**ABC 2025(I) 558 SC**
**ACQUITTAL & BAIL CASES**

# SUPREME COURT OF INDIA

*(Manmohan & Sanjay Karol, JJ.)*

Criminal Appeal No. 87 of 2025
(Arising out of Special Leave Petition (Crl.) No. 13370 of 2024)
(From Gauhati High Court)
Decided on : 7 January 2025

***BISHWAJIT DEY*** - ***Appellant(s).***

***Versus***

***STATE OF ASSAM*** - ***Respondent(s).***

***Law Covered :-*** ***(A) Code of Criminal Procedure, 1973 – S. 451 & 457 (Bharatiya Nagarik Suraksha Sanhita, 2023 – S. 497 & 503) – Narcotic Drugs & Psychotropic Substances Act, 1985 – S. 51 – Interim Custody of Seized Vehicle – No Bar Under NDPS Act – Release on Superdari Allowed – Seizure of a vehicle allegedly used in an NDPS offence – Appellant, the registered owner, was not arrayed as an accused – No allegation of connivance or prior knowledge – NDPS Act does not specifically prohibit interim release – Section 51 NDPS Act allows CrPC provisions unless inconsistent – Vehicle deteriorating due to prolonged exposure at the police station – Held, courts can invoke Sections 451 & 457 CrPC to release the vehicle on superdari with conditions – Directions issued for videography, still photographs & undertaking restricting sale – Owner must surrender the vehicle or pay its value if required. (Paras 10-15, 32-35)***

***(B) Narcotic Drugs & Psychotropic Substances Act, 1985 – S. 60(3) – Ownership Rights Over Seized Vehicles – Hire-Purchase Agreement & Possession Not Sufficient to Claim Ownership – High Court rejected appellant's contention that possession under a hire-purchase agreement constituted ownership for the purpose of Section 60(3) NDPS Act – Mere contractual possession does not equate to absolute ownership – Held, actual ownership determination must be based on registered title & financing agreements. (Paras 20-24)***

***(C) Code of Criminal Procedure, 1973 – S. 451 (Bharatiya Nagarik Suraksha Sanhita, 2023 – S. 497) – Long Detention of Seized Vehicles – Undue Delay Leads to Damage & Depreciation – Supreme Court referred to precedent in State of Gujarat (2002) 10 SCC 283 emphasizing that prolonged retention of vehicles in police custody serves no purpose – Held, seized vehicles must be promptly dealt with to prevent loss of value & unnecessary legal disputes. (Paras 25-30)***

***Facts*** **:-** *The appellant, a registered owner of a truck, sought its release after seizure under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). The vehicle was detained on suspicion of being involved in an NDPS offence, but the appellant was not named as an accused, nor was there any evidence suggesting prior knowledge or involvement. The Additional Sessions Judge denied the release, citing a possible link to illicit activity. On appeal, the Gauhati High Court upheld the denial, stating that allowing interim custody could interfere with the investigation. The Supreme Court, however, observed that the NDPS Act does not bar the release of vehicles per se, and under Section 51, CrPC provisions apply unless inconsistent with the Act. Since no evidence linked the appellant to the alleged crime, and prolonged detention led to vehicle deterioration, the Court directed its release on superdari, subject to strict conditions, including videographic recording, photographic evidence, and an undertaking restricting sale.*

***Law of Relief*** **:-** ***(i) Procedural Safeguard – No Absolute Bar on Release of Vehicles Under NDPS Act – Interim custody of a seized vehicle is permissible unless specifically barred – Section 51 NDPS Act allows CrPC provisions to apply.***

***(ii) Protection of Ownership Rights – No Criminal Allegation Against the Owner – Mere seizure does not warrant prolonged retention – No proof of owner's involvement in illegal activities.***

***(iii) Vehicle Preservation – Avoidance of Unnecessary Deterioration – Prolonged detention led to vehicle damage – Court ensured safeguards before granting release.***

***(iv) Ownership Determination – Mere Possession Under Hire-Purchase Does Not Confer Ownership Rights – High Court's finding that contractual possession alone does not establish ownership – Court emphasized the need for legally recognized title.***

