

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE ACHAL KUMAR PALIWAL
ON THE 24th OF MARCH, 2025
Criminal Revision No. 5948/2024**

PRAVEEN KUMAR TIWARI

Versus

THE STATE OF M.P.

Appearance:

Shri Deepak Sahu – Advocate for the applicant.

Ms. Noopur Dhamija – Deputy Government Advocate for the respondent/State.

ORDER

This criminal revision has been filed under Section 438 read with Section 442 of BNSS Act assailing order dated 29.08.2024 passed in MJCR case No. 1632/2024 passed by Additional Special Judge (NDPS) Rewa, whereby applicant's application under Section 457 of Cr.P.C.(Section 503 of BNSS) for releasing/giving vehicle Scorpio bearing registration No. MP-19-BB-1917 on Supurdagi has been dismissed.

2. Learned counsel for the applicant submits that learned Trial Court has dismissed applicant's application solely on the ground that impugned vehicle is liable to be confiscated under provision of NDPS Act and in the instant case, investigation has not been completed. Trial Court has wrongly dismissed applicant's application. Learned counsel for the applicant, after referring to provision of Section 63 of NDPS Act as well as order passed by the Coordinate

Bench of this Court **in M.Cr.C. No. 38089/2021 (Surendra Dhakad Vs. State of MP) vide order dated 13.01.2022, in Cr.R. No. 2971/2019 (Manoj Kumar Vs. State of MP) vide order dated 27.08.2019 and in Cr.R. No. 3530/2021 (Rahul @ Anurag Chourasiya Vs. State of MP) vide order dated 14.03.2022**, submits that any vehicle seized under NDPS Act can be confiscated only after completion of trial and Collector has no right to confiscate the vehicle seized under NDPS Act. On above grounds, it is urged that order passed by the trial Court be set aside and vehicle MP19-BB-1917 be released and given on supurdagi.

3. Learned counsel for the State submits that confiscation proceedings are under going on. No final order of confiscation has been passed in the instant case. Further, investigation under Section 193 of BNSS (Section 173 of Cr.P.C.) is still going on. If vehicle is released on supurdagi, then, it may be disposed of by the owner of vehicle. Learned counsel for the respondent/State further submits that in view of provisions contained in Rules 16 to 23 of NDPS (Seizure, Storage, Sampling and Disposal) Rules 2022 (hereinafter referred as “Rule 2022”), vehicle seized under NDPS Act cannot be released on interim custody because in view of aforesaid provisions in aforesaid rules, vehicle seized under NDPS Act can only be disposed of by drug disposal committee. On above grounds, it is urged that revision filed by the applicant be dismissed.

4. Heard learned counsel for the parties and considered rival submissions made hereinabove and has also gone through the record of the case.

Relevant provisions of law of NDPS Act:-

5. Before discussing the issues involved in the case, it would be appropriate to refer relevant provisions of law which are as under:-

“(i). **36-C. Application of Code to proceedings before Special Court** – 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 and for the purpose of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a ‘Special Court’ shall be deemed to be a Public Prosecutor.

(ii). **51. Provisions of the Code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and seizures.-** 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, all the warrants issued and arrests, searches and seizures made under this Act.

(iii). **52-A(1). Disposal of seized narcotic drugs and psychotropic substances:-**

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 after following the procedure hereinafter specified.

(iv). **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 for 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 for 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 for 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 for 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) **63. Procedure in making confiscations:-**

(1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under Section 60 or Section 61 or Section 62 and, if

it decides that the article is so liable, it may order confiscation accordingly.

(2) Where any article or thing seized under this Act appears to be liable to confiscation under Section 60 or Section 61 or Section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing, other than a narcotic drug psychotropic substance, [controlled substance,] the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of 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.”

