

Bishwajit Dey Vs State Of Assam

Court: Supreme Court Of India

Date of Decision: Jan. 7, 2025

Acts Referred: Code of Criminal Procedure, 1973 â€” Section 173, 451, 457, 457(1)

Narcotic Drugs and Psychotropic Substances Act, 1985 â€” Section 21(B), 36C, 37, 51, 52A(1), 60, 60(3), 63, 63(2), 67

Hon'ble Judges: Sanjay Karol, J; Manmohan, J

Bench: Division Bench

Advocate: Adeel Ahmed, Raja Chatterjee, Sabrish Ahmed, Ayushi Arora, Anupama Gupta, Riya Dutta, Piyush

Sachdev, Diksha Rai, Aakanksha Kaul, Apurva Sachdev, Piyush Vyas, Purvat Wali

Final Decision: Allowed

Judgement

S.No., "Property

Description", "Estimated

Value (in Rs.)", "Police Station

Property

Register No.", "From whom /

where

reverted or

seized", Disposal,

1, "ELECTRICAL AND

ELECTRONIC GOODS", „000184/2023, "/NH-36 in front

of Lahorijan PP", „

2, "DRUGS /

NARCOTIC DRUGS", „000183/2023, "/NH-36 in front

of Lahorijan PP", „

3, "DOCUMENTS

ANDÃ, Ã, Ã, Ã, Ã, Ã, Ã,

VALUABLE

SECURITIES", „000182/2023, "/NH-36 in front

of Lahorijan PP",,

4,"AUTOMOBILES AND

OTHERS",,000181/2023,"/NH-36 in front

of Lahorijan PP",,

S.No,Name,"Father's/

Husband's name", "Dated/

Year of

birth", "Occupation",

Address, "Type of

evidence, to be tendered

to be tendered

1,"Dhurba

Das",,,"Present

Address:

DILLAI

PS,KARBIAN

GLONG,

ASSAM, INDIA

Permanent

Address:

DILLAI PS,

KARBIANGL

ONG, ASSAM.

INDIA", "Arrest

Memo

Witness

2,"Krishna

Ch Das",,,"Present

Address:

DILLAI PS,

KARBIANGL

ONG,

ASSAM,

INDIA

Permanent

Address:

DILLAI PS,

KARBIANGL

ONG,

ASSAM.

INDIA","Arrest

Memo

witness

3,"Rajib

Borah","Father: Dhaniram

Borah",1992,, "Present

Address:

DILLAI

PS,

KARBIANGL

ONG,

ASSAM,

INDIA

Permanent

Address:

DILLAI PS,

KARBIANGL

ONG, ASSAM.

INDIA",Complainants

4,"Sarat

Kakoti" ,,"02-11-

1993" ,,"Present

Address:

ASSAM, INDIA

Permanent

Address:

ASSAM,

INDIA",IO

5,"ShriÃ,

John Das",,,, "Present

Address:

BOKAJAN,

KARBIAN

GLONG,

ASSAM, INDIA

Permanent

Address:

BOKAJAN,

KARBIAN

GLONG,

ASSAM,

INDIA",Other Witness

6,"Jiten

Gogoi", "Father:Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã,

Late Mukta Gogoi",,,, "Present

Address:

DILLAI PS,

KARBIANGL

ONG, ASSAM,

INDIA

Permanent

Address:

DILLAI PS,

KARBIANGL

ONG, ASSAM.

INDIA",Other Witness

7,"Sankar

Mahana

yak",,,,"Present

Address:

DILLAI

PS,

KARBIANGL

ONG ,

ASSAM,

INDIA

Permanent

Address:

DILLAI

PS,

KARBIANGL

ONG,

ASSAM.

INDIA",Other Witness

8,"Baidujya

Khanikar",,,,"Present

Address:

DILLAI PS,

KARBIANGL

ONG, ASSAM,

INDIA

Permanent

Address:

DILLAI PS,

KARBIANGL

ONG,

ASSAM. INDIA",Other Witness

9,"Mintu

Daimary" ,,,,"Present

Address:

DILLAI PS,

KARBIANGL

ONG, ASSAM,

INDIA

Permanent

Address:

DILLAI PS,

KARBIANGL

ONG, ASSAM

INDIA",Other Witness

10,"Monjur

Ahmed",Father: Abdul Kluqu,1989,,"Present

Address:

