GAHC010204772026

2026:GAU-AS:14755

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

Case No. : Crl.Pet./1320/2026

SMTI TUTU SAIKIA
DAUGHTER OF LATE LAKHIKANTA BORA WIFE OF SRI RABI JAISWAL
RESIDENT OF VILLAGE SONALI PATHAR NO 3 P S MERAPANI DISTRICT
GOLAGHAT ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR. N HASAN, MR. V PANDEY,MR SUBHRAJIT SAIKIA,MR. A HASAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

05.10.2026

Heard Mr. N. Hasan, learned counsel for the petitioner and Mr. P. Barthakur, learned Additional Public Prosecutor for the State respondent.

2. In this petition, under Section 528, read with Sections 438/442 of the BNSS,

2023, the petitioner has prayed for quashing and setting aside the Order, dated 06.06.2026, passed by the learned Special Judge, Sivasagar, in connection with NDPS Case No. 16/2025.

3. It is to be noted here that vide impugned Order, dated 06.06.2026, the learned Special Judge, Sivasagar, (hereinafter, 'Trial Court') has rejected the petition filed by the petitioner, seeking custody of the white coloured 'Mahindra Bolero' vehicle, bearing Registration No. AS-05-Y-3160.

4. Mr. Hasan, learned counsel for the petitioner submits that the petitioner is the registered owner of the vehicle and the said vehicle was seized by Police in connection with Halwating P.S. Case No. 03/2025, registered under Sections 21(c)/29 of the NDPS Act, and that one Rabi Jaiswal, Narayan Debnath, Pintu Debnath, Babu Ram Konwar and Akash Dutta were apprehended, while 992.13 grams of suspected Heroin, in 65 Nos. of plastic boxes, were being carried in a vehicle, without number plate, bearing Engine No. TVS6A11713.

4.1 Mr. Hasan further submits that one of the apprehended accused, namely, Babu Ram Konwar, who is the husband of the petitioner, had used the aforesaid vehicle without the knowledge of the petitioner, and that the petitioner is ready to produce the vehicle as and when directed.

4.2 Mr. Hasan also submits that the learned Trial Court has rejected the petition only on the ground that confiscation proceeding has already been started and the vehicle constitutes an important subject matter of the proceeding; and that the said order is illegal, as the question of confiscation will start at the end of the trial only and under such circumstances, he has contended to allow this petition.

5. Per contra, Mr. Barthakur, learned APP, has vehemently opposed the petition. By referring to a decision of the Hon'ble Supreme Court in the case of **Bishwajit Dey vs. State of Assam**, reported in **(2025) 3 SCC 241**, especially in paragraph No. 29; he submits that in the aforesaid decision, the Hon'ble Supreme Court has described four scenarios and the case of the petitioner falls in the first two scenarios and as such, the learned Trial Court has rightly rejected the petition and therefore, the impugned order, dated 06.06.2026, requires no interference of this Court and under such circumstances, he has contended to dismiss this petition.

6. Having heard the submissions of the learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on record. Also gone through the decision of Hon'ble Supreme Court in **Bishwajit Dey** (supra).

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, it appears that the petitioner is the registered owner of the vehicle bearing Registration No. AS-05-Y-3160, and the said vehicle was intercepted on 06.06.2026, and 992.13 grams of suspected Heroin was recovered in 65 Nos. of plastic soap boxes, and the said vehicle was driven by the husband of the petitioner, namely, Babu Ram Konwar. And as such, to the considered opinion of this Court, it would either come under the first scenario, or under the second scenario, described by the Hon'ble Supreme Court in the case of **Biswajit Dey (Supra),** especially in paragraph No. 29.

9. Though Mr. Hasan, learned counsel for the petitioner, submits that the case of the petitioner would come under the 4th scenario, as described by the Hon'ble

Supreme Court in the case of **Biswajit Dey (Supra)**, the said submission of the learned counsel for the petitioner has left his Court unimpressed, in as much as the accused, Babu Ram Konwar, is the husband of the petitioner and the driver of the aforesaid vehicle, which is registered in the name of the petitioner, and from which, huge quantity of contraband substances were recovered. Carrying the said contrabands by accused Babu Konwar removing the number plate indicates a well designed conspiracy to carry out the business of NDPS.

10. Further, it appears that trial is yet to be started. 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.

11. And accordingly, this Court is of the view that the impugned order dated 06.06.2026, suffers from no illegality of irregularity requiring any interference of this Court. Resultantly, this criminal revision petition stands dismissed, leaving the parties to bear their own costs.

12. In terms of the above, this criminal petition stands disposed of, at its motion stage itself.

JUDGE

Comparing Assistant