts that the vehicle remained unclaimed for more than two months from the date of seizure and that the owner did not approach the Court within that period. It is further stated that the vehicle is not in running condition and is lying idle.

4. Relying on an order of this Court in CrI.R.C.(MD) No.41 of 2019 dated 16.06.2023, the prosecution took the stand that where a vehicle seized in an NDPS case remains unclaimed for more than two months, it may be appropriated for confiscation under Section 63 NDPS Act. On the above premises, the prosecution opposed interim return of the vehicle and instead prayed that steps be taken for its confiscation / disposal.

Case of the Petitioner:

5. The petitioner is arrayed as Accused No.6 in Crime No.294 of



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2023. His case, in brief, is:

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He is the registered owner of the heavy goods vehicle / TAARAS lorry bearing Reg. No. TN-76-AV-5563. The Registration Certificate and supporting records stand in his name. The said vehicle is a goods carrier used for commercial transport of commodities. The petitioner habitually lets out the vehicle on hire for carriage of goods to various destinations. On 06.03.2023, the vehicle was entrusted to his driver for carrying rice bags from Andhra Pradesh to Kerala. The petitioner asserts that he had engaged the vehicle only for lawful goods transport and had no knowledge that contraband ganja would be concealed and transported.

6. He claims that he is not connected with the co-accused allegedly involved in the contraband activity, and that he neither permitted nor connived in the use of the vehicle for any unlawful purpose. The petitioner further points out that in the FIR, the place of occurrence is incorrectly mentioned as Karunthattankudi instead of Chennai, and he relies on this discrepancy as one of the factors contributing to confusion during the initial stages. The petitioner states that he is the sole breadwinner of his family and earns his livelihood through hiring of the said lorry. The vehicle was purchased on finance,



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and he continues to bear the burden of monthly instalments.

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7. The vehicle, after seizure, is lying in the open, exposed to natural elements, and rapidly deteriorating. If not released, he would suffer severe financial loss and mental agony, and the vehicle may become junk even before the trial is concluded. On these allegations, he filed Cr.M.P.No.8149 of 2023 before the learned Special Court seeking interim custody of the TAARAS lorry, undertaking to produce the vehicle as and when required and to abide by any conditions imposed by the Court.

Gist of the Impugned Order:

8. By order dated 09.01.2024, the learned Additional District Judge / Presiding Officer, Special Court under Essential Commodities Act, Thanjavur, dismissed Cr.M.P.No.8149 of 2023. The impugned order, in substance, proceeds on the following lines:

The TAARAS lorry bearing Reg. No. TN-76-AV-5563 was seized in Crime No.294 of 2023 for offences under Section 8(c) r/w 20(b)(ii)(C) NDPS Act and produced as case property. The vehicle remained unclaimed by its owner for more than two months from the date of



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seizure, and it is presently not in running condition. This Court, in Crl.R.C.(MD) No.41 of 2019 dated 16.06.2023, has directed that unclaimed vehicles seized in NDPS cases may be confiscated under Section 63 NDPS Act if they remain unclaimed by the owner for more than two months.

9. In view of the above, the prosecution has sought confiscation of the vehicle; and once such a course is adopted, the Court should not grant interim custody to any claimant. On this reasoning, the learned Judge held that the petition is devoid of merit and rejected the request for interim custody.

Grounds of Revision:

10. The petitioner challenges the impugned order on, among others, the following grounds:

The learned Trial Court erred in treating the vehicle as unclaimed when the registered owner has appeared, asserted ownership, and filed a petition for return. Mere non-claim within two months cannot, by itself, amount to abandonment or loss of ownership. The learned Trial Court applied an earlier order of this Court, which dealt with vehicles



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lying truly unclaimed / abandoned, was mechanically applied to a case where the owner has approached the Court and denies knowledge of the offence. The factual and legal foundations are distinct.

11. The learned Trial Court fails to consider that, confiscation under Section 63 of the NDPS Act can occur only after issuing notice to the owner / claimant and after affording an opportunity of hearing. The Trial Court, by directing confiscatory steps merely on the premise of two months' non-claim, has effectively bypassed these safeguards. The learned Trial court below did not advert to the general powers of criminal courts to order interim custody of property pending inquiry or trial, as clarified by the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai v. State of Gujarat***¹ and subsequent decisions.

