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2026:GAU-AS:15088

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./411/2026

TAJ UDDIN TAPADAR ALIAS TAJ UDDIN
S/O GAUCH UDDIN
VILLAGE KHANEBARI, P.S. BADARPUR, DISTRICT SRIBHUMI ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR. R ALI, N PERVIN,MR. MUSTAFA HUSSAIN,MR H A AHMED

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 07.10.2026

Heard Mr. R. Ali, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. In this petition, under Section 438/442 of the BNSS, 2023, the petitioner has challenged the order dated 23.06.2026, passed by the learned Special

Judge, Barpeta, in Special NDPS Case No. 28/2026, arising out of Tarabari P.S. Case No. 15/2026, under Sections 21(b)/29 of the NDPS Act.

3. It is to be noted here that vide impugned order dated 23.06.2026, the learned Special Judge, Barpeta ('trial Court', for short) had dismissed the petition filed by the petitioner seeking zimma of a Maruti Suzuki Alto 800 car, bearing registration No. AS-01-DX-1945.

4. Mr. Ali, learned counsel for the petitioner submits that in connection with Tarabari P.S. Case No. 15/2026, under Sections 21(b)/29 of the NDPS Act, the Investigating Officer had seized one Maruti Suzuki Alto 800 car, bearing registration No. AS-01-DX-1945, and that the petitioner is the registered owner of the said vehicle and thereafter, the petitioner had filed one petition before the learned trial Court for releasing the vehicle in the interim custody of the petitioner. Mr. Ali also submits that however, the said petition No. 1617/2026, was dismissed by the learned trial Court, vide impugned order dated 23.06.2026, on the ground that charge-sheet had already been submitted against the accused Taz Uddin along with other accused persons, under Sections 21(b)/29 of the NDPS Act and cognizance of the said offences had already been taken. Mr. Ali further submits that the petitioner, being the registered owner of the aforesaid vehicle, he has prayed for only interim custody of the same, and that he will produce the same as and when directed before the learned trial Court. Mr. Ali further submits that if the vehicle remains in the police station for a long period, then the value of the vehicle will be diminished and the same would serve no purpose to either of the parties, and therefore, he has contented to allow the petition by interfering with the impugned order.

5. Per contra, Mr. Borthakur, learned Additional Public Prosecutor for the State respondent has opposed the petition. Mr. Borthakur submits that the

Investigating Officer had recovered 10.38 grams of suspected heroin in one red coloured soap box and 10.20 grams of suspected heroin in one blue coloured soap box from the possession of the accused while the same were transported in the vehicle, bearing registration No. AS-01-DX-1945, via Agdia-Saldia Para PWD Road. Mr. Borthakur also submits that in view of the decision of Hon'ble Supreme Court in the case of **Bishwajit Dey vs. State of Assam**, reported in **(2025) 3 SCC 241**, especially in view of paragraph number 33, the seized vehicle cannot be released in favour of the petitioner, and under such circumstances, he has contented to dismiss the petition.

6. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record, and also perused the impugned order dated 23.06.2026, and the decision referred by Mr. Borthakur, learned Additional Public Prosecutor.

7. Notably, in paragraph Nos. 33 and 34 of the decision in **Bishwajit Dey** (supra), Hon'ble Supreme Court has dealt with the issue of releasing a vehicle involved in NDPS cases as under:

> "**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."

8. In the instant case, the contraband substances were recovered from the possession of the present petitioner while he was transporting the same in the seized vehicle, and as such, the case of the petitioner falls in the first category of the four scenarios described in paragraph No. 33 of the decision of Hon'ble Supreme Court in **Bishwajit Dey** (supra). In the paragraph No. 33, it has been held that in the first two scenarios, the owner of the vehicle and his agent would necessarily be arrayed as an accused. And the petitioner herein this case has also been arrayed as an accused. Further, in paragraph No. 34 of the aforesaid decision, it has been held that in the first two scenarios, the vehicle may not be released till reverse burden of proof is discharged by the accused owner.

9. However, in the instant case, trial is yet to be started though cognizance has been taken against the accused persons, under Sections 21(b)/29 of the NDPS Act. Since trial is yet to be started and reverse burden is yet to be discharged, this Court is of the view that the learned trial Court has rightly rejected the petition filed by the petitioner. And accordingly, this Court is of the view that the impugned order dated 23.06.2026, warrants no interference. Resultantly, this criminal revision petition stands dismissed, leaving the parties to bear their own costs.

JUDGE

Comparing Assistant