

HIGH COURT OF PATNA**Bench: Honourable Mr. Justice Jitendra Kumar****Date:05-01-2024**

CRIMINAL MISCELLANEOUS No. 40912 of 2016

Arising Out of PS. Case No.-131 Year-2015 Thana- VIJAYEPUR District-
Gopalganj**Bhola Singh @ Ayush Singh ... Petitioner/s****Versus****The State Of Bihar ... Opposite Party/s****Legislation and Rules:**

Section 482 of the Criminal Procedure Code (CrPC)

Sections 8, 20, and 22 of the Narcotic Drugs and Psychotropic
Substances (NDPS) Act

Sections 60, 63, 52A, and 36C of the NDPS Act

Sections 5 and 451 of the CrPC

Subject: Petition for quashing the order dated 28.06.2016 by the Ld.
Additional Sessions Judge, Gopalganj, and for the release of a
motorcycle and mobile phone seized under the NDPS Act.**Headnotes:**

Criminal Procedure – Section 482 CrPC – Quashing of Order and Release of Seized Property: Petition under Section 482 CrPC for quashing the order dated 28.06.2016 by the Additional Sessions Judge, Gopalganj, and for release of a motorcycle and mobile phone seized under the NDPS Act. The petitioner, accused in an NDPS case, seeks interim custody of his belongings, claiming wrongful implication. [Para 1, 3]

NDPS Act – Confiscation Proceedings – Authority and Jurisdiction: Discussion on whether the Special Court under the NDPS Act or the

police/authority under the NDPS Act initiates confiscation proceedings. Examination of Sections 60 and 63 of the NDPS Act regarding the liability of vehicles to confiscation and the role of the Special Court in deciding confiscation post-trial. [Para 7, 11-12, 14]

Application of CrPC to NDPS Proceedings – Section 451 CrPC: Consideration of the applicability of Section 451 of the CrPC for interim custody of seized property in NDPS cases. Analysis of Sections 36C and 5 of the CrPC concerning the application of CrPC provisions to NDPS proceedings, addressing the gap in the NDPS Act about interim custody during trial. [Para 7, 22-23]

Judicial Precedents – Interim Custody of Seized Property: Review of various High Court judgments (Karnataka, Chhattisgarh, Punjab & Haryana, Uttarakhand, Calcutta, Madhya Pradesh, Jharkhand) interpreting the powers of Special Courts under NDPS Act and CrPC to grant interim custody of seized vehicles and other properties during trial. [Para 25-34]

Order – Part Allowance of Petition – Conditional Release of Vehicle: The petition is partially allowed. The court orders the release of the seized motorcycle to the petitioner subject to conditions ensuring its availability for trial and confiscation proceedings. The request for the release of the mobile phone is denied, considering the potential for tampering and loss of evidentiary value. [Para 39]

Modification of Impugned Order – Special Court’s Jurisdiction and Conditions for Release: Modification of the order by the Additional Sessions Judge, recognizing the Special Court’s jurisdiction under NDPS Act and CrPC for interim custody and setting conditions for the release of the motorcycle. [Para 40]

Referred Cases:

- Mohan Lal v. Union of India [(2016) 3 SCC 379] – Supreme Court judgment on handling and disposal of seized Narcotic Drugs and

Psychotropic Substance, addressing the prevention of re-circulation of seized contraband drugs.

- **Sunderbhai Ambalal Desai v. State of Gujarat [(2002) 10 SCC 283]** – Supreme Court case that discusses the scope and exercise of jurisdiction under Section 451 CrPC for custody and disposal of property during inquiry or trial.
- **Amit Bhowmik v. State of Tripura [AIRONLINE 2023 TRI 131]** – High Court of Tripura case addressing the release of electronic items and cash during enquiry and trial under Section 451 CrPC.
- **Rathnamma Vs. State of Karnataka [CRL. P No. 3571 of 2021, decided on 17.06.2021]** – Karnataka High Court judgment on the authority of Magistrates and Special Courts under NDPS Act to consider applications for interim custody of vehicles under Sections 451 and 457 CrPC.
- **Tikeshwar Singh Vs. State of Chhattisgarh [2020 SCC Online Chh 2473]** – Chhattisgarh High Court case discussing the applicability of Section 451 CrPC for interim custody of vehicles seized under the NDPS Act.
- **Tej Singh Vs. State of Haryana [2020 SCC OnLine P& H 4679]** – Punjab & Haryana High Court case on the conditions for release of vehicles on sapurdari during NDPS proceedings.
- **Gurbinder Singh Vs. State of Punjab [2017 SCC OnLine P&H 16026]** – Punjab & Haryana High Court judgment on the release of vehicles seized under the NDPS Act.
- **Abhijeet Kumar Vs. State of Uttarakhand [2019 SCC OnLine Utt 265]** – Uttarakhand High Court decision on the applicability of Sections 451, 452, and 457 CrPC in the context of NDPS Act.
- **Waish Ahmed Vs. The State of West Bengal [MANU/WB/0073/2019]** – Calcutta High Court case on the interim custody of vehicles seized under the NDPS Act.

- Anil Haque vs. State of West Bengal [2015 SCC ONLINE CAL 1612] – Calcutta High Court judgment discussing the release of vehicles under Section 451 CrPC during NDPS trials.
- Tridip Mitra Vs. State of West Bengal [2005 SCC OnLine Cal 551] – Calcutta High Court case on the release of vehicles during NDPS proceedings.
- Manoj Kumar Pandey Vs. State of M.P. [2019 SCC OnLine MP 2315] – Madhya Pradesh High Court judgment on the pre-trial disposal and interim custody of vehicles seized under NDPS Act.
- Sri Sankar Das Vs. The State of Tripura [Crl. Petn No. 9 of 2018, decided on 16.03. 2018] – Jharkhand High Court decision on the release of vehicles claimed by their owners in NDPS cases.

