IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. No. 4079 of 2025

Jahangir Mohammad

Versus

The State of West Bengal & Anr.

For the Petitioner	:	Mr. Atis Kr. Biswas, Adv. Mr. Sekhar Barman, Adv. Mr. Amit Singh, Adv. Ms. Jyoti Agarwal, Adv.
For the Opposite Party No. 2	:	Ms. Minoti Gomes, Adv.
For the State	:	Mr. Subhasish Pachhal, Adv Mr. Abhijit Singh, Adv.
Heard on	:	17.09.2026
Judgment on	:	08.10.2026
Uploaded on	:	08.10.2026

Ajay Kumar Gupta, J.:-

1. The petitioner herein being the owner of the seized vehicle filed this application under section 443, read with section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (In short, 'BNSS') assailing the order dated 25th June, 2025 passed by the learned Additional Chief Judicial Magistrate, Lalbagh, Murshidabad in connection with G.R. Case no. 2229 of 2025 arising out of Bhagwangola Police Station Case No. 226/2025 under Sections 3(5)/303(1)/316(2)/317(2) of the Bharatiya Nyaya Sanhita, 2023 read with Section 7(1)(a)(i), and (ii) of the Essential Commodities Act, 1955.

2. By the impugned order, the learned Additional Chief Judicial Magistrate rejected the prayer for return of the Petitioner's seized vehicle with an observation that there is no legal scope for applying the decision of the Hon'ble Supreme Court in the matter of consideration of return of the seized vehicle of this case, as there is a clear bar laid down by the statute of the Essential Commodities Act, 1955.

3. One Rafikul Islam, the de facto complainant/opposite party no. 2 herein, lodged a written complaint before the Officer-in-Charge of Bhagwangola P.S. alleging, *inter alia*, that he hired a Lorry bearing registration No. WB23F/8564 on May 12, 2025 from Biswas Transport and loaded 613 sacks of corn in the said Lorry and sent

them to Hitech Hatch Fresh Pvt., Dankuni, Kolkata for business purposes. On May 13, 2025, complainant/opposite party no. 2 came to know through the transport agency that the said lorry did not reach the allocated spot. He further stated in his complaint that the driver of the said lorry was Ajan Ali @ Ronald, son of Jafar Ali, of 21 Dakshin Baidyapur Sardarpara, P.S.-Shasan, Barasat – II, District – North 24 Parganas and the owner was Abdul Kashem Mandal, s/o – Abdul Gani Mandal of Gidaha Morolpara, Nilaganj Bazar, Titagarh, Telenipara, Dist- North 24 Parganas.

4. Subsequently, on the basis of the said allegation, the police authority registered the aforesaid case and proceeded with the investigation. On 16th May, 2025, the driver, namely, Ajan Ali, was arrested and produced before the Learned Court below, praying for seven days' police remand. The Learned Court below was pleased to allow the prayer of the investigating agency for four days, with a direction to produce him before the Learned Court below on May 20, 2025. Subsequently, he was released on interim bail on May 25, 2025 with certain conditions.

5. Subsequently, on the basis of the statement made by the Driver, namely, Ajan Ali, another accused, namely, Monarul Gazi had been arrested on May 20, 2025 and produced before the learned Court below with a prayer for seven days' police custody. The learned Court

below was pleased to allow five days' police custody for him. He was produced before the learned Court below on May 26, 2025, and on the same day, he was also released on interim bail with certain conditions.

6. At the time of police custody, both the accused persons confessed before the investigating agency that they had committed the alleged offence by using a false number plate. However, they also went on to confess that the number plate of the truck used at the time of committing the offence was WB-23F 8534. Subsequently, the investigating agency recovered the said false number plate as per the leading statement of the accused persons and, on May 20, 2025, the petitioner's truck bearing no. WB 23F 8534 was seized with the help of Mohanpur PS under Barrackpore Police Commissionerate.

7. Thereafter, on June 3, 2025, the power of attorney holder of the petitioner made an application before the learned Court below with a prayer to return the said vehicle being No. WB-23F 8534, following which the learned Court below called for a report from the investigating agency.

8. On 25th June, 2025, the investigating agency made a prayer before the learned Court below for addition of Section 7(1)(a)(i), and (ii) of the Essential Commodities Act, 1955, and the same had been allowed by the learned Court below. On the same day, the learned Additional

Chief Judicial Magistrate, Lalbagh, Murshidabad, rejected the petitioner's prayer for return of the said seized vehicle.

