

(2001) 07 AHC CK 0156**Allahabad High Court****Case No:** Criminal Revision No. 1072 of 2001

Sujeet Kumar Biswas

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: July 11, 2001**Acts Referred:**

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 60(3), 61, 62

Citation: (2001) CriLJ 4431 : (2002) 1 RCR(Criminal) 476**Hon'ble Judges:** J.C. Gupta, J**Bench:** Single Bench**Advocate:** D.R.S. Chauhan, for the Appellant; A.G.A., for the Respondent**Final Decision:** Disposed Of**Judgement**

@JUDGMENTTAG-ORDER

J.C. Gupta, J.

This revision is directed against the order dated 27-3-2001 of Additional Session Judge (Court No. 4) Azamgarh in case crime No. 152/2000. It appears that on 28-9-2000 at 7-30 a.m. vehicle bearing registration No. D.L.-2 C.D.-0657 was seized by Police party in connection with the contravention of the provisions of Narcotic Drugs and Psychotropic Substances Act and about ten kilograms of Ganja is said to have been recovered from the said vehicle which at that particular time was being driven by its driver. The seizure of vehicle was reported to the Court concerned. The applicant in revision thereafter applied for interim custody of the said vehicle claiming himself to be its registered owner and further stating that the vehicle in question was lying in open sky at the Police Station and in case no proper arrangement of its interim custody is made, the vehicle may be damaged and ruined. The learned Session Judge rejected the release application holding that the applicant did not disclose in his affidavit what precautions he had taken to check the wrongful use of the vehicle. It has further been held that benefit of Section 60(3) of

the N.D.P.S. Act could be extended to applicant only if he had proved that he had taken all necessary and possible precautions against, wrongful user of the vehicle.

2. learned Counsel for the applicant in revision submitted before the Court that the learned Magistrate has totally misdirected himself in disposing of the release application as if he was dealing with confiscation proceedings. It was further submitted that Section 60(3) comes into play only during the course of confiscation proceedings and it has no applicability with regard to interim custody of the vehicle as an interim arrangement. Confiscation proceedings under the said Act can be initiated even after the accused is convicted, acquitted or discharged and the Court has then to decide whether any article or thing seized under the Act is liable to confiscation under Sections 60 or 61 or 62 and if it decides that the vehicle is so liable, it may order its confiscation. u/s 60(3) of the Act any animal or conveyance used in carrying any Narcotic Drugs or Psychotropic Substance shall also be liable to confiscation, unless the owner of the said vehicle proves that the vehicle was used without knowledge or consent of the owner himself and that he had taken all reasonable precautions against such use. The occasion to examine this will arise only where the Court proposes to confiscate the vehicle. As far as question of interim custody of the vehicle is concerned Section 60(3) of the Act has no application.

3. In the circumstances, it is directed that the vehicle in question may be released in favour of the applicant in revision on the following conditions :

(1) on the applicant satisfying the Court below regarding the ownership of the said vehicle in his name.

(2) on his executing a personal bond in the sum of Rs. 1,50,000/- and two sureties each in the like amount to the satisfaction of the Court below with the undertaking that he shall produce the vehicle before the Court during the course of inquiry, trial or confiscation proceedings as and when required to do so :

(3) that the applicant shall not sell or otherwise transfer the said vehicle in favour of any third person without prior permission of the Court.

(4) that the applicant shall not allow any changes to be made in the said vehicle so as to make it unidentifiable.

With the aforesaid directions, revision is disposed of finally.