

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

Cri R No. 89/2025

**Reserved on: 02.07.2026
Pronounced on: 06 .07.2026
Uploaded on: 06 .07.2026**

*Whether the operative part or
Full judgment is pronounced: **Full***

Anjum Rafiq, Age 37 years

S/O Mohd. Rafiq

R/O Village Bani Khet,

Tehsil Surankote,

District Poonch

... ..Petitioner(s)

Through: Mr. Mahmood A Shaad, Adv. vice
Mr. Abrar Ahmed Khan, Adv.

Vs

1. **The Union Territory of J&K** through

Commissioner/Secretary, Home Department

Civil Secretariat, Jammu/Srinagar.

2. The Station House Officer,

Police Station Thannamandi.

.... .
Respondent(s)

Through: Mr. Bhanu Jasrotia, GA

CORAM: HON' BLE MR. JUSTICE MA CHOWDHARY, JUDGE

JUDGMENT

01. Through the medium of instant Criminal Revision Petition, the petitioner seeks setting aside of the order dated 06.09.2025 passed by the

Court of learned Additional Sessions Judge (NDPS Cases), Rajouri, (hereinafter referred to as **'the Trial Court'** for short), whereby his application for release of vehicle i.e. i20 bearing registration No. JK12B-7073, seized by the respondent/Police Station, in connection with the case FIR No. 69/2025 for offences punishable under Sections 8/21/22/25/29 NDPS Act, in his favour, was rejected.

02. The order impugned has been assailed on the grounds, inter alia, that without considering the objections filed by the petitioner, the impugned order has been passed; the petitioner being the registered owner of the vehicle in question moved an application before the learned Trial Court seeking release of the same but the learned Trial Court without due application of mind, rejected the same by holding that vehicle cannot be released in view of fact that owner is himself involved in the offence and the vehicle is used in the transportation of narcotics, therefore, it would be required for confiscation; that the impugned order suffers from illegality, and impropriety, thus deserves to be set aside; that the vehicle in question has been lying outside the premises of Police Station, Thannamandi since long and as such the same is likely to be rendered worthless by being subjected to natural decay; that the petitioner is ready to furnish superdnama subject to any conditions to be imposed by this Court; and that the petitioner has been badly suffering, on account of

continuous seizure of his vehicle.

03. Pursuant to notice, respondents filed report stating that the brief facts of the prosecution case which led to the seizure of the vehicle in question are that on 14.05.2025, that a Police Party comprising of Ct. Zulfikar Hussain No.148/R and SPOs Mohd Azam, Waqar Ahmed and Maroof Khadam during Naka duty at DKG Thanamandi, while checking vehicles and pedestrians passing through the Naka point, at 22.45 hours, checked vehicle i20 bearing registration No.JK12B-7073, driven by its driver from Rajouri, towards Bufliaz, wherein four persons including the driver of the vehicle were found travelling; that during checking of the said vehicle, two white coloured polythene pouches were recovered from the left side of the dash board of the vehicle containing Heroin like substance weighing approximately 15/16 grams and 2/3 grams each, total weighing 18/19 grams; that besides heroin like substance, 2 and half strips containing 26 tablets of Ferrous Sulphate & Folic Acid and one piece of silver foil and a ten rupee note were also recovered from the dash board of the said vehicle; that on enquiry, the persons and driver sitting in the said vehicles disclosed their identities and consequently a case FIR No.69/2025 U/Ss 8/21/22/25/29 of NDPS Act was registered at Police Station Thannamandi, accused got arrested and vehicle in question was seized during investigation.

04. The learned counsel for the revision petitioner submitted that the order impugned dated 06.09.2025 passed by learned Trial Court is illegal as the petitioner who had earlier approached before the said Court is the registered owner of the vehicle who has not used the vehicle for commission of the alleged offence; that the petitioner has no past criminal antecedents and the quantity allegedly recovered is admittedly intermediate quantity, therefore, the yard stick which is applied for commercial quantity in releasing the vehicle was not required to be applied to the present case; that the trial court has not applied the law laid down by the Supreme Court in its correct perspective.