Dhainsing

Engleng,

DILLAI", "Search &

siege Witness

,,,,"PS,

KARBIANGL

ONG, ASSAM,

INDIA,

Permanent

Address:

Kania

Tokbi, DILLAI

PS,

KARBINGLO

NG,

ASSAM, INDIA",

11,"Ramesh

Raj",Father: Jagat Bh. Rai,1985,, "Present

Address:

Kania

Tokbi,DILLAI

PS,KARBING

LONG,

ASSAM, INDIA

Permanent

Address:

Kania

Tokbi,DILLAI

PS,ASSAM,

INDIA

Permanent

Address:

Kania

Tokbi,DILLAI

PS,KARBING

LONG,

ASSAM, INDIA", "Search &

siege Witness

12,"Joherul

Ali",Father: Jagat Bh. Rai,1971,, "Present

Address:

BONGAIGA

ON,BON

GAIGAON,

ASSAM, INDIA", "Search &

siege Witness

(a) property of any kind or document which is produced before the court or which is in its custody.,,,,,,

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.,,,,,,

457. Procedure by police upon seizure of property.Ã¢â¬",,,,,,

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before" ,,,,,,

a criminal court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such" ,,,,,,

property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property." ,,,,,,

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if" ,,,,,,

such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and" ,,,,,,

requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.Ã¢â¬",,,,,,

10. He submitted that this Court in the case of Sunderbhai Ambala Desai V. State of Gujarat, (2002) 10 SCC 283 has held, Ã¢â¬"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.Ã¢â¬",,,,,,

11. He pointed out that the High Court of Judicature at Patna in Bhola Singh @ Ayush Singh vs. The State of Bihar, Criminal Misc. No." ,,,,,,

40912/2016, has held that Ã¢â¬"Ã¢â¬"Ã¢â¬"Ã¢â¬"Ã¢â¬" As far as vehicle is concerned, there was no reason to reject the application of the petitioner for its" ,,,,,,

release to interim custody of the applicant claiming to be bona fide owner of the vehicle subject to the certain conditions to ensure,,,,,,

production of the vehicle to the court as and when required during pendency of the trail or confiscation proceedingÃ¢â¬"Ã¢â¬"Ã¢â¬"Ã¢â¬"Ã¢â¬" ,,,,,,

12. In view of the above judgments, he prayed that the Vehicle be released to the appellant, being its rightful owner, subject to conditions as may be" ,,,,,,

imposed by the trial Court.,,,,,,

ARGUMENTS ON BEHALF OF THE RESPONDENT-STATE OF ASSAM,,,,,,

13. Per contra, learned counsel for the respondent-State of Assam submitted that the NDPS Act, which deals with drug trafficking, is a special" ,,,,,,

enactment and a complete code in itself. [See: Noor Aga vs. State of Punjab & Another, (2008) 16 SCC 417; Mukesh Singh vs. State (Narcotic" ,,,,,,

Branch of Delhi), (2020) 10 SCC 120 and Directorate of Revenue Intelligence vs. Amit Kumar, 2016 SCC OnLine Del 6083]A. ccording to" ,,,,,,

her, the NDPS Act does not "unlike the Code of Criminal Procedure " contemplate interim release of a seized conveyance during pendency of",,,,,,

the trial.,,,,,,

14. She stated that for the adjudication of this case, Chapter IV (Offences and Penalties) and Chapter V (Procedure) of NDPS Act are relevant, as" ,,,,,,

they encompass the provisions directly applicable to the alleged offences and the procedural mechanisms to address them. The relevant provisions of,,,,,,

Chapter IV and V of the NDPS Act relied upon by the learned counsel for respondent-State are reproduced hereinbelow:-,,,,,,

i. Section 36C of the NDPS Act: "Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the",,,,,,

provisions as to bail and bonds) shall apply to the proceedings before a Special Court".

ii. Section 51 of the NDPS Act: "The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the",,,,,,

provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act."

iii. Section 52A(1): "The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage",,,,,,

space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the",,,,,,

Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic",,,,,,

substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as",,,,,,

that Government may, from time to time, determine".

iv. Section 60 of the NDPS Act:,,,,,,

"60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation. [(1) Whenever any offence punishable under this Act has been",,,,,,

committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in",,,,,,

respect of which or by means of which such offence has been committed, shall be liable to confiscation.]" ,,,,,,

(2) Any narcotic drug or psychotropic substance [or controlled substances] lawfully produced, imported inter-State, exported inter-State, imported into India",,,,,,

transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance [or controlled",,,,,,

substances] which is liable to confiscation under sub-section,,,,,,

(1) and there receptacles, packages and coverings in which any narcotic drug or psychotropic substance [or controlled substances], materials, apparatus or",,,,,,

utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to",,,,,,

confiscation.....