9. Being aggrieved by and dissatisfied with the impugned order, the petitioner filed this instant revisional application seeking release of the vehicle on any terms and conditions.

10. The learned counsel appearing on behalf of the petitioner submitted that the present petitioner is the registered owner of the vehicle in question. He was neither named as an accused in the FIR nor subsequently added as an accused in the chargesheet as he was not involved in the commission of offence.

11. The petitioner approached the learned Court below seeking release of his seized vehicle on any terms and conditions, and on the same date the Investigating Officer prayed for addition of sections of the Essential Commodities Act, 1955; as such, the Learned Court below declined release of the vehicle, principally observing that there was a statutory bar under the Essential Commodities Act, although no such embargo or statutory bar against releasing the vehicle to the Owner existed, when there was/is no such proceeding initiated for confiscation of the vehicle as yet. Furthermore, the investigation is over, and the vehicle is no longer required for the investigation, as Charge sheet has already been submitted without implicating the Owner.

12. The Petitioner is innocent as he is not involved in the crime as alleged. He is merely the owner of the vehicle and has no connection with the offence as alleged, as it transpired during the investigation. Therefore, the learned court did not apply its judicial mind and mechanically rejected the prayer for return of the vehicle, although the Hon'ble Supreme Court consistently ruled that the vehicles should not be kept in Court compound or thana compound or open space for an indefinite period or till the conclusion of trial to allow the vehicles to lose their value open to sky, sun and rain; as such, the impugned order under challenge is bad in law and liable to be set aside.

13. Learned counsel for the petitioner has relied upon the following judgments in support of his contentions:-

i. ***Biswajit Dey v. State of Assam[1];***
ii. ***K. Viji v. The Forest Range Officer[2];***
iii. ***Sunderbhai Ambalal Desai & Ors. v. State of Gujarat[3];***
iv. ***Prabhat Kumar Das @ Pravat Kumar Das v. State of West Bengal[4].***

14. Learned Counsel appearing on behalf of the Opposite Party No. 2 vehemently opposed the prayer of the petitioner and further submitted that 613 sacks of corn have not yet been recovered, and if

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[1] ***2025 INSC 32***
[2] ***Crl.R.C. (MD) No. 553 of 2019***
[3] ***(2002) 10 SCC 283***
[4] ***CRR 2812 of 2019***

the vehicle is released, the amount involved in the present case cannot be recovered. The amount involved in the crime can only be arranged by selling the vehicle after confiscation. Furthermore, the provisions of the Essential Commodities Act strictly bar the release of the vehicle involved in the crime, and 613 sacks of corn could not be recovered from the accused persons. The lorry was hired by the opposite party no.2 for transportation of corn to Hitech Hatch Fresh Pvt. Ltd., Dankuni, Kolkata for business purposes, but the said lorry did not reach at the destination. Therefore, the impugned order was passed correctly and requires no interference.

15. Learned counsel appearing on behalf of the State submitted that the learned Court has rightly rejected the prayer for return of the seized vehicle as there is a specific bar to release the vehicle under Section 6E of the Essential Commodities Act. Furthermore, the District Magistrate already initiated proceedings for confiscation of the vehicle, which was involved in the crime by changing the number plate of the vehicle.

16. Having heard the submissions made by the learned counsels for the respective parties and on perusal of the application, it appears that the learned Court below rejected the prayer for returning the seized vehicle of the petitioner in the present case with an observation that there is no legal scope for applying the decision of the Hon'ble

Supreme Court in the matter of consideration of return of the seized vehicle of this case as there is a clear bar laid down by the statute of the Essential Commodities Act, 1955. The registered owner of the said vehicle is the present petitioner. He prays for release of the vehicle.

17. The point for consideration before this Court is whether the seized vehicle can be released to the original owner during the pendency of the case?

18. To answer this question, this Court relies on the decision of a coordinate bench of this Court passed in ***Raju Singha v. The State of West Bengal***[5], wherein the Single Bench of this Court relied upon several judgments of the Hon'ble Supreme Court and High Courts and discussed the same in paragraphs 8-11 as under: -

> *"8. In* ***Sunderbhai Ambalal Desai V. State of Gujarat***[6]*, the Hon'ble Supreme Court has directed the criminal court to exercise the power under Section 451 of the Code of Criminal Procedure for return of the seized articles on some conditions pending final decision of the criminal case. With regard to the return of the seized vehicle during pendency of the criminal case the Hon'ble Supreme Court has observed as follows in paragraph 17 of the said judgment: -*

[5] ***2016 SCC OnLine Cal 4013: (2017) 1 RCR (Cri) 441.***

[6] ***(2002) 10 SCC 283***

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."

