



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 100 OF 2026

Mehraj Ahemad Mushtak Ahemad Deshmukh ..APPLICANT

VERSUS

State of Maharashtra ..RESPONDENT

....
Mr. Mohammed Aamir, Advocate for Applicant
Mr. S.N. Morampalle, A.P.P. for Respondent - State
....

CORAM : ABHAY J. MANTRI, J.
DATE : 09th JUNE, 2026

PER COURT :

1. The Applicant/owner of the Chevrolet Tavera vehicle, bearing no. MH-12-HN-9917 (hereinafter referred to as '*the Vehicle*'), being aggrieved by the order dated 20th February, 2026, passed in Criminal Miscellaneous Application No. 42 of 2026 by the learned Additional Sessions Judge, Aurangabad, whereby the application for release of the vehicle was rejected, has preferred this revision.

2. Heard learned counsel for the Applicant and learned A.P.P. for the State. Perused the impugned order, record and the judgments relied upon by learned counsel for the Applicant.

3. Learned counsel for the Applicant vehemently contended that the Applicant is not the accused in the present crime. The Applicant is the owner

of the vehicle. He did not know that the accused person was transporting contraband in the said vehicle; therefore, the Applicant is entitled to custody of the vehicle. However, the learned Trial Court erred in observing that in view of the bar under Section 60(3) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (hereinafter referred to as '*the NDPS Act*'), the Applicant is not entitled to interim custody of the vehicle and rejected the application.

4. To buttress his submission, he relied on the judgment in *Biswajit Dey Vs. State of Assam, AIR 2025 SC 549*. (relied on Paragraph Nos. 21 to 24 and 29-30) and in *Denash Vs. State of Tamil Nadu, AIR 2025 SC 5233* (Paragraph Nos. 13 to 16) and submitted that in view of the law laid down by the Hon'ble Supreme Court in them, there is no bar or restriction under the NDPS Act for the return of the vehicle used for transporting narcotic drugs or psychotropic substances. Therefore, he urged the release of the vehicle.

5. As against, learned A.P.P. strongly objected to the application, contending that the learned Additional Sessions Judge has rightly considered the material on record and held that, as per Section 60 (3) of the NDPS Act, the Applicant is not entitled to get the custody of the vehicle and rejected the Application. He further submits that the Applicant was aware of the transportation of a contraband article in his vehicle. To buttress his submission, he pointed to Paragraph No.3. However, I do not find substance in

his contention in that regard, as he has not stated that he had knowledge that the accused person was transporting the contraband in his vehicle. On the contrary, he stated that in his presence, the accused kept one Wheat gunny bag and one cloth bag in the vehicle. Nowhere has he stated that he had knowledge or was aware of the transportation of the contraband in his vehicle.

6. It is pertinent to note that learned A.P.P. does not dispute that the Applicant is the owner of the vehicle in question.

7. While determining the question in dispute, I would like to refer Paragraph Nos. 22 to 24, 29 and 30 of the judgment in *Biswajit Dey* (supra), as under :-

“22. This Court is further of the opinion that there is no specific bar/restriction under the provisions of the NDPS Act for the return of any seized vehicle used for transporting narcotic drugs or psychotropic substances in the interim pending disposal of the criminal case.

23. In the absence of any specific bar under the NDPS Act and in view of Section 51 of the NDPS Act, the Court can invoke the general power under Sections 451 and 457 of the Code of Criminal Procedure for the return of the seized vehicle pending the final decision of the criminal case. Consequently, the trial Court has the discretion to release the vehicle in the interim. However, this power would have to be exercised in accordance with the law in the facts and circumstances of each case.

COURTS WILL LEAN AGAINST ANY CONSTRUCTION THAT WOULD PRODUCE AN ABSURD OR UNJUST RESULT.

24. It is trite law that the more absurd a suggested conclusion of construction is, the more the court will lean against that conclusion. That is ordinarily so whether one is construing a contract or a statute. [See: Hatzl v. XL Insurance Co. Ltd. [2009] EWCA Civ. 223].

29. *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. a 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 scenarios, the owner of the vehicle and/or his agent would not be arrayed as an Accused.***

30. *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 the 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. It is pertinent to note that despite granting an opportunity, learned A.P.P. prima facie failed to point out from the material on record / charge-sheet that the Applicant was having knowledge that the accused persons were transporting contraband in the vehicle, or with his connivance same was transporting in the vehicle therefore, as observed in Paragraph No.29, the

Applicant falls under 4th category and as per Paragraph No.30, the Applicant being owner of the vehicle is entitled for the interim custody of the vehicle.

9. Thus, in view of the discussion as well as the law laid down in ***Biswajit Dey*** (supra), the Applicant has made out a prima facie case for release of the vehicle. Therefore, I do not find substance in the objection raised by the learned A.P.P. in that regard.

10. The learned Trial Court, while passing the order, failed to consider the law laid down by the Hon'ble Supreme Court in ***Denash*** (supra) and ***Biswajit Dey*** (supra) as well as ***Sunderbhai***. Thus, the order passed by the learned Trial Court is not sustained in the eyes of the law, and interference with the impugned order is warranted under the revisional jurisdiction. As a consequence, I found substance in the contention of learned counsel for the Applicant that the Applicant, being the owner of the vehicle, is entitled to interim custody of the vehicle.

11. Consequently, ***the Criminal Revision Application is allowed in terms of prayer clauses (B) and (C).***

12. The vehicle in question be released on *supurnama* (as per its valuation) in favour of the Applicant on such terms and conditions, which the Trial Court may impose, after preparing a video and still photographs of the

vehicle and after obtaining all information/documents necessary for identification of the vehicle, which shall be authenticated by the Investigating Officer and the Applicant/owner of the vehicle by signing the same. Further, the Applicant shall not sell or part with the ownership of the vehicle till conclusion of the trial and shall furnish an undertaking to the Trial Court that he shall surrender the vehicle within one week of being so directed and/or pay the value of the vehicle (determined according to Income Tax Law on the date of its release), if so ultimately directed by the Trial Court.

13. Inform the concerned court.

14. The application is disposed of.

(ABHAY J. MANTRI, J.)

SSD