

# Rabindra Kumar Behera vs State Of Odisha .... Opposite Party on 15 January, 2025

**Author: Savitri Ratho**

**Bench: Savitri Ratho**

AFR            IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.503 of 2022 & batch

|                        |          |                     |
|------------------------|----------|---------------------|
| CRLREV No. 503 of 2022 |          |                     |
| Rabindra Kumar Behera  |          | .... Petitioner     |
|                        | -versus- |                     |
| State of Odisha        |          | .... Opposite Party |

|                        |          |                     |
|------------------------|----------|---------------------|
| CRLREV No. 555 of 2022 |          |                     |
| Bajrang Lal            |          | .... Petitioner     |
|                        | -versus- |                     |
| State of Odisha        |          | .... Opposite Party |

|                          |          |                     |
|--------------------------|----------|---------------------|
| CRLREV No. 400 of 2021   |          |                     |
| Kumuda Chandra Mohapatra |          | .... Petitioner     |
|                          | -versus- |                     |
| State of Odisha          |          | .... Opposite Party |

|                        |          |                     |
|------------------------|----------|---------------------|
| CRLREV No. 154 of 2022 |          |                     |
| Chitaranjan Sikdar     |          | .... Petitioner     |
|                        | -versus- |                     |
| State of Odisha        |          | .... Opposite Party |

|                        |          |                 |
|------------------------|----------|-----------------|
| CRLREV No. 205 of 2022 |          |                 |
| Babuli Pangi           |          | .... Petitioner |
|                        | -versus- |                 |

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State of Odisha  
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.... Opposite Party

CRLREV No. 253 of 2022

Raj Kumar Soni  
.... Petitioner

-versus-

State of Odisha  
.... Opposite Party

CRLREV No. 266 of 2022

Narayan Chandra Mohanty  
.... Petitioner

-versus-

State of Odisha  
.... Opposite Party

CRLREV No. 346 of 2022

Nasim Khan  
.... Petitioner

-versus-

State of Odisha  
.... Opposite Party

CRLREV No. 353 of 2022

Bhupendra Sahu  
.... Petitioner

-versus-

State of Odisha  
.... Opposite Party

CRLREV No. 356 of 2022

Malaya Ranjan Bhukta  
.... Petitioner

-versus-

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State of Odisha  
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.... Opposite Party

CRLREV No. 361 of 2022

Surender ..... Petitioner

-versus-

Union of India (N.C.B.) ..... Opposite Party

CRLREV No. 380 of 2022

Renubala Nayak ..... Petitioner

-versus-

State of Odisha ..... Opposite Party

CRLREV No. 383 of 2022

Tofan Nayak ..... Petitioner

-versus-

State of Odisha ..... Opposite Party

CRLREV No. 384 of 2022

Abhisek Biswas ..... Petitioner

-versus-

State of Odisha ..... Opposite Party

CRLREV No. 388 of 2022

Tara Devi ..... Petitioner

-versus-

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..... Opposite Party

CRLREV No. 389 of 2022

Prasanta Kumar Pradhan ..... Petitioner

-versus-

State of Odisha ..... Opposite Party

CRLREV No. 395 of 2022

Miriyala Showribabu .... Petitioner

-versus-

State of Odisha .... Opposite Party

CRLREV No. 436 of 2022

Rahul Digal .... Petitioner

-versus-

State of Odisha .... Opposite Party

CRLREV No. 438 of 2022

Mohammad Rizwan .... Petitioner

-versus-

State of Odisha .... Opposite Party

CRLREV No. 444 of 2022

Madhaba Khara .... Petitioner

-versus-

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State of Odisha .... Opposite Party