Representing Advocates:

For the Petitioner/s : Mr. Arbind Kumar Singh, Adv.
For the Opposite Party/s : Mr. Ramchandra Singh, APP

ORAL ORDER

The present petition has been preferred under Section 482 CrPC for quashing the impugned order dated 28.06.2016 passed by Ld. Additional Sessions Judge, 1st Gopalganj in Trial No. 39 of 2015/27 of 2016 arising out of Ijaipur PS Case No. 131/2015 registered for an offence punishable under Sections 8, 20 and 22 of the NDPS Act and for releasing the motorcycle bearing No. U.P. 52 AF 8259 and a mobile of Gionee Company bearing IMEI No. 8676450205 and its sim of mobile No. 9628877640.

2. The factual matrix as emerging from the record is that on a written report of informant Chandan Kumar, Bijaipur PS Case No. 131/2015 was registered for an offence punishable under Sections 8, 20 and 22 of the NDPS Act against Sahebzada @ Gabbar and Bhola Singh @ Ayush. As per FIR, the accused persons were driving the motorcycle in question and during vehicle checking, they attempted to drive fast, whereupon, they were stopped and checked, whereupon, from the dickey of the motorcycle 1.9 Kilograms of Ganja was seized. After investigation, charge-sheet has been submitted and cognizance has been taken against both the accused persons. Even charge has been framed against them on 18.02.2016.

3. It further transpires that during trial, the application was moved on behalf of the petitioner who is an accused also, for releasing the motorcycle bearing No. U.P. 52 AF 8259 and a mobile of Gionee Company bearing IMEI No. 8676450205 and its sim of mobile No. 9628877640 which are kept in Bijaipur police station campus in the open sky, submitting that he is owner of the vehicle and mobile in question and he has been falsely implicated in the case, as he has nothing to do with the alleged offence. However, the application was dismissed by the impugned order holding as follows:-

“As per report received from Senior Deputy Collector, District Legal Cell, Gopalganj, report has been sought by him from Superintendent of Police, Gopalganj whether confiscation proceeding has been initiated or not.

As per report from police Sub-Inspector, Ram Vinay Singh of Bijaipur Police Station dated 10.06.2016 the motorcycle and mobile are kept in police station campus in safe condition. Hence, it is clear that Ganja has been seized from the motorcycle of the applicant which is a serious offence. In such condition, the application of applicant is dismissed.”

4. Heard Ld. Counsel for the petitioner and Ld. APP for the State.

5. Ld. Counsel for the petitioner submits that Ld. Special Court has failed to appreciate the law regarding release of vehicles interim custody, allegedly involved in NDPS cases. He further submits that there was no occasion for the Ld. Special Court to ask for report

from the police regarding initiation of confiscation proceeding, because confiscation proceeding is not initiated by the police but by the Special Court itself under Section 60 and 63 of the NDPS Act. He also submits that there is no bar in the NDPS Act to release the vehicle to interim custody of its rightful owner till conclusion of the trial and confiscation proceeding, because otherwise the vehicle would turn into scrap/junk if it is kept in campus of the police station even in safe condition and it would be neither in the interest of the owner or the State. It would be sheer wastage of the national resources. Conditions could have been imposed for such release of the vehicle to the owner to ensure that vehicle is produced before the court whenever it is required during trial or confiscation proceeding, but rejection of the application for releasing the vehicle to interim custody is no way legally sustainable on the ground that the same is kept in campus of the police station in safe condition.

6. *Per contra* Ld. APP for the State defends the impugned order submitting that the vehicle which is allegedly involved in commission of the alleged offence under the NDPS Act is liable to confiscation under Section 60 of the NDPS Act and hence, cannot be released even to the bonafide owner of the vehicle. He also submits that there is no provision under the NDPS Act to release the vehicle to interim custody. Section 451 of the Cr.P.C. cannot be applied to proceeding before Special Court established under the NDPS Act.

7. In view of the aforesaid facts and circumstances the following questions of law arise for consideration by this Court:

(i) Who is authority to initiate confiscation proceeding under the NDPS Act- police/authority under NDPS Act or Special Court established under the NDPS Act?

(ii) Whether the provision for confiscation of the vehicle under Sections 60 and 63 of the NDPS Act can be a ground for refusal to release the vehicle to interim custody of the rightful owner during trial or confiscation proceeding?

(iii) Whether Special Court established under NDPS Act has jurisdiction to pass interim order to release vehicle to interim custody of the rightful owner during pendency of the trial and confiscation proceeding and if the Special Court has such jurisdiction, what are considerations for passing such interim order?

8. Sections 60, 63, 52A and 36C of the NDPS Act and Sections 5 and 451 of the CrPC are relevant provisions in the given facts and circumstances of the case. Section 60 deals with liability of illicit drugs, substance, plants and articles and conveyance to confiscation, whereas Section 63 deals with procedure in making confiscation. Section 36C of the NDPS Act provides for application of Criminal Procedure Code to the proceedings before the Special Court established under NDPS Act to the extent it is not inconsistent with provisions of the NDPS Act. Section 5 of CrPC also provides that unless there is specific provisions in any special or local Act for application of CrPC, CrPC cannot be applied to proceeding under any Special or local Law. Section 451 CrPC provides for passing order for custody and disposal of property pending inquiry and trial in certain cases.

9. The aforesaid statutory provisions of the NDPS Act read as follows:-

“ Section 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 2[or controlled substances] lawfully produced, imported interState, 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 2[or controlled substances] which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance 2[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 2[or controlled substances], or any article liable to confiscation under subsection (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.”

“Section 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.”

“ Section 36C. Application of Code to proceedings before a 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 purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.”

10. The aforesaid statutory provisions of the CrPC read as follows:-
“**Section 5. Saving-** Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

Section 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.”