6. Thus, Section 60 of NDPS Act provides for confiscation of vehicle seized in commission of the offence punishable under the provisions of the NDPS Act. Section 60 of NDPS Act does not provide for confiscation of any vehicle immediately after its seizure. Confiscation is a separate procedure unconnected with conviction, acquittal, or discharge of the accused. It is only satisfaction of the court trying an offence under the Act, to decide as to whether the vehicle is liable to be confiscated or not. A detailed procedure for making confiscation under Section 60 of the NDPS Act has been provided in Section 63 of NDPS Act.

7. As such, by virtue of Section 60 of the NDPS Act, any conveyance used for commission of offence is liable to confiscation in accordance with Section 63 of the NDPS Act after hearing the person who may claim any right thereto and considering the evidence, if any, which he may produce in support of the claim and confiscation order can be made only at the end of the trial. Neither of the said provisions (Section 60 and 63 of the NDPS Act) contained in the Act prohibits/bars trial Court to make an order for proper custody of such a conveyance pending trial.

8. By virtue of Section 51 of the NDPS Act, the provisions of the Code of Criminal Procedure, 1973 have been made applicable in so far as they are not inconsistent with the provisions of the Act, to searches and seizures made under the Act. Since the provision contained in Section 451/457 of the Cr.P.C., 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 not inconsistent with any of the provisions including Sections 60(3) and 63 of the NDPS Act, in appropriate cases, order for release of conveyance used for carrying narcotic drugs pending conclusion of trial can be passed under Section 451/457 of the Cr.P.C.

9. Further, vide Amendment Act No.2 to 1989, the NDPS Act was amended and Section 36-C was inserted in the Act. By virtue of Section 36-C of the NDPS Act, "Save as otherwise provided in this Act", the provisions of the Cr.P.C. have been made applicable to the Special Court constituted under the

provisions of the NDPS Act by Amendment Act No.2 of 1989 with effect from 29.5.1989. "Save as otherwise provided in the Act" employed in Section 36-C of the NDPS Act, is indicative of the fact that unless, either expressly or impliedly, operation/application of any provisions contained in Cr.P.C. stands excluded to NDPS Act, including any provision of Cr.P.C., which is contrary/inconsistent with provision of NDPS Act, remaining provisions of Cr.P.C. shall apply to the proceeding under NDPS Act. Hence, once the Cr.P.C. has been made applicable, the provisions of the Cr.P.C. contained in Sections 451 and/or 457 of the Cr.P.C. would automatically be attracted. As such, with effect from 29.5.1989, the Cr.P.C. as a whole, subject to the exception carved out as noticed herein-above, has been made applicable to the proceeding before the Special Court constituted under NDPS Act and therefore application under Section 451 or 457 of the Cr.P.C. for interim custody of the vehicle seized for commission of offence punishable under the NDPS Act would be maintainable and the Special Judge, NDPS Act is empowered to consider the application under Section 451/457 of the Cr.P.C. on merits.

10. Since the provisions of the Cr.P.C., including Section 451/457, have been expressly made applicable by virtue of Section 36-C/51 of the NDPS Act to the proceedings before the Special Court (NDPS) and there is no express bar contained in the NDPS Act for grant of interim custody, therefore, merely on the ground that the vehicle is liable to confiscation under Section 60 of the NDPS Act, it cannot be held that once the vehicle is seized for commission of

offence under the NDPS Act, interim custody cannot be granted, as jurisdiction of criminal court has to be construed strictly unless expressly excluded.

11. There is no provision in the NDPS Act to restrict the power of the trial Court to release the vehicle on interim custody. It has been held by this Court in the case of **Pandurang Kadam vs State of M.P., 2005 (2) ANJ MP 351**, that notwithstanding the fact that the vehicle is liable to be confiscated under Section 60 of the NDPS Act, it may be released on interim custody in appropriate cases. Thus, interim custody should not be denied to the owner of the vehicle, simply because it is liable to be confiscated under Section 60 of the NDPS Act.

