

06.04.2026

Sl. No.16.

M/L.

Mithun.

Ct.No.29.

CRR/4253/2025

Ratna Karmakar

Vs.

State of West Bengal

Mr. Pintu Karar,
Mr. Sabab Uddin Laskar,
Ms. M. Chowdhury,
Mr. Surajit Chakraborty

...for the petitioner

Mr. Debasish Roy, Ld.P.P.,
Ms. Sreyashee Biswas,
Ms. Rajashree Tah

...for the State

Affidavit-of-service filed by the petitioner is taken on record.

Petitioner herein assailed order no.31 dated 09.09.2025 passed by Additional Sessions Judge, 1st Court, Tamluk (Special Judge) in TR (NDPS) No.12 of 2022.

By the impugned order learned Court below has rejected the petitioner's prayer for release of the seized vehicle.

Being aggrieved by the aforesaid order, learned Counsel for the petitioner submits that after conclusion of investigation police has already submitted charge-sheet against accused persons. The petitioner is the lawful owner of the vehicle in question and having no connection with the alleged offence she filed a petition before the Court below seeking return of the vehicle.

During hearing before trial court learned Public Prosecutor opposed the prayer for return of the vehicle on the ground that it was allegedly used in transporting contraband ganja. However, it is submitted that no evidence was placed on record to link the petitioner

with the said offence, nor was the petitioner given an opportunity to respond such objection.

Petitioner further submits that learned Court below however by the impugned order rejected the said prayer of the petitioner merely on the ground that the vehicle was allegedly used in carrying contraband, ignoring the petitioner's ownership right and the report of the police authority, who did not raise any objection against such prayer for return.

Having heard learned Counsel for the petitioner and the opposite party/State it appears that it is the specific case of the petitioner that she has got no involvement with the alleged offence. It further appears that the police had submitted a report wherein they had stated that the investigation has been ended in charge-sheet and the vehicle at present lying idle in the Malkhana under the custody of learned Court.

Upon careful consideration of the facts and circumstances of the case, it appears that court below, while rejected the petitioner's prayer for return of seized vehicle, did not consider the relevant provisions of the Narcotic Drug and Psychotropic substances Act, 1985 (in short NDPS Act), along with the fact of the present case that the petitioner's ownership in respect of the seized vehicle is not in dispute and that her involvement with the alleged offence did not transpire during investigation.

It is not the law that if the seized vehicle alleged to have found carrying contraband substance, it's interim custody cannot be give n under any circumstances. Section 51 of the NDPS Act provides that the provisions of the code of criminal procedure shall be made applicable in so far as they are not inconsistent with the provisions of the NDPS Act to all warrants issued and arrest, searchers and seizure made under the Act. It has not been argued on behalf of opposite party that section 451 of

the Cr.P.C corresponding to section 497 of BNSS, providing provision for interim custody, in so far as it relates to passing of order for proper custody of conveyance, pending conclusion of trial, is inconsistent with any of the provisions including section 60(3) and 63 of NDPS Act.

Under section 60(3), the vehicle carrying any narcotic drug is liable to confiscation, under owner of the vehicle proves that it was so used without the knowledge and connivance of the owner or his agent and that he had taken all reasonable precautions against such use but section 63 clearly states that only on awarding conviction, acquittal or discharge, the court is authorised to decide on the issue of confiscation of seized vehicle.

Therefore in appropriate cases there appears to be no bar for granting interim custody of vehicle allegedly used for carrying narcotic substances pending conclusion of trial, as such order granting custody pending trial under section 497 of BNSS is not inconsistent with any of the provisions of the NDPS Act, since confiscation order, even if would be decided to be passed, cannot be passed before conclusion of trial.

If the owner of the vehicle is not an accused in that case a separate and independent proceeding has to be drawn for confiscation in terms of the express provision in section 60(3) of the NDPS Act to protect an innocent owner before confiscating his vehicle or conveyance. Thus there is a right to the owner, to have the interim custody of the said vehicle subject to adequate security till conclusion of the trial, in the absence of any contrary provision in the NDPS Act.

Since there is no express bar contained in the NDPS Act for grant of interim custody, therefore court below was not justified in rejecting the petitioner's prayer for interim custody of vehicle merely on the ground that the vehicle was carrying contraband substance, therefore it is liable

for confiscation under section 60 of the Act. Needless to say that Jurisdiction of a criminal court has to be construed strictly unless expressly excluded.

The Supreme Court in ***Sunderbhai Ambala Desai Case*, AIR 2003 SC 638** has laid down the parameters for considering the application for interim custody expeditiously and judiciously, so that the owner of the vehicle would not suffer by keeping it unused in the Malkhana, where the value of the vehicle would be diminished and the parts of the vehicle would be destroyed.

In view of above, the finding of the court below cannot be accepted in support of refusal and therefore liable to be set aside. Learned court below is directed to pass appropriate order giving interim custody to the petitioner, pending disposal of the case and/or till passing confiscation order, if any, on conclusion of trial, inter alia on condition of furnishing a bank guarantee of an amount nearly equal to be market value of the vehicle and on execution of a bond of similar amount. The petitioner shall also place a colour photo of vehicle duly signed by the petitioner and investigating agency before the court below and the court below will impose condition that whenever it would be required by the court, the same will be produced on petitioner's own expenses. At the time of release of the vehicle court below shall ensure to take note of chassis number, engine number and registration number of the vehicle and will keep on record. The court below will be at liberty to impose any other condition as he deems fit, including the condition that petitioner will neither alter nor will charge the condition of the vehicle in any manner whatsoever during pendency of litigation and petitioner shall not create any third party interest over the said vehicle.

The process of giving interim custody to the petitioner as above shall be completed, preferably within a period of four weeks from the date of the communication of the order.

CRR 4253 of 2025 stands disposed of.

The order impugned dated 09.09.2025 thus stands quashed.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

(Dr. Ajoy Kumar Mukherjee, J.)