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance [or controlled substances], or any article liable to confiscation"

under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the"

knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all"

reasonable precautions against such use.....

v. Second Proviso to Section 63 of the NDPS Act:.....

63. "If any animal or conveyance used in carrying any narcotic drug or psychotropic substance [or controlled substance], the opium poppy, coca plant or"

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substances [controlled substance], the opium poppy, coca plant or"

cannabis plant is liable to speedy and natural decay, or if the court is of the opinion that its sale would be for the benefit of its owner, it may at any time direct it"

to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale."

15. She further submitted that the question that arises for consideration in the present case, arose for consideration before the High Courts of Delhi, "

Kerala and Calcutta where the interpretation forwarded by the respondent-State has been affirmed. The judgments relied upon by learned counsel for"

the respondent-State are reproduced hereinbelow:-.....

A. Smt. Narender Kaur vs. Arun Sheoran, Intelligence Officer, Narcotics Control Bureau, 2000 SCC OnLine Del 502 wherein it has been held"

as under:-.....

"12. This Act obviously is a special legislation intended to deal with a great global malady of drug abuse caused due to drug trafficking. To that extent, it is a"

complete code. Any other provision of law if it impinges on the objects sought to be achieved by this Act will be contrary to this enactment and necessarily over"

ridden by the Act, expressly or by implication. Conveyance used for carrying the contraband is liable to confiscation, of course, after making due inquiry. Second"

proviso to Sub-section (2) of Section 63 of the Act itself provides for interim orders for the disposal of any article or thing other than a narcotic drug etc. which is"

liable to speedy and natural decay, or if the Court is of the opinion that its sale would be for the benefit of its owner, to direct it to be sold. This specifically"

provides for interim orders regarding disposal of seized articles or goods other than the contraband, and obviously includes a conveyance used in transportation."

This by necessary implication excludes any other interim order to be made.....

13. The provisions of Section 451 which provides for order for interim custody and disposal of the property pending trial is identical, in case the property is"

subject to speedy and natural decay and if it is otherwise in the interest of the owner. To this extent, the provisions of Section 451 of the Code are not applicable." ,,,,,,

The Bombay High Court in B.S. Rawant case (supra), in this behalf, in para 10, has observed as under: " ,,,,,,

"10. The object of the Act is to see that the vehicle which is used for such an offence is not made available to the persons who have indulged in these activities. ,,,,,,

They shall not have the benefit of such a vehicle. By and large if an accused person is himself the owner of the vehicle and he uses such a vehicle for the purpose of ,,,,,,

conveying the drugs, then of course, it is possible for the prosecution to contend that it is against the interest of Justice that such a vehicle be given to the accused" ,,,,,,

pending the trial. But in a given case, it might be that a vehicle belonging to innocent owner is stolen by the accused, and in that event, seized by the officer, it" ,,,,,,

does not mean that such an owner has to wait till the trial is completed for the purpose of getting an order of return of the vehicle from the Magistrate. In such ,,,,,,

cases, subject to a guarantee that the vehicle becomes available for the purpose of confiscation, if any, the Court has necessarily the Jurisdiction to pass an order" ,,,,,,

for interim custody either under S. 451 or S. 457(1) of the Criminal P.C. as the case may be. An order under S. 451 or S. 457(1) of the Criminal P.C. Guarantees ,,,,,,

return of the vehicle at the time of the final hearing of the matter, or as and when called upon by the Court. It secures, subject to certain terms and conditions, the" ,,,,,,

interim custody of the vehicle, pending the trial. In fact, the operation of S. 451 or S. 457(1) of the Criminal P.C. comes into existence only after the vehicle is" ,,,,,,

seized and brought into safe custody, as provided under Section 55 of the Act. If it is so, it cannot be said that Section 451 or Section 457(1) of the Criminal P.C." ,,,,,,

is in any way inconsistent with the scheme of the Act. " ,,,,,,

14. According to this reasoning, there would be two yardsticks to be used, one in case the person carrying the contraband is the owner of the vehicle, that vehicle" ,,,,,,