***(v) Timely Disposal – Long Detention of Seized Vehicles is Detrimental – Held, keeping seized vehicles for long durations serves no legal purpose.***

***Counsel*** **:-** ***For Appellant(s)*****:** *Mr. Adeel Ahmed, Adv.*

***For Respondent(s)*****:** *Mr. Diksha Rai, Adv.*

***Cases Referred*** **:-**

1. *Sunderbhai Ambala Desai v. State of Gujarat (2002) 10 SCC 283. (Para 10)*
2. *Noor Aga v. State of Punjab & Another (2008) 16 SCC 417. (Para 13)*
3. *Mukesh Singh v. State (Narcotic Branch of Delhi) (2020) 10 SCC 120. (Para 13)*

4. *Directorate of Revenue Intelligence v. Amit Kumar 2016 SCC OnLine Del 6083. (Para 13)*
5. *Smt. Narender Kaur v. Arun Sheoran, Intelligence Officer, Narcotics Control Bureau 2000 SCC OnLine Del 502. (Para 15)*
6. *Ganga Hire Purchase Pvt. Ltd. v. State of Punjab and Others (1999) 5 SCC 670. (Para 19)*
7. *Union of India v. Dinesh Kumar Verma (2005) 9 SCC 330. (Para 20)*
8. *Shajahan v. Inspector of Excise and Others 2019 SCC OnLine Ker 3685. (Para 21)*
9. *In Re: Moumita Saha 2023 SCC OnLine Cal 1094. (Para 22)*
10. *Sainaba v. State of Kerala and Another 2022 SCC OnLine SC 1784. (Para 33)*

## ***JUDGMENT***

***Sanjay Karol, J.:-***1. Leave granted.

2. The Criminal Appeal has been filed challenging the impugned judgment and order dated 23rd January, 2024 passed by the Gauhati High Court at Assam in Case number Crl. Rev. No.P/483/2023, whereby the appellant's writ petition challenging the order dated 09th October, 2023 passed by the Additional Sessions Judge Karbi Anglong, Diphu, in Dillai Police Station case No.32/2023, corresponding to G.R. Case No.150/2023 dated 05th October, 2023 was dismissed.

### RELEVANT FACTS

3. Briefly stated the relevant facts of the present case are that the appellant had purchased a Truck for commercial purpose bearing Registration No.AS-01-NC-4355 (hereinafter referred to as "the Vehicle") with the intent of plying the same. The Vehicle was purchased on monthly Equated Monthly Instalment of Rs.1,00,020/- (One lakh and twenty rupees) and according to the appellant, it is his only source of income.

4. On 10th April, 2023, the Vehicle was coming from Dimapur side and was signaled to stop at naka checking point. The Police officer searched the Vehicle and found two identical soap boxes containing suspected heroin which was covered in black polythene, kept concealed inside the Tarpaulin and kept at the hood of the Vehicle.

5. The main accused namely, Md. Dimpul, in this connection, was arrested by the Police Officer. After a field test, the said suspected substance was confirmed to be 24.8 gms. of heroin.

**ARGUMENTS ON BEHALF OF THE APPELLANT**

6. According to the appellant, accused-Md. Dimpul boarded the Vehicle from Manipur as is stated by the driver of the Vehicle namely Joherul Ali. It is averred in the petition that neither the appellant (owner of the truck) nor his driver was aware that the said accused-Md. Dimpul was in possession of the said substance and was carrying the same. Moreover, the driver and helper have been cited as witnesses in the case as according to the appellant they were not involved in the offence.

7. The remand report of the arrested person clearly states that the suspected heroin was recovered and seized from the possession of the accused-Md. Dimpul.