12. So far as submissions of learned counsel for the respondent/State with respect to applicability of 16 to 23 of Rules 2022 are concerned, perusal of aforesaid rules clearly reveals that they also deals with “disposal” of conveyances seized under the NDPS Act. Aforesaid rules do not deal with confiscation of conveyances seized under the NDPS Act. “Confiscation” and “Disposal” are not one and the same. Sections 60 and 63 of NDPS Act deals with confiscation of vehicles used for commission of offence under the NDPS Act and Section 63 of NDPS Act provides for procedure for confiscation of any such vehicle. In Rules 16 to 23 of Rules 2022, there is no reference or mention of Sections 60 and 63 of NDPS Act. Further, aforesaid rules 2022 do not prohibit or bar Special Court constituted under NDPS Act to release/give vehicle on interim supurdagi during pendency of trial. Hence, in this Courts’ considered opinion, rules 16 to 23 of Rules 2022 cannot be

interpreted/construed so as to mean that trial Court under NDPS Act is not empowered to release/give vehicle on interim supurgadi. In this courts' opinion, harmonious interpretation of Sections 60 and 63 of NDPS Act and Rule 16 to 23 of Rules 2022 would be that whenever Special Court constituted under NDPS Act confiscates the conveyance in accordance with Section 60 and 63 of NDPS Act, thereafter such vehicle would be disposed of by drug disposal committee as per Rules 2022.

13. Recently Hon'ble Apex Court in **Bishwajit Dey Vs. State of Assam, 2025 SCC Online SC 40** has examined the issue in detail and has laid down in as under:-

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:36868, 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 plane 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 superdagi 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 supurdagi 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 supurdagi 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

32. In the present case, this Court finds that after conclusion of investigation, a charge sheet has been filed in the Court of Special Judge, NDPS Karbi Anglong. In the said charge sheet, neither the owner of the Vehicle nor the driver has been arrayed as an accused. Only a third-party occupant has been arrayed as an accused. The police after investigation has not found that the appellant i.e. the owner of the vehicle, has allowed his vehicle to transport contraband drugs/ substances with his knowledge or connivance or that he or his agent had not taken all reasonable precautions against such use. Consequently, the conveyance is entitled to be released on supurdagi.

33. In fact, the Supreme Court in similar facts in **Sainaba vs. State of Kerala and Another, 2022 SCC OnLine SC 1784** has held as under:-

“6. The appellant has urged inter alia that as per Section 36-C read with Section 51 of the NDPS Act, Criminal Procedure Code would be applicable for proceedings by a Special Court under NDPS Act and Section 451 has an inbuilt provision to impose any specific condition on the appellant while releasing the vehicle. The appellant is undoubtedly the registered owner of the vehicle but had not participated in the offence as alleged by the prosecution nor had knowledge of the alleged transaction.

7. Learned counsel seeks to rely on the judgment of this Court in **Sunderbhai Ambalal Desai v. State of Gujarat (2002) 10 SCC 283** opining that it is no use to keep such seized vehicles at police station for a long period and it is open to the Magistrate to pass appropriate orders immediately by taking a bond and a guarantee as well as security for return of the said vehicle, if required at any point of time.

8. On hearing learned counsel for parties and in the conspectus of the facts and circumstances of the case, and the legal provisions referred aforesaid, we are of the view that this is an appropriate case for release of the vehicle on terms and conditions to be determined by the Special Court.

9. The appeal is accordingly allowed leaving parties to bear their own costs.”

**IF THE VEHICLE IN THE PRESENT CASE IS KEPT IN
THE CUSTODY OF POLICE TILL THE TRIAL IS OVER,
IT WILL SERVE NO PURPOSE**

34. This Court is also of the view that if the Vehicle in the present case is allowed to be kept in the custody of police till the trial is over, it will serve no purpose. This Court takes judicial notice that vehicles in police custody are stored in the open. Consequently, if the Vehicle is not released during the trial, it will be wasted and suffering the vagaries of the weather, its value will only reduce.