would not be given on interim custody to its owner, and another in case some other person claims ownership of the vehicle, the vehicle could be given to him by" ,,,,,,

way of interim custody. In that case, persons engaged in such illegal trafficking would find it more advantageous not to use their own vehicle but use vehicle of" ,,,,,,

someone else and in the latter case merely by the flat of mere saying of owner of such vehicle that the vehicle was used without his or his agent's knowledge or ,,,,,,

connivance or of the person-in-charge of the conveyance, he would be able to secure the interim custody of the vehicle. And such vehicle could again be similarly" ,,,,,,

used. This is likely to defeat the very purpose of the Act which provides for confiscation of such vehicle. Such an Interpretation, in my respectful view, would be" ,,,,,,

against the object and purpose of the Act. ,,,,,,

15. Assuming the petitioner is the owner of the vehicle but the question whether the vehicle was used without her knowledge or connivance is a question of fact to ,,,,,,

be determined after evidence, if any, is produced in proper inquiry. It may not be safe always to accept such a plea as a gospel truth to give interim custody of the" ,,,,,,

vehicle to such a person. Question remains that the vehicle in question was used as a conveyance by the accused who is the husband of the petitioner for carrying ,,,,,,

the contraband. There seems to be no sound reason that if the owner is not entitled to interim custody of such vehicle because the vehicle is liable to be ,,,,,,

confiscated, why another person who may be the owner of the vehicle should be given the custody of the vehicle during the pendency of the case till he proves his" ,,,,,,

non-complicity. As also observed by the Bombay High Court, the purpose of the Act is to see that the vehicle which is used for such conveyance is not made" ,,,,,,

available to the persons indulging in these activities. Confiscation of the vehicle is an additional safeguard to discourage this crime. ,,,,,,

16. As already noticed, the vehicle has been kept secured in a garage and it is not lying in open and as such there is no danger of it being damaged by vagaries of" ,,,,,,

weather. If the vehicle is returned to the petitioner and ultimately it is held that it is liable to be confiscated, its use by the petitioner will benefit the petitioner and" ,,,,,,

defeat the purpose and object of the Act and when ultimately it is to be confiscated it would have lost its value. Moreover, accused Amar Pal Singh is the husband" ,,,,,,

of the petitioner Smt. Narender Kaur. In his statement made before the investigating officer on 25-3-1997 under Section 67 of the Act, he has stated that this car" ,,,,,,

was purchased in the year 1997 and was a second-hand one; it is in the name of his wife but was purchased by them after selling another Car No. DL-2C B-3835; ,,,,,,

some amount was contributed by his wife and some amount was contributed by him. In the circumstances, it is also not certain whether the car exclusively belongs" ,,,,,,

to the petitioner. It is also seen that on search of his house at C-89, Fateh Nagar, New Delhi, inter alia, 4 gms. of Heroin, one vacuum sealer, small weighing scale" ,,,,,,

were recovered. This would show that some activity in drug is also being done at the house where the petitioner lives. This must be in the knowledge of the ,,,,,,

petitioner. The use of the car in the present case in the circumstances may not be without her knowledge. ,,,,,,

Ã ,,,,,,

B. Ganga Hire Purchase Pvt. Ltd. Vs. State of Punjab and Others, (1999) 5 SCC 670 wherein it has been held as under:-" ,,,,,,

Ã¢â¬2. Under sub-section (3) of Section 60 of the NDPS Act, any animal or conveyance used in carrying any narcotic drug or psychotropic substance is liable to" ,,,,,,

confiscation, unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the" ,,,,,,

person in charge of the animal or conveyance and that each of them had taken all reasonable precaution against such use. There is no dispute that the vehicle in ,,,,,,

question was found to be carrying certain narcotics. The bone of contention of the appellant is that in view of the hire-purchase agreement, the appellant" ,,,,,,

continues legally to be "the owner" of the vehicle so long as the entire hire-purchase money has not been paid and therefore unless and until it is established,

that the vehicle was used for carrying of narcotics with the knowledge of the appellant, an order of confiscation could not have been passed. In support of this

contention, reliance has been placed on a decision of a learned Single Judge of the Rajasthan High Court in the case of Punjab Kashmir Finance (P) Ltd. v. State