12. The learned Trial Court failed to consider that the petitioner is a commercial operator with a financed vehicle constituting his livelihood. The Trial Court has not weighed the serious economic prejudice that will be caused by indefinite detention of the vehicle. The learned Trial Court failed to consider that the impugned order runs contrary to the approach mandated in ***Sunderbhai Ambalal Desai v.***

¹ (2002) 10 SCC 283



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State of Gujarat² and other judgments where The Hon'ble Supreme Court has decried keeping vehicles in open yards and has directed their interim release on stringent terms.

Submissions:

13. The learned counsel for the petitioner contended that the petitioner is the undisputed registered owner of the TAARAS lorry, and the RC and other documents can be produced before the Court to establish ownership. The vehicle was lawfully engaged as a goods carrier. The alleged contraband was found in the load portion, and the prosecution has not produced any material to show that the petitioner had knowledge of or consented to such illegal use.

14. The NDPS Act nowhere states that courts are barred from granting interim custody of seized vehicles. On the contrary, Sections 36-C and 51 NDPS Act expressly apply the Cr.P.C., 1973 (now BNSS) provisions to proceedings under the NDPS Act, insofar as there is no inconsistency. Confiscation of a conveyance is governed by Section 60(3) and the procedure in Section 63 of the NDPS Act. Both provisions

² (2002) 10 SCC 283



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emphasise that confiscation can be ordered only after the owner is heard and after the Court is satisfied that the vehicle was used with the knowledge or connivance of the owner, or without due precautions.

15. The learned Trial Court has prejudged the matter by treating the vehicle as liable for confiscation solely on the basis of alleged two months' non-claim, without following the procedure prescribed under Section 63. The Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai v. State of Gujarat***³ has clearly held that vehicles should not be kept in police custody for long since they deteriorate; they must be released to the owner on appropriate conditions. That principle has been recognised even in NDPS matters.

16. The petitioner continues to pay loan instalments and depends on the vehicle for livelihood; its prolonged detention will cause irreparable loss and is disproportionate, particularly when the petitioner is prepared to furnish bond, sureties and undertakings to produce the vehicle as required and to abide by the ultimate order on confiscation. On these grounds, it was urged that the impugned order be set aside and interim custody be granted with suitable safeguards.

³ (2002) 10 SCC 283



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17. The learned Additional Public Prosecutor, on the other hand, submitted that the vehicle was seized along with commercial quantity of ganja, and is a vital material object in a serious NDPS prosecution. The owner did not claim the vehicle for more than two months from the date of seizure. Following the directions of this Court in CrI.R.C.(MD) No.41 of 2019, the prosecution has moved for confiscation, and the Court was justified in refusing interim custody. NDPS is a special law with a stringent, deterrent framework. Conveyances used for trafficking are made liable to confiscation under Section 60 of the NDPS Act, and the Courts ought to be cautious in ordering their release.

18. If vehicles involved in NDPS offences are liberally released, there is a risk that they may not be produced at the time of trial or confiscation, thereby frustrating the statutory intent. It was thus contended that the learned Special Court has adopted the correct approach and that no interference in revision is warranted.

19. Heard the learned counsel on either side and carefully perused the materials available on record.

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Point for Consideration:

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20. In the light of the rival contentions, the point that arises for determination is whether in respect of the TAARAS lorry bearing Reg. No. TN-76-AV-5563 seized in Crime No.294 of 2023, the Special Court was right in declining interim custody to the petitioner on the footing that the vehicle remained “unclaimed” for two months and is therefore liable for confiscation under Section 63 NDPS Act; and whether, notwithstanding such view, this Court ought to exercise its revisional jurisdiction to order interim release of the vehicle to the petitioner, subject to appropriate safeguards.

Analysis:

21. The NDPS Act is indeed a special statute, prescribing stringent provisions and special procedures for dealing with narcotic offences. At the same time: Section 36-C NDPS Act provides that the provisions of the Code of Criminal Procedure shall apply to the proceedings before a Special Court “save as otherwise provided in this Act”. Section 51 NDPS Act further declares that the provisions of the Cr.P.C., 1973 shall apply to warrants, arrests, searches and seizures under the Act, insofar as they are not inconsistent with the NDPS Act.