9. *In* ***B. S. Rawant V. Shaikh Abdul Karim***[7]*, Learned Single Judge of the Bombay High Court held that the provisions of Section 451 or Section 457 of the Code of Criminal Procedure are not inconsistent with the provisions of the NDPS Act and as such the seized article or the seized vehicle may be returned to the rightful claimant as an interim custody on condition that the said seized vehicle or seized article may be produced before the trial court for taking final decision whether the said article or vehicle is liable to be confiscated or to be returned to the rightful claimant. It is held by the Bombay High Court in the said decision that the vehicle seized for transporting narcotic drug or psychotropic substance can be returned to the registered owner as an interim custody on condition of production of the said vehicle before the trial court at the appropriate stage of the proceeding under Section 451 or Section 457 of the Code of Criminal Procedure.*

10. *In* ***Tridip Mitra V. State of West Bengal***[8]*, learned Single Judge of our High Court also laid down that*

[7] 1989 (2) Bom CR 209
[8] 2006 (2) CHN 198

during pendency of the trial, learned Judge of the Special Court under NDPS Act has jurisdiction under Section 451 and Section 457 of the Code of Criminal Procedure to pass necessary order for return of the seized vehicle as an interim custody. It is relevant to quote paragraph 16 of the said judgment: -

> *16. The decision of the Supreme Court in Sunder Bhai Ambalal Desai and decision of the Bombay High Court mentioned above clearly reveals that, provisions of Sections 41,42,43,51,53,55,60 and 63 of the NDPS Act do not exclude operation of Sections 451 and 457(1) of the Code. The decision of this Court in Asis Bose V. State of West Bengal (supra) and Sri Jiban Aich V. State of West Bengal (supra) concerning Forest Act reveals that vehicle used in transporting forest produce should not be released normally but can be released imposing certain conditions which will have deterrent effect on the owner and putting different conditions including condition that the said vehicle henceforth shall not be used in indulging similar type of offence in future. Besides that, the general provisions laid down by the Supreme Court in Sunder Bhai Amlalal Desai (supra) cannot be ignored as it was observed that the vehicles should not be kept in Court compound or thana compound for indefinite period till the conclusion of trial to allow the vehicles lose its value open to sky, sun and rain. The Supreme Court and this Court clearly laid down the consideration of the Court is production of the vehicle at the time of trial and also during confiscation proceeding if any confiscation proceeding is started at all and for securing that the said vehicle is not used in similar type of offence in future. If Government fiscal policy of fetching money by auction of vehicles after confiscation proceeding is considered then also it*

is desirable that the vehicles should be in good condition. A vehicle if kept at thana or Court compound open to sky for indefinite period would become scrap material within a year or two for want of maintenance. A scrap material cannot fetch such money which a good conditioned vehicle would fetch."

*11. In **Rabi Ranjan Ojha V. The State of West Bengal**[9], Learned Single Judge of our High Court interfered in the order of refusal to return the seized vehicle passed by learned Judge of the Special Court. In this case the vehicle was seized for carrying narcotic drug, but the said seized vehicle was returned to the registered owner on furnishing bank guarantee of Rs. 5,00,000/- on condition that the registered owner will produce the vehicle as and when called for by the court and the registered owner will not change the nature and character of the vehicle without the permission of the trial court."*

19. It appears from the case diary that no confiscation proceeding has been started by the authority yet. Section 6E of the Essential Commodities Act, 1955 bars ordinary courts, tribunals, and other authorities from having jurisdiction to make orders regarding the possession, delivery, disposal, release or distribution of seized essential commodities and related vehicle or property pending confiscation.

[9] (2011) 2 C.Cr. L.R. (Cal) 755

20. The petitioner's specific case is that no confiscation proceeding has been commenced against the vehicle and no confiscation notice has been served upon the petitioner as yet. The mere seizure of a vehicle and the mere prayer by the investigating officer for confiscation or addition of provisions of Essential Commodities Act cannot, by themselves, established that the confiscation proceeding is pending before the competent authority.

