

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Crl R No. 50/2025
CrlM No., 714/2025

Waqar Younis

.....Petitioner(s)

Through: Mr. Ashish Sharma, Advocate

vs

UT of J&K

..... Respondent(s)

Through: Mr. Eishaan Dadhichi, GA

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

ORDER
02.05.2025

1. Through the medium of the instant petition filed under the provisions of Section 438 read with Section 442 of the **Bharatiya Nagrik Suraksha Sanhita 2023** (for short **BNSS**), the petitioner has thrown challenge to the order dated 22.03.2025 passed by the Court of learned Principal Sessions Judge, Poonch (for short the trial Court), whereby the learned trial Court has dismissed the application of the petitioner for release of the vehicle bearing registration No.JK12A/4098 alleged to have been seized in an NDPS case, in his favour.
2. The brief facts of the case relevant for disposal of this application are that, a case FIR No. 167/2024 came to be registered with the Police Station, Poonch under Sections 8, 21, 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as NDPS Act for short) upon recovery and seizure of the contraband narcotic substance heroin from the vehicle bearing registration No. JK12A/4098, which at the relevant time was being driven/boarded by the petitioner and another. The petitioner, after the conclusion of the investigation in the case FIR and the presentation of

the final report before the learned trial Court, filed an application for release of aforementioned seized vehicle. However, the learned trial Court through the order impugned, dismissed the application for want of jurisdiction on the ground that the power for disposal of the seized material including conveyances valuing upto Rs. 50.00 lacs as per Rule 22 of the Notification bearing GSR 899(E) of 2022 dated 23.12.2022 issued by the Central Government, Ministry of Finance (Department of Revenue) in exercise of its powers vested under sections 52-A, read with 76 NDPS Act, lies with the Drugs Disposal Committee constituted under Rule 19 of the said Notification.

3. The order impugned has been assailed mainly on the grounds that the powers of a Special Court constituted for the trial of the offences under the NDPS Act to consider the release of a seized vehicle in terms of the provisions of Sections 60 and 63 of the NDPS Act have an overriding effect on the powers of the Drugs Disposal Committee constituted under Rule 19 of the Notification dated 23.12.2022. That the Drugs Disposal Committee can exercise its powers regarding disposal of the seized material including conveyances upto the value of ₹50.00 lacs strictly in terms of the rules framed by the Central Government, Ministry of Finance (Department of Revenue) in exercise of powers under Section 76 read with Section 52-A of the NDPS Act. That the powers already vested with the Court under the provisions of Sections 60 and 63 of the NDPS Act have an overriding effect and a special Court is competent to entertain an application to decide the claim of a person seeking the release thereof, and there is no provision in the NDPS Act barring the powers of the Court to consider the release of a vehicle allegedly seized in an NDPS case.

4. I have heard the learned counsel for the parties.

5. Learned counsel for the petitioner during his arguments *inter alia* contended that the powers vested with the Drugs Disposal Committee constituted under Rule 19 of the Notification dated 23.12.2022 issued by the Central Government, Ministry of Finance (Department of Revenue) regarding disposal of the Narcotic Drugs, Psychotropic substance, Controlled substance or Conveyance, no way bar the powers of the Special Courts constituted under NDPS Act to entertain and hear an application of the owner of a vehicle or any other person so as to decide the claim of said person regarding the release of the vehicle in his favour pending and subject to the outcome of the trial. He further contended that the provisions of Sections 60 and 63 of the NDPS Act providing for confiscation of the contraband Narcotic Substance as also of conveyance at the conclusion of the trial do not bar the release of a vehicle alleged to have been seized in NDPS Act in favour of the owner or the bonafide purchaser/holder in justified circumstances. He further contended that the provisions of sections 60 and 63 of the NDPS Act have an overriding effect over the powers of Drugs Disposal Committee constituted in pursuance of the Rules framed by the Government in exercise of its powers under Section 52-A read with 76. The learned counsel in support of his arguments placed reliance on the judgments cited as, “***Sunderbhai Ambalal Desai vs State of Gujarat, AIR 2003 SC 638; Manoj Kumar Pandey vs. State of Madhya Pradesh High Court, August 27, 2019 and Gurbinder Singh @ Shinder vs. State of Punjab CRR No. 1765 of 2015 decided on Sept. 19, 2016 by the High Court of Punjab and Haryana at Chandigarh.***”
6. Per contra, the learned counsel for the respondents Mr. Eishaan Dadhichi, Ld. GA, contended that the order impugned in the revision petition dated 22.03.2025 passed by the learned trial court does not suffer from any

illegality, incorrectness or impropriety. He contended that the Central Government, in exercise of its powers under Section 76 read with Section 52-A of the NDPS Act have issued the Notification bearing number GSR 899 (E) of 2022 dated 23.12.2022 for disposal of any Narcotic Drugs, psychotropic substance, controlled substance and conveyance, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space, wherein the proper mechanism stands workout for the disposal of such substances and conveyances. He contended that as per the said notification of the Central Govt, the Drugs Disposal Committee constituted under Rule 19 is vested with the powers regarding disposal of the seized material including conveyance up to the value of Rs.50/- lacs.