8. Thereafter, on 01st August, 2023, a charge sheet was filed before the Court of Special Judge, NDPS by Sub-Inspector Sarat Kakoti under Section 21(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') wherein it was stated that the accused-Md. Dimpul carried the suspected heroin. Since learned counsel for the appellant placed heavy reliance on the charge-sheet, the same is reproduced hereinbelow in its entirety:

*"N.C.R.B*
*L.I.F.-V*

*FINAL FORM REPORT*
*(Under section 173 Cr.P.C.)*
*IN THE COURT OF : In the court of Special Judge*
*NDPS Diphu Karbi Anglong*

*1. District : KARBINGLONG P.S. : DILLAI PS*
*Year : 2023*
*FIR No. :0032 Date : 10/04/2023*

*2.Final report / Change Sheet No.*

*3.Date : 01/08/2023*

| *4. S.No.* | *Acts* | *Sections* |
|---|---|---|
| *1.* | *NARCOTIC DRUGS AND PSYCHOTROPIC* | *21(b)* |

*5. Type of Final Form Report : CHARGE SHEET*
*6. If FR Unoccurred*
*7. If Charge school : Original*
*8. name of I.O. at the time of charge sheet :*
*SARAT KAKOTI Rank : SI*

*No.*

*9. (a) Name of complainant / Informant :*

*Rajib Borah*

*(b) Father's Name : Dhaniram Borah*

*10. Detail of Properties/Articles/Documents recovered/seized during Investigation and relied upon:*

| *S.No.* | *Property Description* | *Estimated Value (in Rs.)* | *Police Station Property Register No.* | *From whom / where revered 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 AND VALUABLE SECURITIES* | | *000182/2023* | */NH-36 in front of Lahorijan PP* | |
| *4* | *AUTOMOBILES AND OTHERS* | | *000181/2023* | */NH-36 in front of Lahorijan PP* | |

*Particulars of accused charge-sheet : S.No. 1*

*(i) Name: Md. Dimpul Ali*

*Whether verified : Yes*

*(ii) Father's Name:*

*(iii) Data/ Year of birth : 1993*

*(iv) Sex: male*

*(v) Nationality : INDIA*

*(vi) Passport No. :*

*Date of Issue:*

*Place of Issue:*

**a** *(vii) Religion :*
*(viii) Whether SC/ST/OBC: GENERAL*
*(ix) Occupation:*
*(x) Address:*

**b**

| | | |
|---|---|---|
| *1* | *Present Address* | *No.2 Meda, Charaibari, SORBHOG, BARPETA, ASSAM, INDIA* |

**c**

| | | |
|---|---|---|
| *2* | *Permanent Address* | *No.2 Meda, Charaibari, SORBHOG,BARPETA, ASSAM, INDIA* |

**d** *Whether verified: Yes*
*Regular Criminal No. :*
*(xii) Date of arrest: 10/04/2023*
*(xiii) Date of release on bail:*
*(xiv) Date on which forwarded to court:*
*(xv) Under Acts & Sections:*
*S.No. Acts*
*Sections*

**e** *(xvi) Details of bailers / sureties:*

N.C.R.B.
L.I.F.V

**f** ***Name:***
*Father's / Husband's name:*
*Occupation:*
*Address:*
*S.No. Address Type Address*
*Identification:* Date of *Birth:*

**g** *UID Number:*
*Any Other ID Proof:*
*S.No. Id Type ID Number*
*(xvii) Previous conviction with case references:*

**h**

| *S.No* | *FIR No.* | *State* | *District* | *Police Station* | *Description of case* | *Details of Conviction / Acquittal* |
|---|---|---|---|---|---|---|
| | | | | | | |