11. From perusal of Section 60 and 63 of the NDPS Act, it transpires that Section 60 deals with liability of illicit drugs, substances, plants, materials, apparatus, utensils in respect of which or by means of which such offence has been committed under the NDPS Act, are liable to confiscation. However, SubSection-3 of Section 60 provides that any animal or conveyance used in carrying any narcotic drug or psychotropic substance or any article liable to confiscation under SubSection 1 or under SubSection 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. In other words, if the owner of the vehicle/conveyance proves that his vehicle was used in the commission of the offence without his knowledge or connivance and he has taken all reasonable precautions against such use, the conveyance cannot be confiscated despite it

being used in the commission of the alleged offence under the NDPS Act.

12. A detailed procedure in making confiscation has been provided in Section 63 of the NDPS Act. As per Section 63 of the Act, irrespective of conviction, acquittal or discharge of the accused, the Special Court is required to decide whether any article or thing seized under this Act is liable to confiscation. If the court decides that the article is so liable, it may order confiscation accordingly. It implies that decision regarding confiscation of any article can be taken only by the Special Court and only after conviction, acquittal or discharge.

13. **Sub-section 2 of Section 63** of the NDPS Act provides 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. It implies that if within one month of the seizure of an article or thing, if any body claims that he is a *bona fide* owner and he has right to possess the article or thing, the court is bound to hear him before deciding the liability of the article or thing to confiscation.

14. From the conjoint reading of Section 60 and 63 of the NDPS Act, it emerges that it is the Special court established under NDPS Act which decides liability of any article or thing including vehicle to confiscation and not police or any authority like Drugs Disposal Committee constituted under Section 52A of the NDPS Act. It also emerges that any vehicle is liable to confiscation only when its owner fails to prove that it was used in the commission of the offence without his knowledge and connivance and he had taken all precautions against such use. In regard to mobile or other articles or things, it emerges that there is no special provision for confiscation as provided in case of animal or conveyance/vehicle. In other words, such articles or things are liable to confiscation under Section 60 of the NDPS Act if they are found by the Special Court to be used for commission of the offence. However, as per proviso to Sub-Section 2 of Section 63, if anybody makes claim to it within one month of its seizure, the Special Court has to hear him before passing order for confiscation.

15. The procedure of disposal has been provided in Section 52A of the NDPS Act. This Section has inserted in 1989 providing for

disposal of contraband drugs. However, in 2014, conveyance was also added in this Section. As per Section 52 A, Central Government is authorized to determine the procedure to dispose of contraband drugs and conveyances and accordingly, the Central Government has issued three Standing Orders, namely, (1) 1/88 dated 15.03.1988, (2) 2/88 dated 11.04.1988 and (3) 1/89 dated 13.06.1989 and Notifications have also been issued by the Central Government, namely, (1) Notification dated 10.05.2007, Ministry of Finance, (2) Notification dated 26.03.2013, Ministry of Finance, (3) Notification dated 16.01.2015, Ministry of Finance.

16. However, it is relevant to note that the Standing Order 1/89 dated 13.06.1989 has been superseded by Notification dated 10.05.2007. As such, it is no longer in operation. It is also relevant to point out that even Notification dated 10.05.2007 has been superseded by Notification dated 16.01.2015. As such, Notification dated 10.05.2007 is also no longer in operation.

17. Paragraph 1.23 of Standing Order bearing no.1/1988 dealing with Disposal of Remnant sample/duplicate and the drug provides as follows:-

“It is provided that at present, the remnant sample/duplicate sample and seized narcotic drugs and psychotropic substances can be disposed of after the proceedings of prosecution is over or by obtaining an order from such court under Section 110 of the Customs Act, 1962 and/or 451 of CrPC. While obtaining the order of the court under the aforesaid Section, it is necessary that specific order in respect of the remnant sample/duplicate sample is also obtained.” (Emphasis supplied)

18. Paragraph 5.4 of Standing Order No. 2/88 dated 11.04.1988 provides as follows:-

“The officers-in-charge of godowns will prepare a list of all such drugs that have become ripe for disposal to the Chairman of the respective drug disposal committee. After examining that they are fit for disposal and satisfying that they are no longer required for legal proceedings and the approval of the court has been obtained for the purpose, the members of the respective drug disposal committee will endorse necessary certificates to this effect. The committee will thereafter, physically examine and verify the drug consignments with

reference to the seizure report and other documents like chemical analysis, etc., including its weighment and record its finding in each case.” (Emphasis supplied)

19. Paragraph-4 of the Notification dated 16.01.2015, Department of Revenue, Ministry of Finance dealing with the manner for disposal provides as follows:-

“Manner of disposal.-(1) Where any narcotic drug, psychotropic substance, controlled substance or conveyance has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53 of the said Act or if it is seized by such an officer himself, he shall prepare an inventory of such narcotic drugs, psychotropic substances, controlled substances or conveyances as per Annexure 1 to this notification and apply to any Magistrate under sub-section (2) of section 52A of the said Act as per Annexure 2 to this notification within thirty days from the date of receipt of chemical analysis report of seized narcotic drugs, psychotropic substances or controlled substances.”

20. From the aforesaid provisions of Standing Order bearing no. 1/88 and Standing Order 2/88, it transpires that approval of Special Court is required for disposal of contraband drugs or conveyance. However, as per Notification dated 16.01.2015, there is no such requirement for disposal of contraband drugs or conveyances. Only the prepared inventory of the contraband drugs and conveyance is required to be certified by any Magistrate before disposal. In other words, as per the Notification dated 16.01.2015, pre-trial disposal of contraband drugs and conveyances has been provided without approval of the Special Court. However, such provision of the Notification cannot be read in isolation. It has to be read with Sections 60 and Section 63 of the NDPS Act. As per Section 60(3), any animal or conveyance is liable to confiscation only if the owner thereof fails to prove that it was used without his knowledge or connivance and he had not taken all reasonable precautions against such use. SubSection 2 of Section 63 also provides that no order of confiscation or article or thing shall be made until the expiry of one month from the date of seizure or without hearing any person who made claim any right thereto and the evidence if any which he produces in respect of his claim. As such, as per conjoint reading of Section 60 and 63 of the NDPS Act and the Notification dated 16.01.2015, it transpires that pre-trial disposal of