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22. Correspondingly, under the general procedure: Section 451 Cr.P.C., 1973 (now Section 497 BNSS) empowers the criminal court to make appropriate orders for the proper custody of property pending conclusion of inquiry or trial, and, if expedient and just, to order sale or disposal of such property. Section 457 Cr.P.C., 1973 (now Section 503 BNSS) deals with property seized by police and reported to a Magistrate, authorising the Court to deliver such property to the person entitled to possession, pending inquiry or trial.

23. As regards confiscation of conveyances, the NDPS Act lays down, *inter alia*: Section 60(3): A conveyance used in carrying any narcotic drug or psychotropic substance is liable to confiscation unless the owner proves that it was used without his knowledge or connivance and that he and his agent had taken all reasonable precautions to prevent such misuse. Section 63: The Court is required, at the conclusion of trial, or even where the offender is not known, to decide whether any article or conveyance is liable to confiscation. It must give an opportunity of being heard to any person claiming a right over such property.



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24. The scheme thus envisages a clear distinction between: Interim custody / proper care of seized property during investigation and trial (Sections 451 / 457 Cr.P.C., 1973; 497 / 503 BNSS), and Final confiscation of property upon judicial determination that the statutory conditions are satisfied (Sections 60 and 63 NDPS Act). There is nothing in the NDPS Act that expressly bars the criminal court from exercising its general power to order interim custody of a seized vehicle. What is required is that such exercise must not contradict or defeat the special provisions on confiscation.

25. The prosecution and the Trial Court have relied upon this Court's earlier order in CrI.R.C.(MD) No.41 of 2019, which directed that vehicles seized in NDPS cases and truly unclaimed for more than two months may be considered for confiscation under Section 63 NDPS Act. That order was evidently intended to address the mischief of abandoned vehicles clogging police stations and court campuses with no owner stepping forward, thereby hampering the very objective of keeping case property in manageable condition. However, the present case stands on a different footing:



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26. The petitioner has appeared before the Court as A6, asserted that he is the registered owner, and sought interim custody. There is no adjudication under Section 63 yet; no notice for confiscation has been issued to him in that capacity. The so-called “unclaimed” status is predicated only on his alleged non-claim within the initial two-month period, not on a voluntary abandonment of ownership. To simply equate “non-claim within two months” with “unclaimed / abandoned vehicle liable for immediate confiscation” is to stretch CrI.R.C.(MD) No.41 of 2019 beyond its context and to effectively bypass the statutory protections in Sections 60(3) and 63 NDPS Act. That earlier order cannot be read as authorising automatic confiscation without notice and hearing whenever an owner is late in approaching the Court.

27. In ***Sunderbhai Ambalal Desai v. State of Gujarat***⁴, the Hon’ble Supreme Court lamented the practice of keeping vehicles and other articles in police custody for long periods, resulting in decay, and held that Magistrates ought to act expeditiously to return such property to the rightful owner on suitable terms. Though ***Sunderbhai Ambalal***

⁴ (2002) 10 SCC 283



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Desai v. State of Gujarat⁵ was not in the NDPS context, its reasoning has been consistently applied in later cases, including those involving stringent statutes, to underline that: Seized vehicles, if left in open yards, rapidly deteriorate. There is rarely any evidentiary value in producing the vehicle in its decayed state at the time of trial, when photographs, panchnamas, and descriptions are available. The public interest is better served if such vehicles are either returned to owners or otherwise dealt with in a manner that avoids waste, subject to ensuring their availability for ultimate orders.

28. The Hon'ble Supreme Court in **Union of India v. Mohanlal**⁶ stressed prompt disposal of seized narcotic drugs and other items to avoid pilferage and malkhana congestion. That judgment led to strengthening of disposal mechanisms, but it did not declare that courts lose their jurisdiction to pass interim custody orders in appropriate cases, nor did it dilute the owner-protection in Sections 60(3) and 63 of the NDPS Act. Seen together, these decisions underline that efficient management of case property and protection of innocent owners are not mutually exclusive goals; both must be harmonised.

5 (2002) 10 SCC 283

6 (2016) 3 SCC 379



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29. Under Section 483 BNSS, the High Court is entrusted with the duty of exercising continuous superintendence over the Courts of Judicial Magistrates to ensure that there is expeditious and proper discharge of judicial functions. Section 442 BNSS preserves the High Court's revisional powers. Where a subordinate court misdirects itself on a pure question of law, misapplies a precedent, or adopts an approach that effectively nullifies statutory safeguards, the revisional jurisdiction is properly invoked.