*(xvii) Status of the accused: FORWARDED TO COURT*

12. *Particulars of accused person – not charge sheeted (suspect):*

13. *Particular of witnesses to be examined :*

| *S.No* | *Name* | *Father's/ Husband's name* | *Dated/ Year of birth* | *Occupation* | *Address* | *Type of evidence to be tendered* |
|---|---|---|---|---|---|---|
| *1* | *Dhurba Das* | | | | *Present Address: DILLAI PS,KARBIANGLONG, ASSAM, INDIA Permanent Address: DILLAI PS, KARBIANGLONG, ASSAM. INDIA* | *Arrest Memo witness* |
| *2* | *Krishna Ch Das* | | | | *Present Address: DILLAI PS, KARBIANGLONG, ASSAM, INDIA Permanent Address: DILLAI PS, KARBIANGLONG, ASSAM. INDIA* | *Arrest Memo witness* |
| *3* | *Rajib Borah* | *Father: Dhaniram Borah* | *1992* | | *Present Address: DILLAI PS, KARBIANGLONG, ASSAM, INDIA Permanent Address: DILLAI PS, KARBIANGLONG, ASSAM. INDIA* | *Complainants* |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| a | *4* | *Sarat Kakoti* | | *02/11/1993* | | *Present Address: ASSAM, INDIA Permanent Address: ASSAM, INDIA* | IO |
| b c | *5* | *Shri John Das* | | | | *Present Address: BOKAJAN, KARBIAN GLONG, ASSAM, INDIA Permanent Address: BOKAJAN, KARBIAN GLONG, ASSAM, INDIA* | Other Witness |
| d e | *6* | *Jiten Gogoi* | *Father: Late Mukta Gogoi* | | | *Present Address: DILLAI PS, KARBIANGLONG, ASSAM, INDIA Permanent Address: DILLAI PS, KARBIANGLONG, ASSAM. INDIA* | Other Witness |
| f g | *7* | *Sankar Mahanayak* | | | | *Present Address: DILLAI PS, KARBIANGLONG , ASSAM, INDIA Permanent Address: DILLAI PS, KARBIANGLONG, ASSAM. INDIA* | Other Witness |
| h | *8* | *Baidujya Khanikar* | | | | *Present Address: DILLAI PS, KARBIANGLONG, ASSAM, INDIA Permanent Address: DILLAI PS,* | *Other Witness* |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | | *KARBIANGLONG, ASSAM. INDIA* | | a |
| *9* | *Mintu Daimary* | | | | *Present Address: DILLAI PS, KARBIANGLONG, ASSAM, INDIA Permanent Address: DILLAI PS, KARBIANGLONG, ASSAM INDIA* | *Other Witness* | b c |
| *10* | *Monjur Ahmed* | *Father: Abdul Kluqu* | *1989* | | *Present Address: Dhainsing Engleng, DILLAI PS, KARBIANGLONG, ASSAM, INDIA, Permanent Address: Kania Tokbi, DILLAI PS, KARBINGLONG, ASSAM, INDIA* | *Search & siege Witness* | d e f |
| *11* | *Ramesh Raj* | *Father: Jagat Bh. Rai* | *1985* | | *Present Address: Kania Tokbi,DILLAI PS,KARBINGLONG, ASSAM, INDIA Permanent Address: Kania Tokbi,DILLAI PS,ASSAM, INDIA Permanent Address:* | *Search & siege Witness* | g h |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | | | *Kania Tok-bi,DILLAI PS,KARBING LONG, ASSAM, INDIA* | |
| | *12* | *Joherul Ali* | *Father: Jagat Bh. Rai* | *1971* | | *Present Address: BONGAIGAON,BON GAIGA-ON, AS-SAM, INDIA* | *Search & siege Witness* |

*14. If FR is false (F.R. false), indicate action taken or proposed to be taken u/s 182/211 I.P.C /217/248 B.N.S:*

*15.Result of Laboratory analysis :*

*16. Brief facts of the case :*

*The brief of the case is that on 10/04/2023 informant SI (UB) Rajib Borah of Dillai PS lodged an FIR at PS stating that based on a specific information received from reliable source, a Naka checking was conducted by self along with ASI Jiten Gogoi, Ic Lahorijan and staff on NH 36 in front of Lahorijan PP. During checking at about 06:20 AM one Truck B/R No. AS 01 NC 4355 which was coming from Dimapur side was signaled to stop at Naka checking point and the vehicle stopped. After receiving authorization from SDPO Bokajan to search the vehicle, I have served Notice U/S 50 NDPS Act to the driver of the said vehicle whom I have explained about the notice Clearly and on their concerned I along with my staff started search of the vehicle in presence of independent witnesses. On thorough search of the vehicle, total 02 (two) nos, identical soap boxes containing suspected to be Heroin covered with black polythene which was kept concealed inside the Tarpaulin and kept at the hood of the truck. During spot interrogation, the driver of the vehicle Joherul Ali 52 Yrs S/O Lt Ahmed Choudhary, R/O Morth*

