



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.553 of 2024

(From the order dated 01.08.2024 passed by the Learned Additional Sessions Judge, Phulbani in CRLMC No.06 of 2024)

Rajesh Kumar Sahu

....

Petitioner(s)

-versus-

State of Odisha

....

Opposite Party (s)

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s)

:

Mr. Susant Kumar Lenka, Adv..

For Opposite Party (s)

:

Ms. Jyoshnamayee Sahoo, ASC.

CORAM:

DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-29.01.2025

DATE OF JUDGMENT:-13.03.2025

Dr.S.K. Panigrahi, J.

1. The Petitioner has filed this CRLREV challenging the order dated 01.08.2024 passed by the Learned Additional Sessions Judge, Phulbani in CRLMC No.06 of 2024. He further seeks a direction from this Court for release of his vehicle on appropriate terms and conditions, as deemed fit by this Court.

I. CASE OF THE PROSECUTION:

2. The prosecution's case can be summarized as follows:



- (i). On 30.03.2023, at 5:40 AM, the Phiringia Police Station received reliable information about individuals transporting contraband (ganja) in an auto-rickshaw. The suspect vehicle (Atul Passenger Auto, OD-12-B-6726) was intercepted near Kaliasahi and found to contain 78.7 kg of ganja in 11 carry bags.
- (ii). The contraband was seized along with the vehicle and the case was registered under CT-59/2023 (Phiringia P.S Case No. 51 dated 30.03.2023). The accused, including Rajesh Kumar Sahu (the petitioner), were arrested under Sections 20(b)(ii)(C), 25, and 29 of the NDPS Act.
- (iii). The vehicle was directly involved in transporting contraband, making it an instrument of crime. Under Section 52-A of the NDPS Act, vehicles used for transporting narcotics cannot be released to the accused but must be disposed of following the prescribed legal procedure.
- (iv). Precedents from the Orissa High Court and Supreme Court support the pre-trial disposal of vehicles used in NDPS Act offenses, rather than returning them to the owner. The Supreme Court in *Union of India v. Mohanlal*¹ held that vehicles used in narcotics transportation must be disposed of as per Section 52-A and cannot be released during trial.
- (v). Since the vehicle was used as a conveyance for illegal transport of narcotics, its release is barred by law. The only legal recourse is pre-

¹ (2016) 3 SCC 379.



trial disposal of the vehicle, as per government notification and court rulings.

II. THE JUDGMENT OF THE SESSIONS COURT:

3. The court found that the vehicle was indeed used for transporting a commercial quantity of ganja (78.7 kg). Since the petitioner (Rajesh Kumar Sahu) was an accused in the case, he could not produce any legal authorization for possessing or transporting ganja.
4. The court cited Section 52-A(1) of the NDPS Act, which mandates pre-trial disposal of vehicles used in narcotics transportation. The Central Government's notification dated 16.01.2015 and Special Task Force's circular dated 26.04.2016 outline procedures for disposing of seized vehicles involved in NDPS Act cases. The Government of Odisha's notification dated 23.05.2017 constituted District Drug Disposal Committees for handling such cases.
5. In the case of *Union of India v. Mohanlal* (supra), the Supreme Court has held that vehicles used for drug transport should not be released but should be disposed of under Section 52-A. Moreover, in the case of *State of Odisha v. Registrar General, Orissa High Court, Cuttack*², the Division Bench of Orissa High Court ruled that Courts should not release vehicles involved in NDPS cases as they are subject to pre-trial disposal.
6. Since the vehicle was used in an NDPS Act offense, and precedents clearly establish that such vehicles should be disposed of rather than released, the petition is not maintainable. The application for release of

² W.P. (C) No. 32580 of 2021.



the vehicle is rejected. The vehicle is subject to pre-trial disposal as per Section 52-A of the NDPS Act.

III. REVISIONIST'S ARGUMENTS:

7. The counsel for the revisionist urged the following submissions:
- (i). The vehicle is legally owned by the petitioner and is a public transport auto-rickshaw. The petitioner was not involved in the alleged offense, and merely because the vehicle was used by others for carrying contraband should not justify its forfeiture.
 - (ii). As per the prosecution's own version, there were nine passengers including the driver, indicating that the petitioner was not present at the time of the offense.
 - (iii). The auto-rickshaw is lying exposed to natural elements, leading to damage and depreciation. The Supreme Court has held that vehicles should not be left to deteriorate and should be released to the rightful owner under necessary conditions. The learned Addl. Sessions Judge ignored this principle, failing to consider that prolonged non-usage would render the vehicle non-functional.
 - (iv). The reliance on Section 52-A(1) of the NDPS Act is misplaced because the petitioner is not an accused and had no knowledge or intent to use the vehicle for an illegal act. Moreover, the NDPS Act does not impose an absolute bar on releasing vehicles, as courts have the discretion to impose conditions for their release. The lower court wrongly applied legal precedents without considering the petitioner's innocence and ownership rights.