05. Learned counsel further argued that the mere fact that the vehicle is subject to confiscation proceedings, at the conclusion of the trial is no ground to refuse its release; that if the vehicle is not released in his favour, same is likely to suffer damage and deterioration on account of vagaries of the weather and same is also not to serve any purpose to the State except a loss to the petitioner/registered owner. He submitted that the vehicle may be released in favour of the petitioner/registered owner subject to any reasonable terms and conditions which he is ready to abide by. In support of his submissions, learned counsel has relied upon judgment of Supreme Court in **'Bishwajit Dey V. The State of Assam'** reported at 2025 INSC 32.

06. Learned counsel for the respondent, *Per Contra*, argued that the vehicle in question (i20 hyundai) bearing registration No.JK12-B/7073, was being used for transporting of Narcotic drugs which is heinous offence; that the petitioner/owner is himself involved in the commission of offence and his vehicle is required for confiscation as the said vehicle has been used in the commission of the offence, thus, cannot be released; and that the NDPS Act does not envisage the interim release of a seized conveyance during the trial; that the seized vehicle is a material evidence that directly links the accused to the commission of the offence, particularly since it was used as a means of transport and conceal the contraband substance; that there is every likelihood that the vehicle, if released, be used again for transporting/trafficking contraband substances. He supported the impugned order, asserting that the same does not suffer from any illegality or infirmity so as to warrant interference by this court invoking revisional jurisdiction. He prayed that the impugned order be upheld. Lastly, it is prayed that the seized vehicle be not released.

07. Heard learned counsel for both the sides at length and perused the impugned order.

08. Section 497 of BNSS deals with custody and disposal of seized property during trial. For the facility of reference, it is reproduced below:

497. Order for custody and disposal of property pending trial in certain cases.

(1) When any property is produced before any Criminal Court or the Magistrate empowered to take cognizance or commit the case for trial during any investigation, inquiry or trial, the Court or the Magistrate may make such order as it thinks fit for the proper custody of such property pending the conclusion of the investigation, 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 or the Magistrate 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.

(2) The Court or the Magistrate shall, within a period of fourteen days from the production of the property referred to in sub-section (1) before it, prepare a statement of such property containing its description in such form and manner as the State Government may, by rules, provide.

(3) The Court or the Magistrate shall cause to be taken the photograph and if necessary, videograph on mobile phone or any electronic media, of the property referred to in sub-section (1).

(4) The statement prepared under sub-section (2) and the

photograph or the videography taken under sub-section (3) shall be used as evidence in any inquiry, trial or other proceeding under the Sanhita.

(5) *The Court or the Magistrate shall, within a period of thirty days after the statement has been prepared under sub-section (2) and the photograph or the videography has been taken under sub-section (3), order the disposal, destruction, confiscation or delivery of the property in the manner specified hereinafter.*

09. On a plain reading of Section 497 of the BNSS, 2023, it is clear that the Trial Court/Magistrate is under an obligation to deal with the seized property which may have been used in the commission of the offences or regarding which offence may have been committed, within a period of 15 days, from the production of seized property, the Court/Magistrate has to prepare a statement of such property, photograph/videograph the same, which can be used in evidence and within 30 days from the preparation of such statement/videograph/photograph, the seized property is to be ordered to be disposed of by destruction, confiscation or delivery of the property.

10. The NDPS Act, as in the present case, has also provisions, as to how seized property is to be dealt with like vehicles, etc used in the commission of offences punishable under NDPS Act, are liable to be confiscated, on conclusion of trial irrespective of conviction, acquittal or discharge of the accused. Sub-Section (3) of Section 60 NDPS Act,

provides for such confiscation, whereas Section 63 of the Act provides the procedure for confiscation. Sections 60(3) and 63 of NDPS Act bearing relevance to the issue involved in this case deserve consideration. The relevant provisions are extracted as under:

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

(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance [or controlled substances] lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance [or controlled substances] which is liable to confiscation under sub-section (1) and their receptacles, packages and coverings in which any narcotic drug or psychotropic substance [or controlled substances], materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic

drug or psychotropic substance [or controlled substances], or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.”

63. Procedure in making confiscation.-

(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 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."

11. Perusal of the provisions extracted hereinabove reveals that the provisions of Section 60 of the NDPS Act, do not bar the consideration of an application for interim release of conveyance allegedly involved in NDPS Act during investigation and pending trial of a case. Any order made by a competent criminal court in respect of the release of conveyance in NDPS case during trial, 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. Besides the provisions of Sections 60(3) and 63 of the NDPS Act, Section 52-A of the Act also deals with disposal of seizures, in the cases under the Act, under which Central Government has issued Notification to constitute Drugs Disposal Committees to deal with the seized drugs.