CRLREV No. 450 of 2022

Fatima Bibi .... Petitioner

-versus-

State of Odisha .... Opposite Party

CRLREV No. 451 of 2022

Chittaranjan Moharana .... Petitioner

-versus-

State of Odisha ..... Opposite Party

CRLREV No. 471 of 2022

Sabina Bibi ..... Petitioner

-versus-

State of Odisha ..... Opposite Party

CRLREV No. 479 of 2022

Rajesh Jani ..... Petitioner

-versus-

State of Odisha ..... Opposite Party

CRLREV No. 482 of 2022

Mohammad Ashan Alam ..... Petitioner

-versus-

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..... Opposite Party

CRLREV No. 487 of 2022

Narottam Digal ..... Petitioner

-versus-

State of Odisha ..... Opposite Party

CRLREV No. 491 of 2022

Susanta Debnath ..... Petitioner

-versus-

State of Odisha ..... Opposite Party

CRLREV No. 515 of 2022

Pankajini Bagha ..... Petitioner

-versus-

State of Odisha ..... Opposite Party

CRLMC No. 150 of 2023

K. Mahaswar Rao ..... Petitioner

-versus-

State of Odisha ..... Opposite Party

CRLREV No. 19 of 2023

Prime Mover Mobility  
Technologies Pvt. Ltd, Bangalore ..... Petitioner

-versus-

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State of Odisha

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..... Opposite Party

CRLREV No. 26 of 2023

Sadasiva Bhola ..... Petitioner

-versus-

State of Odisha ..... Opposite Party

CRLREV No. 77 of 2023

Santosh Kumar Dash ..... Petitioner

-versus-

State of Odisha ..... Opposite Party

Advocates appeared in this case through Hybrid Mode :

For Petitioner :Mr. S. R. Mulia, Advocate  
Mr.Devasish Panda, Amicus Curiae  
(In CRLREV No. 503 of 2022)  
Mr.Anupam Dash, Advocate  
(In CRLREV No. 555 of 2022 & batch)

For Opposite Party : Mr. L. Samantary, A.G.A.

CORAM:

HON'BLE THE CHIEF JUSTICE  
AND  
HON'BLE MS. JUSTICE SAVITRI RATHO

.....  
Date of Judgment : 15.01.2025 ..... SAVITRI RATHO,  
J. The following question had been referred to the Division Bench by a learned Single Judge of this Court by a common order dated 23.08.2022 passed in CRLREV No. 346 of 2022, CRLREV No. 205 of 2022, CRLREV No. 253 of 2022, CRLREV 266 of 2022, CRLREV No. 353 of 2022 and CRLREV No. 356 of 2022 :-

"to examine the question as to whether the provision under Section 457 of Cr.P.C. will have no application in a case of release of the vehicle seized under the N.D.P.S. Act during investigation or trial of the case."

2. This common order dated 23.08.2022 had been passed by the learned Single Judge while hearing the batch of criminal revisions which had been filed challenging the orders rejecting applications filed U/s. 457 of Cr.P.C., for release of vehicles, seized in connection with prosecutions under the NDPS Act, by the learned Courts below. Other criminal revisions involving similar question had also been tagged and listed before us alongwith CRLREV No. 346 of 2022, CRLREV No. 205 of 2022, CRLREV No. 253 of 2022, CRLREV 266 of 2022, CRLREV No. 353 of 2022 and CRLREV No. 356 of 2022.

3. We have heard Mr. D Panda learned amicus curiae, Mr. S.R. Mulia and Mr. Anupam Dash learned counsel and Mr. L. Samantray, learned Additional Government Advocate. The other counsel for the petitioners adopted the submissions of Mr. Panda, learned amicus curiae.

4. It was the submission of Mr. Panda and Mr. Dash learned counsel that there is no bar in the NDPS Act for entertaining applications under Section - 451 and 457 of the Cr.P.C for interim release during pendency of the trial for which the power under Sections 451 and 457 of the Cr. P.C could be invoked for interim release of such vehicles. They had also submitted that in many of the cases, the owner is not an accused in the case but the vehicles seized during investigation are left lying in open in the Police Station or Excise Office premises, exposed to the vagaries of weather and miscreants. As a result the vehicles get damaged and sometimes its parts are also stolen. So by the time of conclusion of the trial and / or the confiscation proceedings, the value of the vehicle has gone down substantially which does not benefit the State or the owner. Often the owners who are not accused in the case and even where the vehicle has been utilised for carrying contraband inspite of precautions taken by them , have to suffer pecuniary loss due to damage to the vehicles. They have also submitted that if the vehicles are released in the interim, pending finalization of the proceedings, imposing suitable conditions, the interest of the prosecution as well as the owner will be protected.

5. The learned counsel for the State did not dispute the contention that there was no prohibition in the NDPS Act for interim release of the vehicle during pendency of the confiscation proceeding or criminal case. But he had submitted as the Legislature had not included any provision for interim

release of the vehicle in the NDPS Act, which is a special enactment and as there was a provision in the NDPS Act for confiscation of the vehicle, the provision would be rendered redundant and the trial of the case would be hampered, if the interim release of a vehicle would be allowed during pendency of the trial. It was also his submission that the vehicle may again be used for similar purpose, which would defeat the aims and objection of the enactment of the NDPS Act.

6. The learned counsel had relied on a number of decisions of this Court as well as the Supreme Court in support of their submissions.