- (v). Since the driver (Rajesh Kumar Sahu) has been granted bail, the principle of parity should apply, and there is no justification for continued seizure of the vehicle. The main accused has been granted bail, so keeping the vehicle seized serves no legal purpose.
- (vi). The petitioner is willing to abide by any conditions the Court may impose. The vehicle can be released on a security bond to ensure it is produced before the court whenever required.

IV. COURT'S ANALYSIS AND REASONS:

8. I have given my anxious consideration to the submissions of the counsel appearing for both the parties.
9. The dispute centers on the seizure of an Atul Passenger Auto (OD-12-B-6726) on 30.03.2023, after Phiringia Police intercepted it near Kaliasahi and recovered 78.7 kg of ganja. The petitioner, Rajesh Kumar Sahu, was arrested under the NDPS Act. As the vehicle was directly used in transporting contraband, the sessions court ruled that its release was barred under Section 52-A, which mandates pre-trial disposal of such conveyances. Citing legal precedents, the court rejected the petition, affirming that vehicles used in narcotics offenses should not be returned but disposed of according to the prescribed legal procedure. The central issue before this Court is whether the release of the seized vehicle is legally permissible.
10. A careful examination of the facts reveals that the seized vehicle has remained in police custody for over a year, exposed to the relentless forces of nature, including sun, rain, and fluctuating weather conditions, resulting in its gradual deterioration and inevitable



depreciation. A vehicle, by its very nature, is intended for active use and mobility, and its prolonged immobility in official custody serves no substantive legal or practical purpose.

11. If left unattended indefinitely, the vehicle will inevitably suffer structural degradation, mechanical wear, and a substantial diminution in both its functional utility and economic value, rendering it unfit for future use. The law does not sanction the indefinite retention of property where its custody ceases to advance the cause of justice. Rather, the established legal principle dictates that seized property should be preserved and safeguarded, not subjected to unnecessary deterioration and waste.
12. A consistent line of judicial precedents has reaffirmed that the prolonged retention of seized vehicles in police custody serves no meaningful purpose and results only in their gradual deterioration and depreciation. In this context, the Supreme Court, in *Sunderbhai Ambala Desai v. State of Gujarat*³, unequivocally held as follows:

"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."

13. Similarly, in the recent case of *Bishwajit Dey v. State of Assam*⁴, the Supreme Court examined the question of whether a vehicle may be

³ (2002) 10 SCC 283.

⁴ Special Leave Petition (Crl.) No. 13370/2024.



retained in police custody for a prolonged period during the pendency of trial. The Court held as follows:

“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. In light of the aforementioned judicial precedents, the release of the vehicle emerges as the most judicious course of action. Keeping the vehicle immobilized for an indefinite period does not advance the prosecution's case and only results in an unjustifiable loss to the registered owner.
15. Accordingly, it is held that the vehicle in question shall be released to the Petitioner, subject to the following conditions:
 - (i). The Petitioner shall produce the original registration certificate, insurance paper before the concerned Police Station which shall be verified properly and true attested copies thereof shall be retained by the I.O/IIC of the concerned Police Station;
 - (ii). The Petitioner shall not change the colour or any part of the engine and chassis number of the vehicle;



- (iii). Petitioner shall furnish two photographs of the vehicle before taking delivery of the same;
 - (iv). The Petitioner shall not transfer the ownership of the vehicle in favour of any other person;
 - (v). The Petitioner shall produce the vehicle before the Court as and when called upon;
 - (vi). The Petitioner shall not allow the vehicle to be used in the commission of any offence; and
 - (vii). The Petitioner shall furnish property/cash security of Rs.3,00,000/- (rupees three lakh only).
16. In case of violation of any of the conditions by the Petitioner, this order shall not be applicable.
17. The CRLREV is, accordingly, disposed of.
18. Interim order, if any, passed earlier stands vacated.

(Dr.S.K. Panigrahi)
Judge

*Orissa High Court, Cuttack,
Dated the 13th March, 2025*