7. The learned counsel for the UT further contended that the provisions of Sections 60 and 63 also provide for the confiscation of the seized Narcotic Drugs/substance and conveyance.
8. Keeping in view the perusal of the instant petition and the consideration of the rival arguments advanced on both the sides, in the light of the law on the subject, this court is of the considered opinion that the order impugned suffers from illegality, incorrectness and impropriety.
9. While reading the different relevant provisions of the NDPS Act especially as contained under Sections 51, 52 (4), 52-A, 60 and 63 in juxtaposition, one reaches to an irresistible conclusion to the effect that :-
 - i) Provisions of Section 52-A and the Notification issued by Central Government, there under regarding disposal of Narcotic Drugs and Psychotropic substance, Controlled substance or conveyance having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, are mainly applicable during investigation process.

- ii) The power of the trial court to order confiscation in respect of any article or thing liable to such confiscation in terms of the provisions of sections 60, 61 and 62 is to be exercised at the conclusion of the trial whether by way of early discharge or by conviction or by acquittal.
- iii) The application of the provisions of Section 497 (1) of BNSS, 2023, corresponding to Section 451 of the erstwhile repealed Code of Criminal Procedure, 1973, in connection with the consideration of an application for temporary release (subject to final outcome of the trial) of a vehicle allegedly involved in a NDPS case, by a competent criminal court during investigation of the case and even pending trial, is not barred in view of the Section 51 of the NDPS Act.
- iv) The initiation of proceeding for disposal of conveyance (vehicle) alleged to be involved in a NDPS case by the Drugs Disposal Committee in pursuance of the notification issued by the Central Government in exercise of its powers U/ss 76 and 52-A NDPS Act need to be communicated to a criminal Court seized of an application for release of a vehicle especially when a report is called from the Investigating agency in that behalf.

10. The provisions of Sections 60 and 63 of the NDPS Act do not bar the consideration of an application for release of conveyance allegedly involved in NDPS Act during investigation and pending trial of a case.

11. Any order made by a competent criminal court in respect of the release of conveyance in NDPS case shall be temporary on the basis of *superdnama/panchnama* and subject to the outcome of the final orders in that behalf at the conclusion of the trial of the case.

12. The impugned order providing that, Narcotic Drugs and Psychotropic substances, controlled substances or conveyances seized under NDPS Act shall be exclusively disposed of by the Drugs Disposal Committee

constituted under the Notification dated 23.12.2022 of the Central Government issued under Section 52-A read with Section 76 of the NDPS Act and as such according to said Notification the seized vehicle can be disposed of by the said Committee only, does not appear to be correct.

13. The provisions of Sections 52 (3) and 52-A(2) read with the provisions of the Notification dated 23.12.2022 issued by Central Government under No. GSR 899 (E) of 2022 leads to a clear inference that such provisions regarding disposal of contraband substance and conveyance are mainly applicable during the investigation stage, as the disposal process, if any, initiated is meant to be immediately preceded by the requirement of forwarding of seized property as per inventory before the Magistrate for satisfying the correctness of the same and for sampling purposes etc.

14. The powers of the criminal court under section 60(3) and 63 of NDPS Act for consideration of temporary release in respect of a seized vehicle in NDPS Act have an overriding effect. Sections 60(3) and 63 of NDPS Act bearing relevance to the issue involved in this case deserve a needful mentioned as under:-

"60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.-

(1) xxxxx (2) xxxxx (3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance, 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.

63. Procedure in making confiscation.- (1) In the trial of offences under this Act, whether the accused is convicted or THE HIGH COURT OF MADHYA PRADESH ([Manoj Kumar Pandey vs. State of M.P.](#)) acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation For Subsequent orders 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 [or 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."

15. The insertion of Section 52-A enabling the Central Government to issue notification appear to be backed by the necessity because earlier in the NDPS Act there were no provisions regarding the pre-trial disposal of the seized Narcotic drugs and psychotropic substances.

16. The storage of seized narcotic drugs and psychotropic substances up to the final conclusion of the trial of the cases created many problems. [Section 52-A\(1\)](#) of the NDPS Act, 1985 empowers the Central Government to prescribe by a notification the procedure to be followed for seizure, storage and disposal of drugs and psychotropic substances. So to counter the problems like vulnerability to theft, substitution, constraints of proper storage space and other relevant problems, the Central Government in the exercise of that power has issued said notification, which prescribes the procedure of pre-trial disposal of seized narcotic drugs, psychotropic substances and conveyance.