7. After the reference had been heard and reserved for judgment but before we could deliver the judgment answering the reference, the Supreme Court in the case of Bishwaji Dey vs. State of Assam: 2025 INSC 32: 2025 SCC Online SC 40 has delivered a judgment on 07.01.2025, dealing with the identical question, in the application filed by the owner of a vehicle for interim release of the vehicle which had been seized in connection with a case registered for commission of offences under the NDPS Act .

8. In the case of Bishwajit Dey (supra), the truck had been seized by the police on 10.04.2023 and two soap boxes covered with black tarpaulin containing heroin were recovered from the hood of the vehicle. The suspected substance was confirmed to be 24.8gm of heroin which was being carried by the main accused who had boarded the vehicle at Manipur. The owner of the vehicle was not an accused in the case and had been cited as a witness in the case. As his prayer for interim release of the vehicle was rejected by the learned Special Judge as well as the High Court, the appellant had approached the Supreme Court, stating that the vehicle which had been purchased for commercial purpose on monthly equated installment was the only source of income of the appellant and it was getting damaged lying unattended in the police station campus, exposed to sun and rain. He relied on the case of Sunderbhai Ambala Desai V. State of Gujarat, (2002) 10 SCC 283 and the decision of the Patna High court in the case of Bhola Singh @ Ayush Singh vs. The State of Bihar, Criminal Misc. No.40912/2016.

9. The counsel appearing on behalf of the State of Assam had opposed the prayer for interim release inter alia contending that the NDPS Act being a special enactment is a complete code by itself and did not contemplate interim release of a vehicle during pendency of the trial. She had referred to Chapter-IV of the NDPS Act which dealt with offences and penalties and Chapter-V which deals with procedure and relied on the decisions of the High Court of Delhi, Kerala and Calcutta where interim release had been refused. Relying on the decisions in the cases of (i) Smt. Narender Kaur vs Arun Sheoran: 2000 SCC OnLine Del-502, (ii) Ganga Hire Purchase Pvt. Ltd. vs State Of Punjab & others:(1999) 5 SCC 670, (iii) Union of India vs. Dinesh Kumar Verma: (2005) 9 SCC 330, (iv) Shajahan vs. Inspector of Excise: (2019) SCC OnLine Ker 3685, (v) Moumita Saha :

2023 SCC OnLine Cal 1094, she had submitted that the seized vehicle would be required during trial and if it was released during pendency of the trial, it may not be available for such purpose. She had also submitted that if released, the vehicle may again be utilized for the same purpose and encourage third party misuse for transportation and smuggling of drugs and undermine the drive to combat such



illegal activity.

10. The Supreme Court after discussing the provisions of Section- 36C, Section 60, the second proviso to Section 63 of the NDPS Act and the earlier decisions of different High courts and the Supreme Court, observed that in the decisions relied on by the State of Assam, interim release of vehicles had not been allowed, but in the cases of General Insurance Council &Ors. vs. State of Andhra Pradesh, (2010) 6 SCC 768; Gurbinder Singh @ Shinder vs. State of Punjab, 2016 SCC OnLine P&H 16026; Tej Singh vs. State of Haryana, 2020 SCC OnLine P&H 4679; Shams Tavrej vs. Union of India, 2023 SCC OnLine All 1154; Manakram vs. State of Madhya Pradesh, Crl. Rev. 2421/2021; Nirmal Singh vs. State of Punjab, CRR- 1208-2018 (O&M); Kawal Jeet Kaur vs. State of Karnataka, 2024:KHC- K:5691 and Bhagirath vs. State of Rajasthan, 2024: RJ-JD:36868, in NDPS cases, the Courts had directed for release of vehicles in the interim. It further held that the judgments of the Supreme Court did not lay down any general proposition of law and went on to lay down the law.

11. The relevant portions of Section - 451 and 457 of the Code of Criminal Procedure and Section- 36 C, Section 51, 52 A Section 60 and, the second proviso to Section 63 of the NDPS Act are extracted below:

Code of Criminal Procedure "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.

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457. Procedure by police upon seizure of property.--

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a criminal court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained,

respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

Narcotics drugs and Psychotropic Substances Act "Section 36C of the NDPS Act: "Save as otherwise provide 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...."

". Section 51. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act."

"Section 52A(1): The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine...."

"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 [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 there 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 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.

"Section 63 Second Proviso:

63. ....

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substances [controlled substance], the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of the 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

12. The relevant portions of the judgment of the Supreme Court are extracted below;

"COURT'S REASONING NO SPECIFIC BAR/RESTRICTION UNDER THE NDPS ACT FOR RELEASE IN THE INTERIM OF ANY SEIZED VEHICLE.