35. On the contrary, if the Vehicle in question is released, it would be beneficial to the owner (who would be able to earn his livelihood), to the bank/financier (who would be repaid the loan disbursed by it) and to the society at large (as an additional vehicle would be available for transportation of goods).”

14. The Supreme Court in **Sunderbhai Ambala Desai Vs. State of Gujarat, 2002(10) SCC 283** has laid down parameters for considering the application for interim custody expeditiously and judiciously so that the owner of the article would not suffer because of its remaining unused or by its misappropriation and court or the police would not be required to keep the vehicle in safe custody. It was observed as under:-

"7. In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. it would serve various purposes, namely:-

1. owner of the article would not suffer because of its remaining unused or by its misappropriation.

2. court or the police would not be required to keep the vehicle in safe custody;

3. if the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles."

15 Thus, from discussion in the forgoing paras and having regard to relevant legal provisions as well as pronouncements of Hon'ble Apex Court as well as Coordinate Bench of this court, this court is of the opinion that there is no such bar/prohibition under NDPS Act/Rules 2022 that Special Court constituted under NDPS Act, during pendency of trial, cannot release/give conveyance seized under the NDPS Act on interim custody/Supurdagi. Hence, Special Court under NDPS Act, after having regard to all the facts and circumstances of the case, has jurisdiction to release conveyance seized under the NDPS act on interim custody/supurdagi during pendency of the trial.

Final Conclusions:-

16. So far as facts of present case are concerned, in the instant case, one Scorpio bearing registration No. MP-19-BB-1917 has been seized under NDPS Act on the ground that the vehicle was being used for transportation of ornex cough syrup bottles without any licence. This court has examined record of the

case and there is nothing on record as such so as to justify not to give vehicle on interim supurdagi during pendency of the trial.

17. Accordingly, the present Criminal Revision in respect of seized Scorpio bearing registration No. MP-19-BB-1917 is **allowed** and the impugned order dated 29.08.2024 passed by the learned Additional Special Judge (NDPS), Rewa, in MJCR No. 1632/2024, to the extent of rejection of application for releasing of seized Scorpio in MJCR No. 1632/2024 filed by the applicant under Sections 457 of Cr.P.C, is hereby **set aside**. It is directed that the vehicle of the applicant bearing Registration No. MP-19-BB-1917, in Crime No. 401/2024 registered at Police Station Semariya, District Rewa for the offence Punishable under Section 8, 21 and 22 of NDPS Act be released on interim supurdagi/custody till the conclusion of trial on the following terms and conditions :-

1. The applicant Praveen Kumar Tiwari shall furnish Supurdiginama of a sum of **Rs.10,00,000/- (Rupees Ten Lakhs Only)** alongwith a surety of the like amount to the satisfaction of the trial Court for releasing the vehicle in question;
2. The applicant shall also furnish an undertaking that he shall produce the vehicle in question on his own expenses as and when required during the trial;
3. The applicant shall not alienate the same and shall not use such vehicle for any unlawful purpose during pendency of the case;

4. An undertaking shall also be given by the applicant that condition of the vehicle in question shall not be changed or altered in any manner whatsoever;

5. In the event of confiscation order by the Court competent, the applicant shall produce the vehicle positively for confiscation.

18. It is further directed that before releasing the vehicle on interim custody of the applicant, the S.H.O. of concerning police station shall get all the papers of vehicle from registered owner and shall verify the same and will also get video and still photographs of 18 x 12 inches of the concerned vehicle taken from all sides and also the photographs showing engine number and chassis number. Such papers and photographs etc. shall be authenticated by Investigating Officer and owner/accused and they shall be filed in the trial Court to be kept along with the record.

19. With the aforesaid directions, this petition stands disposed of.

(ACHAL KUMAR PALIWAL)

JUDGE