conveyance/vehicles is possible under Notification dated 16.01.2015 only if no one claims right to possession and interim release of vehicle under the provision of Section 60 and 63 of the NDPS Act. If anybody claims for release of the vehicle, the Special Court has to hear him to decide liability of the vehicle to confiscation and if it is proved by the claimant that he has right to possess the vehicle and it has not been used in commission of the offence with his knowledge or connivance and he had taken all precautions against such use, the vehicle cannot be confiscated and disposed of by the State. This position of law is not affected even by the judgment of Hon'ble Supreme Court in **Mohan Lal v. Union of India** as reported in **(2016) 3 SCC 379** dealing with handling and disposal of seized Narcotic Drugs and Psychotropic Substance, giving directions to prevent re-circulation of seized contraband drugs into the system.

21. The aforesaid discussions clearly shows that in case of any article, thing or conveyance/vehicle is claimed by any person as provided under Sections 60 and 63 of the NDPS Act, the Special Court is duty bound to decide the liability of that thing, article or vehicles to confiscation and only if it is decided by the Special Court that such article, thing or vehicle is liable to confiscation, the disposal committee can dispose it by sale or otherwise.

22. It further transpires that under Section 60 and 63 of the NDPS Act, there is no provision for passing any order by the Special Court for interim release during pendency of the trial or confiscation proceeding before itself. In such a situation, now question is whether Special Court has any jurisdiction to pass any order to release vehicle/article to interim custody of the rightful owner or not.

23. Here Sections 36C of the NDPS Act, becomes relevant, as per which, the provisions of the CrPC is applicable if it is not inconsistent or contrary to the provisions of the NDPS Act which is a special enactment. Section 5 of the CrPC also provides that the provisions of CrPC is applicable in case of special enactments only if there is such provisions in that special enactment. In such situation, Section 451 of the CrPC becomes applicable to the proceedings before the Special Court established under the NDPS Act, because Section 451 CrPC provides for order for custody and disposal of property pending inquiry and trial in certain cases. It's an application to the proceedings before the Special Court of NDPS Act is reinforced by the

fact that there is no bar to pass any interim order releasing vehicle or articles to rightful owner during pendency of the trial or confiscation proceeding.

24. The view as expressed by this Court also gets support from various judgment of different High Courts which are as follows:-

25. Hon'ble High Court of Karnataka in **Rathamma Vs. State of Karnataka (CRL. P No. 3571 of 2021**, decided on 17.06.2021) has held as follows after considering the relevant provisions of the NDPS Act and the CrPC and relevant case laws.

“59. For the reasons stated above, we answer the reference as under:

(i) The Magistrate or the Special Court is conferred with the power/jurisdiction to consider the application for interim custody of the conveyance/vehicle under the provisions of Sections 451 and 457 of the Code of Criminal Procedure in cases arising out of the provisions of NDPS Act; and

(ii) The drug Disposal Committee constituted under the Notification dated 16.01.2015 issued by the Central Government under the provisions of section 52A of the NDPS Act has no authority to consider the application for release of interim custody of the conveyance/vehicle.”

26. Hon'ble High Court of Chhattisgarh in **Tikeshwar Singh Vs. State of Chhattisgarh (2020 SCC Online Chh 2473)** has held as follows after referring to Section 60 of the NDPS Act-

“ 7. The aforesaid provision 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 the NDPS Act

8. 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 empowers the trial Court to make an order for proper custody of such a conveyance pending trial.

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10..... Since the provision contained in Section 451 of the CrPC 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 made under Section 451 of the CrPC.

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12. By virtue of Section 36-C of the NDPS Act, "Save as otherwise provided in this Act", the provisions of the CrPC 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. Once the CrPC has been made applicable, the provisions of the CrPC contained in Sections 451 and/or 457 of the CrPC would automatically be attracted. As such, with effect from 29-5-1989, the CrPC as a whole, subject to the exception craved out as noticed herein-above, has been made applicable to the proceeding before the Special Court (NDPS) and therefore application under Section 451 or 457 of the CrPC for interim custody of the vehicle seized in commission of offence punishable under the NDPS Act would be maintainable and the Special Judge (NDPS) is empowered to consider the application under Section 451/457 of the CrPC on merit.

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15. Since the provisions of the CrPC including Section 451/457 have been expressly made applicable by virtue of Section 36-C 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 as contained in Section 52C of the Indian Forest Act, 1927, as amended by the M.P. Amendment Act, 1983, 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.”

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27. Hon’ble High Court of Punjab & Haryana in **Tej Singh Vs. State of Haryana (2020 SCC OnLine P& H 4679)** has held as follows after referring to relevant case laws and Statutory Provisions:

“17. In the present case, if the car in question is retained on the ground of being case property liable to confiscation and kept idle in the police station, then the same is likely to be converted into junk. Any public auction of the car in question is not only likely to take long time but may also not fetch amount higher than the reserved price. In case the car in question is released on sapurdari on usual terms and conditions to be returned on confiscation, passing of final order for confiscation of the car in question may also take such long time that the car in question may become wholly unserviceable, complete junk and of no use for being taken over by the state on such confiscation. In these facts and circumstances it will be appropriate that the car is released on sapurdari to the registered owner on additional conditions, besides usual terms and conditions, that the registered owner will not use or allow any person to use the car in question for commission of any offence including offence under the NDPS Act and that he will deposit the market price of the car in question as determinable under the Income Tax Rules in case of passing of order for its confiscation under section of the NDPS Act.