[1993 Cri LJ 498 (Raj)]. The expression "owner" has not been defined in the NDPS Act. There is also no dispute that under the hire-purchase agreement the

title to the vehicle is retained with the appellant until and unless the entire hire-purchase money is paid back. But, if the contention of the appellant is accepted,

then all the vehicles which have been purchased on hire purchase basis, cannot be confiscated notwithstanding the fact that the vehicles were found to be used

for commission of offences under the NDPS Act in carrying narcotic and psychotropic substances. The very purpose for engrafting sub-section (3) of Section 60 of

the NDPS Act is to have it as a deterrent measure to check the offences under the Act in question which have been found to be dangerous to the entire society. In,

the absence of any definition of "owner" in the NDPS Act, it would be reasonable for us to construe that the expression "owner" must be held to mean the

"registered owner" of the vehicle in whose name the vehicle stands registered under the provisions of the Motor Vehicles Act,

3. In view of the aforesaid interpretation of the expression "owner" in sub-section (3) of Section 60 of the NDPS Act, the appellant cannot be permitted to

urge that the order for confiscation is bad as he had no knowledge of the fact that the vehicle was used for carrying any narcotic substances. The High Court,

therefore, in our opinion, was justified in rejecting the contention of the appellant that the truck in question having been taken on a hire-purchase agreement, for

the purpose of sub-section (3) of Section 60, the appellant shall be treated to be the owner.

C. Union of India vs. Dinesh Kumar Verma, (2005) 9 SCC 330 wherein it has been held as under:-

"3. By the impugned order, the High Court has directed for release of the vehicle during trial of the accused for violation of the provisions of the Narcotic

Drugs and Psychotropic Substances Act, 1985 (the NDPS Act). In our view, in the facts and circumstances of the present case, the High Court was not justified in

releasing the vehicle.

4. Accordingly, the appeal is allowed, the impugned order rendered by the High Court is set aside and the prayer for release of vehicle made on behalf of the

respondent is rejected. The respondent is directed to surrender the vehicle within a period of one month from today, failing which it would be open to the police to

seize the same and report compliance to this Court within a period of six weeks from today.

D. Shajahan vs. Inspector of Excise and Others, 2019 SCC OnLine Ker 3685 wherein it has been held as under:-

These matters have come before us by way of a reference as per order of the learned Single Judge dated 9/4/2019. It was noticed that this Court in Hassainar,,,,,,

Aseez B. v. State of Kerala (2017 (2) KLT 741) held that a vehicle which was seized under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter" ,,,,,,

referred to as NDPS Act) could be released subject to certain conditions if an application is filed u/s 451 of the Criminal Procedure Code. It was observed that,,,,,,

S.52A of the NDPS Act read with the judgment of the Apex Court in Union of India v. Mohanlal [(2016) 3 SCC 379] indicates that the Magistrate does not have,,,,,,

jurisdiction to pass orders u/s 451 Cr.P.C. In the light of the aforesaid controversy, the matter has been referred to this Court." ,,,,,,

xxx xxx xxx,,,,,,

6. When a Special Act prescribes the procedure for dealing in specified goods and the NDPS Act being a special statute and latter in time, the provisions of the" ,,,,,,

special statute has to be followed by the Magistrate. In other words, the Magistrate may not have jurisdiction to entertain a petition u/s 451 of Cr.P.C. in the light" ,,,,,,

of the special provision made u/s 52A of the NDPS Act. In fact, in Mohanlal (supra), the Apex Court had issued certain directions which are extracted hereunder:-" ,,,,,,

“31. To sum up we direct as under:,,,,,,

31.1. No sooner the seizure of any narcotic drugs and psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the" ,,,,,,

officer in charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate,,,,,,

with an application under Section 52-A(2) of the Act, which shall be allowed by the Magistrate as soon as may be required under sub-section (3) of Section 52-A," ,,,,,,

as discussed by us in the body of this judgment under the heading “seizure and sampling”. The sampling shall be done under the supervision of the,,,,,,

Magistrate as discussed in Paras 15 to 19 of this order.,,,,,,

31.2. The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage,,,,,,

facilities for the exclusive storage of seized narcotic drugs and psychotropic and controlled substances and conveyances duly equipped with vaults and double-,,,,,,

locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer" ,,,,,,

each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1 of 1989 to ensure proper security against" ,,,,,,

theft, pilferage or replacement of the seized drugs." ,,,,,,

31.3. The Central Government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of,,,,,,

seizure and store required, one storage facility for more than one districts." ,,,,,,