*Bongaigaon, PS Bongaigaon stated that the suspected drugs is belongs to one another person of the vehicle namely Md Dimpul Ali S/O Mansur Ali R/O No. 2 Meda, PS Sorbhog, Dist Barpeta, Assam who was came with him from Dimapur and he kept the soap box inside the tarpaulins. Suspected recovered from the vehicle was subjected to field test by using Deflection Kit in presence of SDPO Bokajan and above name eye witnesses and the result comes positive for Heroin. The recovered 02 (two) packets of Identical soap boxes has been weighed by using digital weight machine belonging to PP (which was quoted in Lahorijan pp gde No. 537 Dated 31/12/2023) and found total 24.8 grams after weight. Accordingly the recovered soap boxes containing suspected to be Heroin along with other items were seized the recovered psychotropic substance. Sealed and packet the psychotropic substance at PO in presence of independent witnesses. Open the sealed packed before Hon'ble Judicial Magistrate Ist class, Bokajan and drawn the sample and samples have sent to Forensic science Kahlilpara Guwahati for examination. The suspected accused person have been arrested and forwarded to the Judicial custody. Expert opinion report was collected and the report is positive for Heroin. The recovered psychotropic substances have identified as Heroin, which are highly addictive drugs that affect Central Nervous System. It is an illegal drug with high market value and its uses have immense medical, social and economic consequences. Its uses have been increasing in today's society and mostly amongst the young generation which has devastating impact on human resource as well as social health. The drug trafficking involves a huge national international gang which is also seen to be prevalent in Assam. The arrested accused person revealed that he carried the Heroin form Dimapur. This statement proves the interstate transition of psychotropic substances. Above facts and circumstance, a prima facie is found well established U/S 21 (b) of NDPS Act against the arrested accused person. I have sent the arrested accused person named Md. Dimpul Ali S/O Mansur Ali, R/O No.2 Meda, PS Sorbhog . Dist, Barreta Honble court for trial against him under aforementioned section of Law.*

*17.Refer Notice served : No Date:*

*18.Dispatched on:*

*19.No. of enclosures 4*

*20. List of enclosures: As annexed: IIF1.pdf, IIF2.pdf, IIF3-1.pdf, IIF4-1 pdf*

*Forwarded by Officer in charge*

*Name: Nitul Saikia*

*Rank: SI (Sub-Inspector)*

*No.:*

*Signature of Investigation Officer submitting final report/ charge sheet*

*Name: SARAT KAKOTI*

*Rank: SI (Sub-Inspector)*

*No.:"*

9. Learned counsel for the appellant stated that the Vehicle since seized has been lying unattended at the Police station campus and the same is lying exposed to sun and rain thereby rendering it to natural wear and tear and deterioration. He referred to and relied upon Sections 451 and 457 of the Code of Criminal Procedure ('for short 'Cr.P.C.') to seek release of the Vehicle. The relevant portions of Sections 451 and 457 of Cr.P.C. are reproduced hereinbelow:-

"451. Order for custody and disposal of property pending trial in certain cases.—When any property is produced before any criminal court during any inquiry or trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.—For the purposes of this section, 'property' includes—(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.—(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."

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

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 "…… 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 proceeding……"

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***]. According 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. ……*

*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.*

*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.*

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

*"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 § 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.*

*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.524 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 524 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".*

*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's 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: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: Hata! 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**

32. In the present case, this Court finds that after conclusion of investigation, a chargesheet has been filed in the Court of Special Judge, NDPS Karbi Anglong. In the said chargesheet, 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 superdari.

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.*

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).

**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.

***Result*:-** The appeal allowed.