18. In view of the above discussion, the present petition under Section 482 of the Cr. P.C. is allowed and the car in dispute bearing registration No. HP-66A-2157 is ordered to be released on sapurdari to its registered owner on furnishing sapurdginama to the satisfaction of learned Judge, Special Court, Panchkula on the conditions (i) that he will preserve the said car in the same condition during the pendency of the trial; (ii) that he will not dispose of the same during the pendency of the trial; (iii) that he will produce the same in the trial Court as and when so ordered by the trial Court (iv) that he will not use or allow any person to use the car in question for commission of any offence including offence under the NDPS Act and (v) that he

will deposit the market price of the car in question as determinable under the Income Tax Rules in case of passing of order for its confiscation under Section 60 of the NDPS Act.”

28. Hon’ble High Court of Punjab and Haryana in **Gurbinder Singh Vs. State of Punjab (2017 SCC OnLine P&H 16026)** referring to relevant provisions of the NDPS Act and the Cr.PC held as follows:

“13. On a thorough perusal of the various provisions under the NDPS Act, we find that there is no specific provision debarring the release of the vehicle seized under the Act. When the provision under Section 451 Cr.P.C. is not inconsistent with any specific provision under NDPS Act, the same will have to be applied as mandated under Section 51 of the said Act.

14. A vehicle used for committing rape and murder is being released in the garb of Section 451 Cr.P.C. as interpreted by the Hon’ble Supreme Court in Sunderbhai Ambalal Desai’s case (supra). When the vehicles seized in such heinous crimes are released for interim custody, there is no logic in denying interim custody of the vehicle seized under the NDPS Act. Neither the State nor the owner of the vehicle is going to be benefited if the vehicle in the premises of the police station occupies a larger space posing inconvenience to the Police Department. Further, it is an open secret that when a vehicle is parked unattended, the valuable parts of the vehicle are casually taken away or stolen. Finally, when the Court comes to a conclusion that the vehicle was used for committing the crime, the vehicle which was kept in the open would have substantially deteriorated. Likewise, if the Courts take a final decision that the vehicle was not at all used for commission of the crime or the vehicle was used without the knowledge of the owner thereof, the owner will have to collect only the scrap of the vehicle. In other words, nobody is going to be benefited out of idle parking of vehicle totally unattended in the premises of the police station.

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17. On a perusal of the above provisions under the NDPS Act, we find that the trial Court has to take a decision as to whether a vehicle is liable to confiscation only on conclusion of the trial. A vehicle seized under the NDPS Act cannot be kept idle to the disadvantage of

everyone concerned till the order of confiscation is passed on conclusion of trial.

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22. In the above facts and circumstances, we have no hesitation to hold that there is no provision under the NDPS Act debarring the release of the vehicle for interim custody. The provision under Section 451 Cr.P.C. which is found not inconsistent with the provisions of the NDPS Act is applicable to the vehicle seized under the NDPS Act as well. No differential treatment to the vehicle seized under the NDPS Act is contemplated either under the provisions of the NDPS Act or under the ratio laid down by the Court of law. In our considered view, the law laid down by the Hon'ble Supreme Court in Sunderbhai Ambalal Desai's case (supra) will apply to the vehicles seized under the NDPS Act as well. Any contrary view taken by the Courts of law would be against the interest of the owner of the vehicles, the public at large and the State.

23. In the above facts and circumstances, we hold that the vehicle used for transporting the narcotic drugs and psychotropic substances can also be released on sapurdari invoking the provision under Section 451 Cr.P.C. The reference is answered accordingly.”

29. Hon'ble High Court of Uttarakhand in **Abhijeet Kumar Vs. State of Uttarakhand (2019 SCC OnLine Utt 265)** after referring to relevant provisions of the NDPS Act observed as follows holding the applicability of Section 451,

452 and 457 of the Cr.PC.

“7. No such provision has been brought to the notice of the Court, which may restrict the power of the Court to release any vehicle seized in connection with an offence committed under the Act. Definitely, as per the provisions of Section 51 of the Act, the provision of the Code will apply, *inter alia*, in the cases of release of any vehicle. There are three situations which deal with for the release of any article seized by the Police. They are Section 451, 452 and 457 of the Code. The provision of Section 451 of the Code comes into play when any property is produced before the court during any inquiry or trial. In such cases, the Court may make such order, which it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial.

Section 452 of the Code makes provision for disposal of property at the conclusion of trial and Section 457 makes provision in cases when the seizure of property by any Police is reported to the Magistrate under the provision of the Code and such property is not produced before the court during inquiry or trial.”

.....

11. Section 60 of the Act does not provide for confiscation of any vehicle, immediately after its seizure. Confiscation is a separate procedure un-connected with conviction, acquittal or discharge of the accused. It is only the satisfaction of the court, trying an offence under the Act, to decide as to whether the vehicle is liable to be confiscated or not. In the instant case, trial is yet to begin. Whether the petitioner was, in fact, carrying Charas with him? Whether the petitioner has committed any offence under the Act, is yet to be established. Whether any proceeding for confiscation would at all be initiated? It has also to be decided at a later stage of the trial. Section 451 of the Code makes provision for interim custody of any article.

.....

13. Even otherwise in the absence of any provision, which bars from release of any vehicle seized, there appears no reason to keep the vehicle in Police custody until the conclusion of the trial. There are various issues related with the upkeep of such articles specially a vehicle. This Court is of the view that the provision of Section 60 of the Act at all does not debar from releasing a vehicle during pendency of the trial. The provision of Section 60 of the Act and Section 451 of the Code act in different spheres. It is the matter of interim custody only. If vehicle is given to its owner with certain conditions namely producing it whenever called to do so; not changing its shape without prior permission of the Court; not to transfer its ownership without prior permission of the Court, etc; the production of the vehicle may be ensured at any later stage of the trial or at the time of confiscation proceeding.

.....

14. In view of the foregoing discussion, this Court is of the view that the learned court below ought to have released the vehicle with certain conditions. Accordingly, the impugned order dated 20.02.2019 deserves to be set aside and the petition deserves to be allowed.”