21. The pivotal question is whether Section 6E of the Essential Commodities Act, 1955 (the "EC Act") ousts the jurisdiction of the learned Magistrate to direct interim release. The said section has been set out hereinbelow:-

> *"6E. Bar or of jurisdiction in certain . cases.—Whenever any essential commodity is seized in pursuance of an order made under section.3 in relation thereto, any package, covering or receptacle in which. such essential commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending confiscation-under section 6A, the Collector, or, as the case may be, *[the judicial authority.appointed under section 6C} shall have, and, notwithstanding anything to the contrary contained in any shall not other law for the time being in force, 'fany other court, tribunal or authority] have, possession, delivery, jurisdiction to' make orders with regard to the disposal, release or distribution of essential commodity, package, covering, receptacle, . animal, vehicle, vessel or: other coriveyance."*

22. Section 6E provides that where an essential commodity is seized in pursuance of an order made under Section 3, or where a package,

covering, receptacle, animal, vehicle, vessel or other conveyance used in carrying it is so seized, and a report of the seizure has been made to the Collector, the Collector alone has jurisdiction over its possession, delivery, disposal, release or distribution. Courts, tribunals and other authorities are excluded, notwithstanding anything contained in any other law.

23. The bar is therefore conditional. Its operation depends on a seizure in pursuance of an order under Section 3; the seized article being an essential commodity or a conveyance used in carrying it; and, a report of such seizure having been made to the Collector. Section 6E works together with Sections 6A and 6B, which provide for confiscation after notice to the person from whom the article was seized. The ouster is an exception to the ordinary powers of the criminal court and must be construed strictly. Its conditions must be shown to exist on the record, not assumed.

24. On the materials before this Court, the vehicle was seized on 20th May, 2025 in the course of investigation of an offence of theft, misappropriation and cheating. The provisions of the Essential Commodities Act were added only on 25th June, 2025, on the investigating officer's prayer. The case diary discloses no order under Section 3; even though the IO made a prayer for confiscation of the seized vehicle to the DM, Murshidabad, for further proceedings under

the Essential Commodities Act, no notice of confiscation was issued to the petitioner as yet. The assertion of the learned counsel for the State that confiscation has been initiated is unsupported by any document. The mere addition of provisions of the EC Act, or a prayer for confiscation, does not in itself engage Section 6E. The petitioner is the registered owner, is not an accused, and the investigation is complete. The learned Magistrate was therefore in error in holding that a clear statutory bar precluded consideration of the prayer. In this context, reliance placed on the decision of ***Bishwajit Dey (Supra)*** is apposite. Even the decisions in ***K. Viji (Supra)*** as well as ***Sunderbhai Ambalal Desai (Supra)*** squarely apply, wherein it was held that no useful purpose would be served in keeping seized vehicles at police stations for extensive periods of time, and such seizure cause losses to the owners.

25. In the light of above discussions and on perusal of the judgments relied by the Hon'ble Single Benches on the proposition laid down by the Hon'ble Supreme Court as well as other High Court, this Court is of the opinion that the seized vehicle can be allowed to be returned to the registered owner subject to verification and satisfaction of the trial court calculating the value of the vehicle and 613 sacks of corn and on further condition that the petitioner shall produce the said vehicle before the learned Trial Court as and when called for and he

shall not sell and/or change the nature and character of the vehicle during the pendency of the criminal case.

26. It is clarified that if confiscation proceedings are initiated or are shown to be pending before the competent authority, the authority shall proceed in accordance with law, and not be prejudiced by this order. The interim custody ordered is subject to the petitioner's undertaking to produce the vehicle before the Collector and/or the Trial Court as and when required.

27. Accordingly, **CRR 4079 of 2025** is, thus, **allowed**. Connected applications, if any, are also, thus, disposed of.

28. Accordingly, the order dated June 25, 2025 passed by the learned Additional Chief Judicial Magistrate, Lalbagh, Murshidabad in connection with G.R. Case no. 2229 of 2025 arising out of Bhagwangola Police Station Case No. 226/2025 under Sections 3(5)/303(1)/316(2)/317(2) of the BNS, 2023 read with Section 7(1) (a) (i) and (ii) of the Essential Commodities Act, 1955 is hereby set aside. The fate of the said vehicle will be decided by the learned Trial Court after conclusion of trial. The trial court shall act on the basis of this order upon filing proper application for release of the vehicle by the owner or his authorised agent afresh.

29. Case Diary, if any, is to be returned to the learned Advocate for the State.

30. Let a copy of this judgment be sent to the learned Court below for information and taking necessary action.

31. Interim order, if any, stands vacated.

32. Parties shall act on the server copies of this judgment uploaded on the *website* of this Court.

33. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J.)

(P.A.)