31.4. Disposal of the seized drugs currently lying in the Police Malkhanas and other places used for storage shall be carried out by the DDCs concerned in terms,,,,,,,,,

of the directions issued by us in the body of this judgment under the heading "disposal of drugs".....,

7. In the light of the aforesaid law laid down by the Apex Court, the said procedure has to be followed in every case and there is no two way of looking at it. ".....,

Apparently, in such instances, going by the statutory provision under the Special Act, the power of the Magistrate to consider a claim u/s 451 of Cr.P.C. stands".....,

denuded. Reference is answered accordingly.....,

E. In Re: Moumita Saha, 2023, SCC OnLine Cal 1094 wherein it has been held as under:-".....,

"13. It may be that there is no express bar contained in the NDPS Act for grant of interim custody in order to protect the innocent owner of the vehicle. It would.....,

not be out of context to state that Section 37 of the NDPS Act provides that the bail can only be granted where there are reasonable grounds for believing that.....,

accused is not guilty of such offence and that he is not likely to commit any offence while on bail. The spirit of section 37 and the other provisions of the said Act.....,

make it clear that strict applications thereof are required to achieve the purpose, so that further offence relating to illicit traffic in narcotic drugs and".....,

psychotropic substances could be prevented. Before passing an order of releasing the vehicle involved in such offence, the court has to satisfy the reasons which".....,

justify such release. The NDPS Act is a special Act, which has been enacted with a view to make stringent provisions for the control and regulation of operations".....,

relating to narcotic drugs and psychotropic substances. In the present case petitioner/owner of the vehicle herself is an accused and she is still absconding and.....,

did not make co-operation with the investigating agency, in spite of repeated reminders. Accordingly it would not be unreasonable to hold that the vehicle in".....,

question used for committing the offence, if released on terms, then there would be every chance of committing such offence with the help of the same vehicle.".....,

Petitioner's innocence could have been understandable, if she made co-operation with the investigating agency.".....,

14. Under the said provision 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 provisions in Section 60(3) of the Act, to protect an innocent owner before confiscating his vehicle.".....,

15. Accordingly, I am of the view that this is not an appropriate case where such prayer can be allowed and accordingly, the court below has not committed any".....,

error in rejecting the said prayer made by the petitioner and as such, the order impugned does not call for any interference.".....,

16. She further stated that in the present case, the seized vehicle is a material evidence that directly links the accused to the commission of the".....,

offence, particularly since it was used as a means to transport and conceal the contraband substance. She stated that during the course of the trial, the".....,

seized vehicle will be required for inspection, demonstration or verification to substantiate the prosecution case and to establish the manner in" ,,,,,,

which the offence was committed. This, according to her, includes, but is not limited to, demonstrating the concealment of the contraband, its storage" ,,,,,,

within the vehicle etc. She contended that releasing the said seized vehicle prematurely on zimma would jeopardize the trial, as it may not be available" ,,,,,,

for such purposes as and when required.,,,,,,

17. She stated that the likelihood of the conveyance, if released, being used again for transporting/trafficking contraband substances cannot be ruled" ,,,,,,

out. She contended that vehicles involved in the commission of offences under stringent laws, such as the NDPS Act, serve as essential tools for" ,,,,,,

offenders to execute their illegal activities and releasing such a vehicle prematurely may increase the risk of its reuse.,,,,,,

18. She contended that releasing the seized vehicle on zimma would encourage the misuse of third-party vehicles for the transportation and smuggling,,,,,,

of drugs, which would significantly undermine the efforts to combat illegal activities. She lastly contended that drug traffickers and smugglers often" ,,,,,,

adopt the strategy of using vehicles that are not directly linked to their own ownership in order to evade law enforcement scrutiny and to reduce the,,,,,,

risk of detection and confiscation. Accordingly, she prayed that the seized vehicle be not released." ,,,,,,

COURT'S REASONING,,,,,,

NO SPECIFIC BAR/ RESTRICTION UNDER THE NDPS ACT FOR RELEASE IN THE INTERIM OF ANY SEIZED VEHICLE.,,,,,,

19. Having heard learned counsel for the parties and having examined the issue at hand, this Court finds that different Courts have taken divergent" ,,,,,,

views with regard to interim release of conveyances during the pendency of the trial in NDPS cases. While the courts in cases referred to by learned,,,,,,

counsel for the Respondent-State of Assam have not released the vehicles in the interim during NDPS trial, yet in General Insurance Council &" ,,,,,,