30. Hon'ble High Court of Calcutta **Waish Ahmed Vs. The State of West Bengal (MANU/WB/0073/2019)** has held as follows after referring to Sections 60 and 63 of the NDPS Act:

“9. It is evident from the aforesaid provisions that the article or conveyance/vehicle seized under the NDPS Act is liable to confiscation on conclusion of trial in accordance with the procedure prescribed in section 63 of the Act unless the owner of the conveyance or vehicle proves that it was so used for carrying any narcotic drug or psychotropic substance or any article liable to confiscation under sub-section (1) or sub-section (2) of section 60 of the Act without his knowledge or connivance and that he had taken all reasonable precautions against such use of the seized vehicle. It is clear that there is no provision in the NDPS Act for grant of interim custody of the seized vehicle to its owner during the pendency of the trial. However, learned counsel for the State could not refer to any provision under the Act which specifically prohibits the grant of interim custody of the seized vehicle to its owner pending final disposal of the case. In *Tridip Mitra versus State of West Bengal* reported in 2006(2) CHN 198 the learned Single Judge of this Court held that during pendency of the trial the learned Judge of the Special Court under the NDPS Act has jurisdiction under section 451 and section 457 of the Code of Criminal Procedure to pass necessary order in accordance with law regarding prayer for release of the seized vehicle as an interim custody.....

.....

11. It is obvious that the considerations would be the production of the seized vehicle during the trial and also during the confiscation proceeding if any such proceeding is initiated and for securing that the vehicle in question is not used for commission of any such offence in future. For the reasons aforesaid and in view of the decisions hereinabove referred, I am of the opinion that the interim custody of the seized truck no. UP32 HN 3425 may be given to its registered owner/petitioner on proper verification and identification subject to the following conditions:

(1) The petitioner shall furnish bank guarantee of rupees twenty five lacs before the trial court.

- (2) The petitioner shall produce the seized vehicle before the trial Court as and when called for during the trial and also during the confiscation proceeding if any such proceeding is initiated.
- (3) To facilitate production of the seized vehicle before the trial Court as and when called for, the seized vehicle shall not leave the district of Howrah till the conclusion of trial and the confiscation proceeding, if any such proceeding is initiated, without prior permission of the trial court.
- (4) The petitioner shall not alienate the seized vehicle or change its nature and character during the pendency of the case.
- (5) The seized vehicle shall not be used for the commission of any offence.”

31. Hon’ble High Court of Calcutta in Anil Haque vs. State of West Bengal (2015 SCC ONLINE CAL 1612) has held as follows after referring to Sections 60 and 63 of the NDPS Act-

“ 7. On perusal of the above provisions of Section 60(3) and Section 63 of the NDPS Act, I find that the seized vehicle can be confiscated by the trial court on conclusion of the trial when the accused is convicted or acquitted or discharged. The Court must give opportunity of hearing to the person who may claim any right to the seized vehicle before confiscation of the seized vehicle. However, the seized vehicle is not liable to be confiscated if the owner of the seized vehicle can prove that the vehicle was used by the accused person without his knowledge or connivance and that he had taken all reasonable precautions against such use of the seized vehicle by the accused person. The above provisions can be invoked by the trial court at the time of passing the order whether seized vehicle is liable to confiscation on conclusion of trial and after conducting an inquiry to ascertain whether seized vehicle is to be returned to the registered owner or the same is liable to confiscation to the State. There is no specific bar under the provisions of the NDPS Act for return of any seized vehicle used for transporting narcotic drug or psychotropic substance as an interim custody pending final disposal of the Criminal Case. In the absence of any specific bar under the NDPS Act the court can invoke the general provisions of Section 451 of Section 457 of the

Code of Criminal Procedure for return of the seized article or vehicle pending final decision of the criminal case. The only obligation on the part of the court returning the seized vehicle to the registered owner is that the registered owner of the vehicle must produce the same before the court on conclusion of trial, so that the court can decide whether the said vehicle is liable to be confiscated or returned to the rightful claimant.”

32. Hon’ble High Court of Calcutta in **Tridip Mitra Vs. State of West Bengal (2005 SCC OnLine Cal 551)** has held as follows after referring to various case laws and Statutory Provisions-

“17. After considering the entire facts and circumstances and the provisions of law, I am of opinion that, the case cannot now be considered as under the early stage of investigation. If chargesheet has been submitted the investigation is over and trial will follow. During pendency of the trial or pendency of the criminal proceeding the learned Special Judge has jurisdiction under sections 451 and 457 of the Code to pass necessary order in accordance with law concerning prayer for release of the vehicle. The learned Judge after assigning adequate reasons and in view of the guidelines indicated above may allow the prayer or may reject the prayer but, should exercise his jurisdiction judicially. It is evident that the present petitioner did not file any application before the learned Judge praying for return of the seized Tata Sumo bearing registration No. WB-24C/4382. The petitioner is given liberty to file proper application before the learned Judge (Special Court, NDPS Act), Barasat for release of the vehicle, and if any, application is filed by the present petitioner the learned Additional Sessions Judge, 6th Court (Special Judge, NDPS Act), Barasat shall dispose of the same in accordance with law after hearing the petitioner, the State and the NDPS Authority if the said authority is proceeding with the said criminal proceeding. The learned Judge shall dispose of the application as early as possible, if any such application is filed by the present petitioner before him.”

33. Hon’ble High Court of Madhya Pradesh in **Manoj Kumar Pandey Vs. State of M.P. (2019 SCC OnLine MP 2315)** has held as follows after referring to Sections 52A, 60 and 63 of the NDPS Act-

“8. From the perusal of the above-mentioned provisions of NDPS Act and the Notification, it emerges that earlier in the Act there were no provisions regarding the pre-trial disposal of the seized narcotic drugs and psychotropic substances. 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 and destruction of seized narcotic drugs, psychotropic substances and conveyance.

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.

