

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CRIMINAL APPLICATION (POSSESSION OF MUDDAMAL)  
NO. 4400 of 2021**

**With**

**CRIMINAL MISC.APPLICATION (FOR VACATING INTERIM RELIEF) NO.  
1 of 2022**

**In**

**R/SPECIAL CRIMINAL APPLICATION NO. 4400 of 2021**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE ILESH J. VORA**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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**UNION OF INDIA THROUGH INTELLIGENCE OFFICER  
Versus  
STATE OF GUJARAT & ANR.**

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Appearance:

MR KARTIK V PANDYA(2435) for the Applicant(s) No. 1  
AADITYA D BHATT(8580) for the Respondent(s) No. 2  
CHANDNI S JOSHI(9490) for the Respondent(s) No. 2  
MR JAY MEHTA APP for the Respondent(s) No. 1

**CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA**

**Date : 29/04/2024**

## **ORAL JUDGMENT**

1. The applicant Union of India - NCB, Ahmedabad Zonal Unit, has preferred this application under Article 226 read with Section 482 of the Cr.P.C., whereby, the Department has questioned the legality and correctness of the order dated 12.03.2021, passed in Cr.MA. No. 1759 of 2021, whereby, the learned Additional Sessions Judge, Ahmedabad, exercising, its discretion under Section 451 of the Cr.P.C., passed an interim order for custody of vehicle bearing Registration No. JK-13F-4922 in favour of the Private Respondent Gulam Rasool.
2. This Court has heard learned counsel Mr. Kartik Pandya, learned Standing Counsel appearing for and on behalf of the applicant, Mr. Aditya Bhatt, and Mr. Jay Mehta, learned State Counsel for the respective parties.
3. Brief facts giving rise to file present application are that, the vehicle in question No. JK-13F-4922 seized in connection with the offence being CR. No. NCB/AZU/CR.No.01/2021 for the offence punishable under Sections 8(c), 20(b)(ii)(c), 27A, 28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. According to case of the Narcotics Control Bureau, applicant herein that the Zonal Unit,

Ahmedabad received a specific information on 20.01.2021 that “3 persons namely Moin Asraf, Mohd. Chopan and Raja Rameez are travelling in a truck being JK-13F-4922 with the contraband narcotics drugs “Charas” weighting about 23 Kg. and same is concealing in the vehicle and name of the driver is Moin Asraf and they will deliver it to one Avesh Pathan, resident of Mehmdabad, Porbandar, Gujarat and they are passing between Unjha, Dist.: Mehsana to Ahmedabad. After following the mandatory procedure, the Intelligence Officer formed a team and in presence of independent panchas, reached at the place namely S.P. Ring Road, Ahmedabad and on seeing the said truck, they intercepted the vehicle. The officer found the cartoon boxes containing therein 23 packets of charas, total weighing 23.762 Kgs. and same has been seized along with the truck. The driver along with two persons traveling in the truck have been arrested. During the investigation, the officer got the information from the Regional Transport Office, Srinagar in relation to the seized truck, which allegedly registered in the name of Gulam Rasool, the private respondent herein.

In the aforesaid facts and circumstances, the second respondent being a registered owner of the

vehicle, through his power of attorney by filing Cr.M.A. No. 1759 of 2021 claimed interim custody of the vehicle under Section 451 of the Cr.P.C. The learned Additional Sessions Judge, Ahmedabad, after hearing the parties, held and observed that, the vehicle used for transporting the narcotic drugs can also be released under Section 451 of the Cr.P.C. and accordingly, imposing necessary conditions, released the interim custody of the vehicle pending the trial proceedings.

Being aggrieved by the said order dated 12.03.2021, the applicant NCB, Zonal Unit, Ahmedabad, Union of India, by invoking extraordinary jurisdiction of this Court, has challenged the findings and observations made by the learned Sessions Court.

4. Mr. Kartik Pandya, learned Standing counsel has submitted that the vehicle was found to be involved in a serious crime and if it is handed over to the respondent, the same would be used for commission of the similar kind of offences. On issue of law, referring Section 52A of the NDPS Act, he would urge that, for disposal of the vehicle and drugs, the application was made under Sub-Section (2) of Section 52A of the NDPS Act and in such

circumstances, once the proceedings under Section 52A is in process and the Drug Disposal Committee is in seicin of the proceedings, the trial Court could not have exercise its discretion under Section 451 of the Cr.P.C. That, the vehicle in question, admittedly used in transporting the contraband drugs and in view of Section 60(3) of the NDPS Act, it shall be liable to be confiscated.

5. In view of the aforesaid contentions urged by the learned counsel Mr. Pandya, it is submitted that, the findings recorded by the trial Court are not in accordance with law and same suffers from infirmities which has resulted into miscarriage of justice.
6. On the other hand, learned counsel Mr. Aditya Bhatt appearing for and on behalf of private respondent has submitted that, the trial court has rightly exercised the judicial discretion under Section 451 of the Cr.PC as there is no bar under the provision of the NDPS Act for releasing the seized vehicle, pending the case proceedings and thus, in absence of specific bar, the trial Court has rightly invoked the general provision of Section 451 of the Cr.P.C. Thus, he would urge that, no case is made out warranting any interference by this Court under Article 226 of

the Constitution of India.