17. This court is in full agreement with the law laid down by Madhya Pradesh High Court in case titled "*Manoj Kumar Pandey vs. State of Madhya Pradesh decided on 27th August, 2019*", also relied upon by the learned

counsel for the petitioner. The relevant paras 9, 12 and 13 of the judgment are reproduced for the sake of convenience:-

“9. However the legislature has not given any power to the Drugs Disposal Committee to decide the claim of a person who place claims on the conveyance (vehicle) seized under the provisions of [NDPS Act](#) for illegal transporting of any narcotic drugs and psychotropic substances, as given by the legislature to the special court under [section 60](#) and [63](#) of the Act. Where a person claims for release the vehicle seized under the provisions of [NDPS Act](#) for illegal transportation of any narcotic drugs and psychotropic substances there are no provisions in the notification to decide that claim. So, in that case, the provisions of [Section 60](#) & [63](#) of the NDPS Act would prevail on the provisions of the notification issued by the central government under [Section 52A](#) of the NDPS Act.

According to the provisions of [Section 60](#) & [63](#) of the NDPS Act, seized conveyance cannot be disposed of without deciding the claim of the person who claimed that conveyance and the power to decide the claim of such a person is only given by the legislature to special court under [Section 60](#) & [63](#) of the NDPS Act. In [Sections 52](#) and [52A](#) of NDPS Act, the word 'confiscation' is not used because the trial is yet to come and it is the discretion of the trial Court "to confiscate or not to confiscate" the conveyance seized under the [NDPS Act](#) as per the legal provisions.

12. On perusal of the provisions of [Section 60\(3\)](#) and [Section 63](#) of the NDPS Act, as mentioned above it is clear that the conveyance seized under the [NDPS Act](#) shall be liable to confiscation only when the owner of the conveyance who was given an opportunity by the Court could not prove that the conveyance was used without his knowledge or connivance. The Court will have to decide whether a vehicle seized under the [NDPS Act](#) is liable to confiscation only on conclusion of the trial.

13. There is no provision in the [NDPS Act](#) to restrict the power of the trial Court to release the vehicle in 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 in 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.”

18. The provisions of clause (3) of the Section 60 clearly reveal that a seized conveyance or an animal liable to be confiscated under clause (1) and (2) of the said section, can be so confiscated unless the owner of the conveyance or animal proves that same was so used without his knowledge or connivance or of his agent.

19. The mere fact that a vehicle used in carrying contraband articles is liable to confiscation under the provisions of NDPS Act especially under section 60 (3), is no bar for giving the interim custody of the same to its

registered owner before passing confiscation order. It is also well settled that under the provisions of section 497 (1) BNSS corresponding to section 451 of the repealed Code, the court before whom the property is produced is empowered to release the vehicle during enquiry and trial of the accused persons. In case “*Basawa Kom Dyamangouda Patil vs. State of Mysore*”, the Hon’ble Apex court held “the object and scheme of various provisions of the Code appear to be: that where the property which has been subject matter of the offence is seized by the police, it ought not to be retained in the custody of the court or of the police for any time longer than what is absolutely necessary.”

20. In *Nirmal Singh vs State of Punjab*, it has been held by the Hon'ble Apex court that no useful purpose would be served by keeping the vehicle seized under NDPS Act, parked in the premises of Police Station and it will be in the interest of justice if such vehicle is ordered to be released on 'Superdari' to the petitioner on his furnishing the requisite undertaking.

21. In *Khema vs State of Rajasthan*, it has been held that the fact that a vehicle seized under NDPS Act is liable to be confiscation under section 60 of the Act is no ground for denying the interim custody of the vehicle to its registered owner before passing the confiscation order subject to reasonable conditions.

22. In 2003 C.L.J 3142 Orissa it has been held that a vehicle seized under NDPS Act, if allowed to remain in the premises of Police Station without any care and subjected to rain and sun, is likely to deteriorate. That the interim release of said vehicle subject to final decision of the case and after taking undertaking from the registered owner that he will produce it as and

when required by the trial court and will not transfer it, will meet ends of justice.

23. In 2002 C.L.J. 2605, Delhi, it has been held that the interim release of a vehicle seized under, NDPS Act is not inconsistent with the provisions of NDPS Act. That the pendency of the trial against the driver accused under NDPS Act is likely to take some time during which period the vehicle concerned is likely to get further damaged because of its disuse.

24. In *Kulvinder Kour vs State* 2005 (2) Criminal Court Cases 903 Rajasthan, it has been held that a vehicle seized under the NDPS Act could be released in favour of the owner if he is not an accused of the offence.