10. Although Hon'ble Supreme Court in the case of Union of India v. Mohanlal, (2016) 3 SCC 379 held “No sooner the seizure of any narcotic drugs and psychotropic and controlled substances and conveyances is affected, 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”.

11. But in that judgment Apex Court has not dealt with the provisions of Section 60(3) and 63 of the NDPS Act and has not held that where a person claims to the conveyance seized under the provisions of NDPS Act for illegal transporting of any narcotic drugs, psychotropic or controlled substances, the committee has the power to dispose of the said vehicle before decision of his claim by the concerned special judge. So in the considered opinion of this court, the ultimate effect of the provisions of the Section 60 & 63 of the NDPS Act is that where a person claims to get a vehicle seized under the provisions of NDPS Act, for illegal transporting of any contraband, the committee cannot dispose that vehicle unless the claim of the person is decided by the concerned court. The disposal of conveyance in terms of the Para-9(5)(e) by the committee is only possible after the confiscation proceeding is complete. As also held by the single bench of Tripura High Court in the Case of Sri. Sankar Das v. The State of Tripura criminal petition No. 9 of 2018 Judgement dated 16th March of 2018.

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 v. 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.

14.....If the seized vehicle is kept lying at the Police Station, the value of the said vehicle would be diminished and its parts would be damaged. So in the considered opinion of this court learned Special Judge committed mistake in rejecting the applicant's application to get the interim custody of the vehicle.”

34. Hon'ble High Court of Jharkhand in **Sri Sankar Das Vs. The State of Tripura (Crl. Petn No. 9 of 2018 decided on 16.03.2018)** has held as follows after referring to Sections 52A, 60 and 63 of the NDPS Act-

“12. It is thus apparent that Section 60(3) of the NDPS Act has made provision for protecting the interest of an innocent owner before confiscating his vehicle. The procedure of confiscation has been made under Section 60(3) of the NDPS Act which provides that in the trial of offences under the NDPS Act, whether the accused is convicted or acquitted or discharged the Special Court shall decide whether any article or thing seized under this act is liable to confiscation under Sections 60,61 or 62 and if it decides that that the seized articles or things are liable to be confiscated it may order confiscation accordingly. The procedure for confiscation has been further elaborated under sub Section 2 of Section 63 of the NDPS Act. A substantive reading of Section 63 read with Section 60(3) of the NDPS Act would provide that until the trial is over the confiscation proceeding cannot be initiated. However, exception has been curved out in proviso-es to sub Section 2 of Section 63 of the NDPS Act. The first proviso provides that no order of confiscation of an article or thing shall made 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. The second proviso to sub-Section 2 of Section 63 of the NDPS Act provides 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.

13. A conjoint reading of proviso-es as referred above would certainly allow a prudent person to infer that immediate disposal would mean the disposal after expiry of one month and that would apply to articles or things other than the narcotic drugs, psychotropic substance, controlled substances, the opium poppy, coca plant or cannabis plant which are liable to speedy and natural decay. If the court is of the opinion that sale would be beneficial for its owner it may any time direct it to be sold. In that event the Drug Disposal Committee shall make all arrangements for sale of those things or articles. So far the conveyance [of which ownership has been claimed] is concerned, its involvement in carrying out the offence has to be proved in the trial and on such proof, the proceeding for confiscation may ensue in terms of Section 63(1) of the NDPS Act and the confiscation only be made after affording a reasonable opportunity of being heard to the person who has any right or claim over the said conveyance. Such confiscation can be done only after the trial is complete and the Special Court decides for confiscation as the court is to see that the vehicle or conveyance which was used for commission of offence under the NDPS Act is not made available to the person or persons who indulged in the blameworthy act. 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 NDPS Act to protect an innocent owner before confiscating his vehicle or conveyance. Thus, there is a right to the owner who claimed within 30[thirty] days from the day of seizure, his title over the vehicle to have interim custody of the said vehicle subject to the adequate security till completion of the trial. In absence of any contrary provision in Union of India vs. Mohanlal (supra), this Court is of the view that the vehicle bearing registration No.TR-01-AT-0341 as seized in connection with Khowai P.S. Case No. No.2017/KHW/128 may be released to its registered owner till completion of the trial. The petitioner has claimed his ownership over the said vehicle within 30[thirty] days from the day of seizure. It is made absolutely clear that on taking zimma, the registered owner shall keep the vehicle in good condition and shall not transfer any right including the right of ownership or by forging agreement in respect of use of the vehicle. Where no one claims the ownership of the vehicle within the stipulated time of 30[thirty] days, the court may direct the Drug Disposal Committee for disposal by sale.

14. Having observed thus, it is directed that the said vehicle bearing registration No. TR-01-AT-0341 only be released to its registered owner on furnishing of the bail bond of Rs.4,00,000/- supported by one surety of the like amount and on realizing a specific undertaking from the surety that if the vehicle is not produced on asking or there is no participation in the confiscation proceeding by the registered owner, the surety shall be liable to tender the said amount to the court. As a measure of abundant caution, the special court shall determine whether the petitioner is the registered owner or not. If it is found that the petitioner is the registered owner, the vehicle be released to him on such terms and conditions as stated above.”

35. It is also relevant to refer to celebrated judgment of **Sunderbhai Ambalal Desai v. State of Gujarat, [(2002) 10 SCC 283]** which is a leading case on the subject and still holding the field. In this case, Hon'ble Supreme Court has explained the extent and scope of jurisdiction under Section 451 Cr.PC and how it should be exercised. The relevant parts of the judgment are as follows:

“ 5. Section 451 clearly empowers the court to pass appropriate orders with regard to such property, such as:

- (1) for the proper custody pending conclusion of the inquiry or trial;
- (2) to order it to be sold or otherwise disposed of, after recording such evidence as it thinks necessary;
- (3) if the property is subject to speedy and natural decay, to dispose of the same.

.....