7. Having regard to the facts and circumstances to the present case, the question that arises for determination, as to whether Section 451 of the Cr.P.C. can be invoked while considering the plea for interim custody of the vehicle seized under the provision of NDPS Act?
8. In the facts of the present case, the learned trial Court by invoking Section 451 of the Cr.P.C., has granted interim custody of the vehicle in question i.e. truck bearing registration No. JK-13F-4922 to the private respondent herein.
9. Chapter XXXIV(Sections 451 to 459) deals with the powers of Court in the matter of disposal of property. An order of disposal of property may be made by the Court during the pendency of the proceedings or at the conclusion of the trial. Section 451 empowers the Court to pass an interim order for custody of any property pending inquiry or trial produced before the Court or regarding which an offence appears to have been committed or appears to have been used for commission of an offence. The Section confers very wide discretion on the court in passing interim order of the custody of the property and same requires to

be exercised judicially.

10. In case of **Sunderbhai Ambalal Desai Vs. State of Gujarat, 2002 (10) SCC 282**, where the Apex Court has observed as under :

*“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 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 evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”*

11. The law as laid down in *Sunder Ambalal Desai (supra)* has been restated in **General Insurance Council and others Vs. State of Andhra Pradesh, 2010 (6) SCC 786**, wherein, again it was observed as under:

*“15. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road.”*

12. Coming to facts of the present case, the learned trial Court has categorically stated that, there is no specific provision in the NDPS Act debarring the Court for exercising powers under Section 451 of the Cr.P.C. for releasing the vehicle pending the trial proceedings. In the present case, the vehicle – truck seized in connection with the offence registered under the provisions of NDPS Act. In order to appreciate the findings and conclusion of the trial Court, let us examine the relevant statutory provision in respect to the disposal of the muddamal seized under the NDPS Act.
13. Section 51 of the NDPS Act, which has bearing on this issue, reads as follows:



“51: provisions of Code of Criminal Procedure 73 to apply warrants, arrests, searches and seizures.

The provision of the Code shall apply in so far, they are not in consistent with the Act to all warrants, issued and arrests, searches and seizures made under this Act.”

14. On bare perusal of the Section 51, it provides that the seizure of any article or thing, the provisions of Cr.P.C. shall apply, if it is not in consistent with the provisions of the NDPS Act.
15. The applicant NCB has raised the issue that, the proceedings under Section 52A has already been commenced and in view of Section 60(3) of the NDPS Act, the trial Court could not have granted interim custody of the vehicle.
16. Section 52A of the NDPS Act, provides that, notification published in the official gazette may having regard to the nature of any narcotic drugs or conveyances, specify such drugs or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner. The Central Government, by the notification dated

16.01.2015, provided the manner of disposal. In view of the said provision, the present applicant moved an application under Section 52A (3) before the Court concerned and same was allowed. However, I am told that, till date, the Drug Disposal Committee has not acted upon it.

17. The other relevant provisions as referred by the applicant - NCB is Section 60(3) and Section 63 of the NDPS Act. The said sections have relevance to the issue involved in this Case, which reads as follows:

**“Section 60: Liability Of Illicit Drugs, Substances, Plants, Articles And Conveyances To Confiscation**

**(1) xxxx**

**(2) xxxx**

**(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 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."

18. Conjoint reading of aforesaid statutory provisions, it provide that conveyance seized under the NDPS Act,

shall be liable for confiscation only when the owner of the conveyance after giving an opportunity by the Court failed to prove that, the conveyance was used without his knowledge or connivance and Court can pass the order only on conclusion of the trial and the Court is not supposed to pass any order of confiscation before expiry of 1 month from the date of seizure or without affording opportunity to the claimant.

19. In light of the aforesaid statutory provisions, it is evident that, there is no specific bar for exercising judicial discretion by the Court concerned under Section 451 of the Cr.P.C to release the vehicle pending the trial proceedings.
20. The different High Courts have taken similar view that, during the pendency of the trial, a Special Court under the NDPS Act has jurisdiction under Section 451 of the Cr.PC to pass necessary order for return of the seized vehicle as an interim custody. (Tridip Mitra Vs. State of West Bengal, 2006(2) CHN 198, Ainul Haque Vs. State of West Bengal, 2015 Criminal Law Journal 4913, Hafij Khan vs The State of Madhya Pradesh (CRR-4438-2019), Gurbinder Singh @ Shinder Vs. State of Punjab 2016 SCC On-line, P&H 16026, Abhijeet Kumar Vs. State of Uttrakhand (2019

SCC On-line UTT 265).

21. This court is in complete agreement with the view taken by the different High Courts and there is no any circumstances exist to take a contrary view. The private respondent herein is the registered owner of the seized vehicle and he is not involved in the offence nor having a past antecedent of like nature. In such set of circumstances and having considered the provisions of law, more particularly, the investigation in the case has already been completed and matter is at the stage of recording of evidence of the prosecution witnesses, keeping the vehicle ideal in the police station into open to sky, would serve no purpose and it de-valued the price of the seized vehicle.
22. For the reasons recorded, this court comes to conclusion that when the vehicle or anything seized under the provision of NDPS Act, the trial Court can exercise its judicial discretion under Section 451 of the Cr.P.C. to release the vehicle with a condition to produce it before the court on conclusion of the trial, for passing necessary order under Section 60(3) after hearing the claimant, if any.

23. In view of the above, the trial Court has not committed any error of law while passing the order and has rightly exercised its discretion while handing over the interim custody of the vehicle pending the trial and thus, therefore, the reasons assigned by the court below of the decision, do not warrant any interference and the order impugned is having been passed in accordance with law and does not suffer from any infirmities.
24. Accordingly, the application stands dismissed. Notice discharged. Interim relief granted earlier stands vacated.

**Order in Cr.M.A. No. 1 of 2022:**

In view of the order passed in main matter being Special Criminal Application No. 4400 of 2021, no order in Cr.M.A. No. 1 of 2022 and is disposed of accordingly.

**(ILESH J. VORA,J)**

P.S. JOSHI/06.05