19. Having heard learned counsel for the parties and having examined the issue at hand, this Court finds that different Courts have taken divergent views with regard to interim release of conveyances during the pendency of the trial in NDPS cases. While the courts in cases referred to by learned counsel for the respondent- State of Assam have not released the vehicles in the interim during NDPS trial, yet in General Insurance Council & Ors. vs. State of Andhra Pradesh, (2010) 6 SCC 768; Gurbinder Singh @ Shinder vs. State of Punjab, 2016 SCC OnLine P&H 16026; Tej Singh vs State of Haryana, 2020 SCC OnLine P&H 4679; Shams Tavrej vs. Union of India, 2023 SCC OnLine All 1154; Manakram vs. State of Madhya Pradesh, Crl. Rev. 2421/2021; Nirmal Singh vs. State of Punjab, CRR-1208-2018 (O&M); Kawal Jeet Kaur vs. State of Karnataka, 2024:KHCK: 5691 and Bhagirath vs. State of Rajasthan, 2024: RJ-JD:36868, the Courts have directed release of the vehicles in the interim in NDPS cases.

20. The judgements of this Court are confined to their facts or in the context of the expression „owner and do not lay down any general proposition of law. Consequently, the issue would have to be examined on first principles.

21. Upon a reading of the NDPS Act, this Court is of the view that the seized vehicles 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.

22. 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.

23. 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 Sections 451 and 457 of the Cr. P.C. 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.

**COURTS WILL LEAN AGAINST ANY CONSTRUCTION THAT WOULD PRODUCE AN ABSURD OR UNJUST RESULT.**

24. It is trite law that the more absurd a suggested conclusion of construction is, the more the court will lean against that conclusion. That is ordinarily so whether one is construing a contract or a statute. [See: Hatzl v. XL Insurance Co. Ltd. [2009] EWCA Civ. 223].

25. The presumption against absurdity is found in the brief observation of Lord Saville agreeing with his colleagues in the case of Noone [R (on the application of Noone) v. Governor of HMP Drake Hall [2010] UKSC 30]. Lord Saville says simply:

"I would allow this appeal. For the reasons given by Lord Phillips and Lord Mance, I have no doubt that by one route or another the legislation must be construed so as to avoid what would otherwise produce irrational and indefensible results that Parliament could not have intended"

26. If the respondent-State's interpretation is accepted, then in a case where an accused is arrested carrying heroin in a private plane or a private bus or a private ship without the knowledge and consent of the management and staff of the private plan or bus or ship, the plane/bus/ship would have to be seized till the trial is over!

27. Though the risk of misuse by the accused or third party of the same plane or bus or ship cannot be ruled out, yet the Courts do not take coercive action on the basis of fear or suspicion or hypothetical situation.

28. 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.

#### BROADLY SPEAKING THERE ARE FOUR SCENARIOS

29. Though seizure of drugs/substances from conveyances can take place in a number of situations, yet broadly speaking there are four scenarios in which the drug or substance is seized from a conveyance. Firstly, where the owner of the vehicle is the person from whom the possession of contraband drugs/substance is recovered. Secondly, where the contraband is recovered from the possession of the agent of the owner i.e. like driver or cleaner hired by the owner. Thirdly, where the vehicle has been stolen by the accused and contraband is recovered from such stolen vehicle. Fourthly, where the contraband is seized/recovered from a third- party occupant (with or without consideration) of the vehicle without any allegation by the police that the contraband was stored and transported in the vehicle with the owner's knowledge and connivance. In the first two scenarios, the owner of the vehicle and/or his agent would necessarily be arrayed as an accused. In the third and fourth scenario, the owner of the vehicle and/or his agent would not be arrayed as an accused.

30. This Court is of the view that criminal law has not to be applied in a vacuum but to the facts of each case. Consequently, it is only in the first two scenarios that the vehicle may not be released on superdari till reverse burden of proof is discharged by the accused- owner. However, in the third and fourth scenarios, where no allegation has been made in the charge-sheet against the owner and/or his agent, the vehicle should normally be released in the interim on superdari subject to the owner furnishing a bond that he would produce the vehicle as and when directed by the Court and/or he would pay the value of the vehicle as determined by the Court on the date of the release, if the Court is finally of the opinion that the vehicle needs to be confiscated.