7. In our view, the powers under Section 451 CrPC 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 article in safe custody;
3. if the proper panchnama before handing over possession of the 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 evidences should be exercised promptly so that there may not be further chance of tampering with the articles.

.....

10. To avoid such a situation, in our view, powers under Section 451 CrPC should be exercised promptly and at the earliest.

Valuable articles and currency notes

11. With regard to valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, the Magistrate should pass appropriate orders as contemplated under Section 451 CrPC at the earliest.

12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:

- (1) preparing detailed proper panchnama of such articles;
- (2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and
- (3) after taking proper security.

13. For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition.

14. In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the court may direct that such articles be kept in bank lockers. Similarly, if articles are required to be kept in police custody, it would be open to the SHO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the court may direct that such articles be handed back to the investigating officer for further investigation and identification. However,

in no set of circumstances, the investigating officer should keep such articles in custody for a longer period for the purposes of investigation and identification. For currency notes, similar procedure can be followed.

.....

17. In our view, whatever be the situation, it is of nouse 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.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

19. For articles such as seized liquor also, prompt action should be taken in disposing of it after preparing necessary panchnama. If sample is required to be taken, sample may be kept properly after sending it to the Chemical Analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing.

20. Similarly for the narcotic drugs also, for its identification, procedure under Section 451 CrPC should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same.

21. However, these powers are to be exercised by the Magistrate concerned. We hope and trust that the Magistrate concerned would take immediate action for seeing that powers under Section 451 CrPC

are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly.

36. It is also relevant to refer to **Amit Bhowmik v. State of Tripura** as reported in **AIR ONLINE 2023 TRI 131** wherein Hon'ble Tripura High Court had occasion to consider the release of mobile phones and cash during enquiry and trial under Section 451 CrPC. In this context, Hon'ble High Court had held that electronic items are susceptible to be tampered with and as such, may lose its evidentiary value, if released during pendency of the trial. It was further held that such articles may be subject to forfeiture upon outcome of the trial. Accordingly, Hon'ble High Court had refused to release mobile to interim custody of its owner during trial. The relevant part of the judgment reads as follows:-

“15. These electronic items are susceptible to be tampered with and as such may lose its evidentiary value if released during pendency of the trial. Moreover, the currency notes, if released, may be consumed and expended and as such, may not be available to be produced in its original form when called for by the learned Trial Court during evidence. As such, even with the condition of security, release of these material objects may affect the case of the prosecution which is based on the recovery of these articles and cash. Moreover, these articles and cash may be subject to forfeiture depending upon the outcome of the trial. As such, this Court does not find any error in the order of the learned Trial Court in rejecting the application for release of articles and cash in favour of the petitioners under Section 451 of the CrPC.”

37. After the aforesaid discussions, it is concluded as follows:-

(i) The confiscation proceedings is initiated and conducted by the special court as established under the NDPS Act,

(ii) It is the Special Court which decides the liability of an article, thing or vehicle to confiscation and such decision is taken by the Special Court after conviction, acquittal or discharge of the accused.

(iii) The provisions of the CrPC are applicable to the proceedings before Special Courts established under the NDPS Act to the extent they are not inconsistent or contrary to provisions in the NDPS Act which is a special enactment.

(iv) During pendency of the trial and confiscation proceedings, the Special Court is empowered to release an article, thing or vehicle to interim custody of the rightful owner subject to conditions to ensure that such article, thing or vehicle are produced before the court as and when required during trial and confiscation proceedings.

(v) The provisions of confiscation in Section 60 and 63 of the NDPS Act or seriousness of the allegation levelled against the petitioner cannot be grounds for refusal to release an article, thing or vehicle to interim custody of their rightful owners.

38. Now coming to the case at hand, I find that the court below had sought report from the police whether confiscation proceeding has been initiated in regard to the vehicle and the mobile in question. I also find that the court below has rejected the application of the petitioner for releasing the vehicle and mobile in view of the fact that the same are kept in campus of police station in safe condition and on the ground that there is allegation of serious offence against the applicant. However, I have already found as per the statutory provisions and case laws that Ld. Special Court had no occasion to seek report regarding confiscation proceeding by the police or other authority because the Special Court itself is the authority to initiate confiscation proceeding and decide liability of any thing, article or vehicle seized in the case registered under the NDPS Act to confiscation. Moreover, keeping the vehicle or article in safe condition in police station is also no ground to refuse the release of the same to interim custody of the rightful owners, otherwise, they would turn into scrap/junk in course of time and it would be wastage of national resources. Nature of allegation levelled against the applicant is also no ground to deny the interim custody of the vehicle, article or thing to the rightful owner. In case of mobile and its SIM, the case might be different, because electronic

items are susceptible to be tampered with and they may lose its evidentiary value if released during pendency of the trial. 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 trial or confiscation proceeding.

39. Hence, the petition is part allowed rejecting the prayer of the petitioner to release the mobile of Gionee Company bearing IMEI No. 8676450205 and its sim of mobile No. 9628877640. However, the prayer to release the motorcycle bearing No. U.P. 52 AF 8259 to the petitioner is allowed subject to the following conditions:-

(i) The petitioner shall furnish bank guarantee of rupees twenty five thousand before the trial court. (ii) The petitioner shall produce the seized vehicle before the trial Court as and when called for during the trial and also during the confiscation proceeding if any such proceeding is initiated.

(iii) The petitioner shall not alienate the seized vehicle or change its nature and character during the pendency of the case.

(iv) The seized vehicle shall not be used for the commission of any offence.”

(v) The vehicle, before its release, should be properly photographed and the photograph will be made part of record. Engine number and chasis number of the motorcycle should be also noted for future reference.

40. The impugned order dated 28.06.2016 passed by Ld. Additional Sessions Judge, 1st Gopalganj in Trial No. 39 of 2015/27 of 2016 arising out of Bijaipur PS Case No. 131/2015 is, accordingly, modified, allowing the petition in part.

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