25. In *Surjeet Kumar vs State of U.P.* 2002 (1) RCR (Cri) 476 Allahabad, a Special Court had rejected a release application in respect of vehicle seized under NDPS Act on the ground that the same did not disclose the facts as to what precautions were taken against the wrongful user of the vehicle. The Hon'ble High Court has held that the rejection of the application was not justified.

26. In *Drugs Cases (Narcotic 2007 155 Punjab & Haryana)*, it was held that it will fetch no useful purpose by not releasing the vehicle to its owner whose livelihood is linked with the earning of the said vehicle. The owner should be bound down with the direction to produce it as and when directed by the trial Court and not the dispose of the said vehicle. Vehicle be released on Superdnama to the owner.

27. In *Hoshar Singh vs State*, Crimes 2011 Vol. IV 176 Allahabad, it was held while making a reference to Hon'ble Apex court judgment titled *Basawa Kom Dyamangouda Patil vs State of Mysore* that "from the law laid

down by Apex Court, it clearly shows that rejecting the application of the applicant only on the ground that it may be liable for confiscation and it was used for transporting the Narcotic Substance was against the law. If the vehicle is given in the Supurdgi and custody of the owner of the vehicle and later on at final stage of the case, it is found that the same is liable for the confiscation, the same Court can direct the owner to produce the vehicle before the Court or the authority concerned.”

28. This court is also conscious of the law laid down by the Hon'ble Apex Court in “**Sunderbhai Ambalal Desai v. State of Gujarat, AIR 2003 Supreme Court 638**” in which it has been held that “ Powers under section 451 Cr.P.C (corresponding to Section 497 (1) of BNSS) is intended to serve various purposes viz:-

- i) “Owner of the article would not suffer because of its remaining unused or by its misappropriation;
- ii) Court or the police would not be required to keep the articles in safe custody;
- iii) 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
 - iv) The jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

29. The transfer of vehicle is governed by a Sale of Goods Act and the transfer of vehicle under law is complete by the transfer of possession of the same in a bona fide manner. It has been held by the Hon'ble Apex Court in “**Rajasthan State Road Transport Corporation vs. Kailash Nath Kothari and others etc. 1997 STPL(LE)23797 SC**” that “the definition of owner under Section 2(19) of the Act is not exhaustive. It has, therefore, to be construed, in a wider sense, in the facts and circumstances of a given case.

The expression owner must include, in a given case, the person who has the actual possession and control of the vehicle and under whose directions and commands the driver is obliged to operate the bus. To confine the meaning of 'owner' to the registered owner only would in a case where the vehicle is in the actual possession and control of the hirer, not be proper for the purpose of fastening of liability in case of an accident.”

30. In “**Beni Dan Vs. Laxmichand, 1996 Cri.L.J 1191**” a learned Single bench of Rajasthan High Court in the context of Sections 451 and 452, Code of Criminal Procedure, under which provisions also the Magistrate is to decide who is the best person for the custody and disposal of the property pending trial and at the conclusion of the trial, respectively, has held in para 15 that:-

“..... It is also true that interim custody under Section 451, Cr.P.C of the motor vehicle should generally be given to registered owner for use in the public road and that a heavy burden lies on a person, who claims that such vehicle has been sold to him or that he has superior claim, but there cannot be any inflexible rule that under Section 452, Cr.P.C the vehicle should be invariably returned to its registered owner. On the other hand, the court while passing an order under Section 452 Cr.P.C should find out as to who is the best person entitled to the possession of such property.”

31. A similar view has also been already taken by this court in *Shanta Devi Vs. State* SLJ 1987 page 132.

32. An application for consideration of the release of a vehicle seized under NDPS case, can be filed by a bonafie owner also in his capacity as a purchaser or the attorney holder, as such categories are also included in the definition of owner.

It is true that Motor vehicles Act. 1988 casts an obligation on the parties to, transfer of a vehicle, to report the fact to the concerned Registering Officer and to ensure the transfer of the vehicle in his records within a stipulated period.

33. The consideration of a release of the seized vehicle in justified circumstances where a registered or *bonafide* owner of the vehicle *prima facie* satisfies the court that the vehicle was involved in the alleged commission of offences under NDPS Act, without his knowledge or connivance or of his agent, appears to be well tenable under law.
34. In the case in hand it is not a case of the respondent UT that the investigating agency or any competent forum has/had initiated the process for disposal of the seized vehicle.
35. In the backdrop of aforementioned discussion, the impugned order dated 23.03.2025 passed by the court of learned Principal Sessions Judge Poonch is set aside and the learned trial court is directed to rehear the application of the petitioner for release of the seized vehicle on merits.
36. Disposed of.

(Mohd Yousuf Wani)
Judge

Jammu
02.05.2025
ayaz

- i) Whether order is speaking? Yes.
- ii) Whether order is reportable? Yes.