Sections 52 and 52-A of the Act, however, are not applicable to those seized properties which are subject to confiscation. 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 lays claim 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. 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. 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 and 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 and 63 of the NDPS Act.

13. On perusal of the provisions of Section 60(3) and Section 63 of the NDPS Act, as mentioned hereinabove, it is clear that the conveyance seized under the NDPS Act shall be liable to confiscation only when the owner of the conveyance who is given an opportunity by the Court can 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. There is no provision in the NDPS Act to restrict the power of the trial Court to release the vehicle in interim custody. 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. 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.”

15. 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.

16. 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 Criminal Procedure Code, the court before whom the property is produced, is empowered to release the vehicle during enquiry and trial of the accused persons.

17. The object and scheme of various provisions of the Sanhita 2023 and NDPS Act 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. In **Nirmal Singh vs State of Punjab** reported at **2023:PHHC:037265**, it has been held 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. In **Khema vs State of Rajasthan** reported at **2026 INSC 12**, 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. 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. 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.

18. 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, (1977) 4 SCC 358* 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."

19. Upon a careful perusal of the NDPS Act, this court is of the view that the seized vehicle can be confiscated by the trial court only on conclusion of the trial when the accused is convicted or acquitted or discharged. Further, even where the Court is of the view that the vehicle is liable for confiscation, it must give an opportunity of hearing to the person who may claim any right to the seized vehicle before passing an order of confiscation. However, the seized vehicle is not liable to confiscation, if

the owner of the seized vehicle can prove, that the vehicle was used by the accused person without the owner's knowledge or connivance and that he had taken all reasonable precautions against such use of the seized vehicle by the accused person.

20. This Court is further of the opinion that there is no specific bar/restriction under the provisions of the NDPS Act for return of any seized vehicle used for transporting narcotic drug or psychotropic substance, in the interim, pending disposal of the criminal case.

21. In the absence of any specific bar under the NDPS Act and in view of Section 51 of NDPS Act, the Court can invoke the general power under Section 497 of BNSS 2023 for return of the seized vehicle pending final decision of the criminal case. Consequently, the Trial Court has the discretion to release the vehicle in the interim. However, this power would have to be exercised, in accordance with law, in the facts and circumstances of each case.

22. Undoubtedly, the Vehicle is a critical piece of material evidence that may be required for inspection to substantiate the prosecution's case, yet the said requirement can be met by stipulating conditions while releasing the Vehicle in interim on superdari like Videography and still photographs to be authenticated by the Investigating Officer, owner of the Vehicle and accused by signing the said inventory as well as restriction on

sale/transfer of the Vehicle.

23. This Court is 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 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.

24. Having regard to the foregoing reasons, observations made hereinabove and the aforestated legal propositions enunciated, and on these touchstones, the view taken by the court below for refusing to release seized vehicle in an NDPS Act case, on interim, is fallacious, for the reason that there is no such bar either in the Penal law or Procedural law, the confiscation to be considered, on disposal of the case by the Trial Court regardless of its outcome- conviction, consideration of the claim laid in this behalf and affording an opportunity of being heard to the owner of the vehicle.

25. Viewed thus, as a consequence of the aforesaid, the Criminal Revision Petition is allowed and the impugned order is set-aside with following directions:

- (i) that the trial court shall release the vehicle in question, in the interim, on Supardari of the registered owner after getting prepared a video

and still photographs of the vehicle and after obtaining all information/documents necessary for identification of the vehicle to be authenticated by the Investigating Officer, owner of the vehicle and accused by signing the same; and

- (ii) that the petitioner shall file an undertaking to the trial court that he shall not sell/part with the ownership of the Vehicle in question till conclusion of the trial and that he shall surrender the Vehicle within one week of being so directed and/or pay the value of the Vehicle (determined according to the Income Tax law on the date of its release), if so ultimately directed by the court.

26. Disposed of, as allowed.

**(MA CHOWDHARY)
JUDGE**

JAMMU
06.07.2026
Raj Kumar

Whether the order is reportable: Yes/No