30. In the present case, the Trial Court has treated the vehicle as unclaimed despite the owner's appearance and assertion of ownership. Acted on the basis that non-claim within two months automatically triggers confiscatory consequences under Section 63 NDPS Act, without notice or hearing. Omitted to consider the general powers under Sections 451 / 457 Cr.P.C., 1973; 497 / 503 BNSS. Failed to balance the rights of an alleged innocent owner with the interest of the prosecution. Such an order warrants correction in revision.

31. Applying the aforesaid principles, the factual position here is:



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The petitioner is the registered owner of the TAARAS lorry; he asserts bona fide ownership and use for legitimate goods transport. The contraband was allegedly recovered from the vehicle while being used by others. There is no material presently brought to this Court's notice to show that the petitioner has a prior history of NDPS offences or that he routinely facilitates illicit transport. The issue of his knowledge or connivance is a matter for trial and for determination under Section 60(3) and Section 63 NDPS Act at the appropriate stage, after evidence is recorded.

32. The vehicle is lying in police custody and, by the very nature of such storage, is exposed to deterioration. The petitioner continues to be liable on his finance commitments, and the vehicle is a tool of his livelihood. Denial of interim custody does not advance the cause of justice; it only ensures that by the time the trial ends, the vehicle is reduced to scrap. The interest of the prosecution can be adequately safeguarded if: the petitioner is required to furnish a substantial bond and sureties; the details of the vehicle, including engine and chassis numbers, are duly recorded and photographed; the petitioner undertakes not to change its identity or alienate it; and he is bound to produce the vehicle whenever directed by the Trial Court or abide by



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any confiscation order.

33. In these circumstances, and bearing in mind the clear distinction between interim custody and final confiscation, this Court is of the considered view that the learned Special Court adopted an unduly restrictive and legally unsustainable approach in dismissing the petitioner's application solely on the footing of alleged non-claim within two months. The appropriate course is to set aside the impugned order and grant interim custody to the petitioner, subject to stringent conditions that secure the interests of justice on both sides.

34. In the result, the Criminal Revision Case is allowed. The order dated 09.01.2024 passed in Cr.M.P.No.8149 of 2023 on the file of the learned Additional District Judge / Presiding Officer, Special Court under Essential Commodities Act, Thanjavur District, is set aside.

35. The respondent police are directed to release the vehicle – Ashok Leyland TAARAS lorry bearing Registration No. TN-76-AV-5563 – to the petitioner on interim custody, on the following conditions:



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- (a) the petitioner is directed to deposit a sum of **Rs.50,000/- (Rupees Fifty Thousand only)** as non-refundable deposit for the said vehicle to the credit of the Siddha Clinic, Madurai Bench of Madras High Court (A/c No.6865578213, Indian Bank, Madurai Bench of Madras High Court);
- (b) the petitioner shall execute a bond for a sum of **Rs.25,000/- (Rupees Twenty Five Thousand only)**, with two sureties for a likesum to the satisfaction of the learned Additional District Judge/ Presiding Officer, Special Court Under Essential Commodities Act, Thanjavur District;
- (c) the petitioner shall deposit the original Registration Certificate of the vehicle before the learned Additional District Judge/ Presiding Officer, Special Court Under Essential Commodities Act, Thanjavur District;
- (d) The petitioner shall give an undertaking before the respondent/ authority concerned stating that he will not use the vehicle in question for any illegal activities in future, failing which the respondent/trial Court is at liberty to confiscate the vehicle;
- (e) the petitioner shall not alienate and shall not make any alteration in the vehicle;



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(f) the petitioner shall produce the vehicle before the learned Trial Court on every Monday of every English calendar month;

36. It is made clear that the above directions relate only to interim custody of the vehicle and shall not be construed as expressing any opinion on the merits of the prosecution in Crime No.294 of 2023, or on the eventual question of confiscation under the NDPS Act, which shall be decided independently by the Trial Court on the basis of evidence.

37. In fine, this Criminal Revision case is allowed. Consequently, connected miscellaneous petition is closed.

27.11.2025

Index : Yes / No
Internet : Yes
Sml

To

- 1.The Additional District Judge/
Presiding Officer,
Special Court Under Essential
Commodities Act, Thanjavur District.
- 2.The Sub Inspector of Police,

20/22



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Thanjavur West Police Station,
Thanjavur District

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3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

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