Ors. vs. State of Andhra Pradesh, (2010) 6 SCC 768; Gurbinder Singh @ Shinder vs. State of Punjab, 2016 SCC OnLine P&H 16026; Tej" ,,,,,,

Singh vs. State of Haryana, 2020 SCC OnLine P&H 4679; Shams Tavrej vs. Union of India, 2023 SCC OnLine All 1154; Manakram vs." ,,,,,,

State of Madhya Pradesh, Crl. Rev. 2421/2021; Nirmal Singh vs. State of Punjab, CRR-1208-2018 (O&M); Kawal Jeet Kaur vs. State of" ,,,,,,

Karnataka, 2024:KHC-K:5691 and Bhagirath vs. State of Rajasthan, 2024: RJ-JD:3686, the Courts have directed release of the vehicles in" ,,,,,,

the interim in NDPS cases.,,,,,,

20. The judgements of this Court are confined to their facts or in the context of the expression "owner" and do not lay down any general,,,,,,

proposition of law. Consequently, the issue would have to be examined on first principles." ,,,,,,

21. Upon a reading of the NDPS Act, this Court is of the view that the seized vehicles can be confiscated by the trial court only on conclusion of the" ,,,,,,

trial when the accused is convicted or acquitted or discharged. Further, even where the Court is of the view that the vehicle is liable for confiscation, it" ,,,,,,

must give an opportunity of hearing to the person who may claim any right to the seized vehicle before passing an order of confiscation. However, the" ,,,,,,

seized vehicle is not liable to confiscation if the owner of the seized vehicle can prove that the vehicle was used by the accused person without the" ,,,,,,

owner's knowledge or connivance and that he had taken all reasonable precautions against such use of the seized vehicle by the accused person. ,,,,,,

22. This Court is further of the opinion that there is no specific bar/restriction under the provisions of the NDPS Act for return of any seized vehicle. ,,,,,,

used for transporting narcotic drug or psychotropic substance 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 NDPS Act, the Court can invoke the general power under" ,,,,,,

Sections 451 and 457 of the Cr.P.C. for return of the seized vehicle pending 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 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] ,,,,,,

25. The presumption against absurdity is found in the brief observation of Lord Saville agreeing with his colleagues in the case of Noone [R (on the ,,,,,,

application of Noone) v. Governor of HMP Drake Hall [2010] UKSC 30]. Lord Saville says simply: ,,,,,,

"I would allow this appeal. For the reasons given by Lord Phillips and Lord Mance, I have no doubt that by one route or another the legislation must be" ,,,,,,

construed so as to avoid what would otherwise produce irrational and indefensible results that Parliament could not have intended" ,,,,,,

26. If the respondent-State's interpretation is accepted, then in a case where an accused is arrested carrying heroin in a private plane or a private" ,,,,,,

bus or a private ship without the knowledge and consent of the management and staff of the private plan or bus or ship, the plane/bus/ship would have" ,,,,,,

to be seized till the trial is over! ,,,,,,

27. Though the risk of misuse by the accused or third party of the same plane or bus or ship cannot be ruled out, yet the Courts do not take coercive" ,,,,,,

action on the basis of fear or suspicion or hypothetical situation.,,,,,,

28. Undoubtedly, the Vehicle is a critical piece of material evidence that may be required for inspection to substantiate the prosecution's case, yet",,,,,,

the said requirement can be met by stipulating conditions while releasing the Vehicle in interim on superdari like videography and still photographs to.,,,,,,

be authenticated by the Investigating Officer, owner of the Vehicle and accused by signing the said inventory as well as restriction on sale/transfer of",,,,,,

the Vehicle.,,,,,,

BROADLY SPEAKING THERE ARE FOUR SCENARIOS.,,,,,,

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. 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.,,,,,,

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 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.,,,,,,

31. This Court clarifies that the aforesaid discussion should not be taken as laying down a rigid formula as it will be open to the trial Courts to take a.,,,,,,

different view, if the facts of the case so warrant.",,,,,,

SUPREME COURT IN SIMILAR FACTS IN SAINABA VS. STATE OF KERALA AND ANOTHER HAS RELEASED THE VEHICLE.,,,,,,

of goods).,,,,,,

CONCLUSION,,,,,,

36. Consequently, the present Criminal Appeal is allowed with directions to the trial Court to release the Vehicle in question in the interim on superdari" ,,,,,,

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, owner of the Vehicle and accused by signing the same. Further, the appellant 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 Court.,