31. This Court clarifies that the aforesaid discussion should not be taken as laying down a rigid formula as it will be open to the trial Courts to take a different view, if the facts of the case so warrant." SUPREME COURT IN SIMILAR FACTS IN SAINABA VS. STATE OF KERALA AND ANOTHER HAS RELEASED THE VEHICLE

32. In the present case, this Court finds that after conclusion of investigation, a chargesheet has been filed in the Court of Special NDPS Karbi Anglong. In the said chargesheet, neither the owner of the Vehicle nor the driver has been arrayed as an accused. Only a third-party occupant has been arrayed as an accused. The police after investigation has not found that the appellant i.e. the owner of the vehicle, has allowed his vehicle to transport contraband drugs/ substances with his knowledge or connivance or that he or his agent had not taken all reasonable precautions against such use. Consequently, the conveyance is entitled to be released on superdari.

33. In fact, the Supreme Court in similar facts in Sainaba vs. State of Kerala and Another, 2022 SCC OnLine SC 1784 has held as under:-

"6. The appellant has urged inter alia that as per Section 36- C read with Section 51 of the NDPS Act, Criminal Procedure Code would be applicable for proceedings by a Special Court under NDPS Act and Section 451 has an inbuilt provision to impose any specific condition on the appellant while releasing the vehicle. The appellant is undoubtedly the registered owner of the vehicle but had not participated in the offence as alleged by the prosecution nor had knowledge of the alleged transaction.

7. Learned counsel seeks to rely on the judgment of this Court in *Sunderbhai Ambalal Desai v. State of Gujarat*, (2002) 10 SCC 283 opining that it is no use to keep such seized vehicles at police station for a long period and it is open to the Magistrate to pass appropriate orders immediately by taking a bond and a guarantee as well as security for return of the said vehicle, if required at any point of time.

8. On hearing learned counsel for parties and in the conspectus of the facts and circumstances of the case, and the legal provisions referred aforesaid, we are of the view that this is an appropriate case for release of the vehicle on terms and conditions to be determined by the Special Court.

9. The appeal is accordingly allowed leaving parties to bear their own costs."

IF THE VEHICLE IN THE PRESENT CASE IS KEPT IN THE CUSTODY OF POLICE TILL THE TRIAL IS OVER, IT WILL SERVE NO PURPOSE

34. This Court is also of the view that if the Vehicle in the present case is allowed to be kept in the custody of police till the trial is over, it will serve no purpose. This Court takes judicial notice that vehicles in police custody are stored in the open. Consequently, if the Vehicle is not released during the trial, it will be wasted and suffering the vagaries of the weather, its value will only reduce.

35. On the contrary, if the Vehicle in question is released, it would be beneficial to the owner (who would be able to earn his livelihood), to the bank/financier (who would be repaid the loan disbursed by it) and to the society at large (as an additional vehicle would be available for transportation of goods).

## CONCLUSION

36. Consequently, the present Criminal Appeal is allowed with directions to the trial Court to release the Vehicle in question in the interim on superdari after preparing a video and still photographs of the vehicle and after obtaining all information/documents necessary for identification of the vehicle, which shall be authenticated by the Investigating Officer, owner of the Vehicle and accused by signing the same. Further, the appellant shall not sell or part with the ownership of the Vehicle till conclusion of the trial and shall furnish an undertaking to the trial court that he shall surrender the Vehicle within one week of being so directed and/or pay the value of the Vehicle (determined according to Income Tax law on the date of its release), if so ultimately directed by the Court."

13. On a consideration of the submission of the learned counsel, the provisions of Section - 451 and 457 of the Cr.P.C and Section 51 of the NDPS Act, and the decision of the Supreme Court in the case of Bishwajit Dey (supra), we answer the reference in the following manner:-

(i) 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.

(ii) 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 Sections 451 and 457 of the Cr.P.C. for release of the seized vehicle pending final decision in the criminal case.

(iii) The Court has the discretion to release the seized vehicle in the interim but the power has to be exercised in accordance with law, in the facts and circumstances in each case.

(iv) If the Court decides to exercise its discretion to release a vehicle in the during pendency of the criminal case, suitable conditions have to be imposed to ensure its identification and production during trial with an embargo on its sale and / or transfer till conclusion of the trial and for submission of a specific undertaking for production of such vehicle.

14. The cases may now be listed before the assigned Single Bench for disposal in accordance with law.

(SavitriRatho) Judge Chief Justice. I agree.

(ChakradhariSharan Singh) Chief Justice Orissa High Court, Cuttack Dated 15.01.2025/Subhalaxmi  
Signed by: SUBHALAXMI PRIYADARSHANI Location: Orissa High Court, Cuttack Date:  
20-Jan-2025 19:39:54