

IA 2/25 S.C 75/25
CBN V/S RAHUL BAWARI

26.07.2025

Present: Ms. Pooja Bhasker, Ld. SPP for CBN.
Sh. Vikalp Sharma, Ld. counsel for
applicant/accused.

1. Vide the present order, I shall dispose of the application moved by the applicant release of the vehicle bearing registration no. RJ14GP 6560 on Superdari.

2. As per the applicant, the alleged recovery of the contraband was made from vehicle in question, while there was no knowledge on his part regarding the contraband being ferried by some other person. He had merely given the vehicle to accused Rahul for temporary use on 26.08.2024. The accused was known to the applicant from earlier and there was no occasion for the applicant to suspect any illegal purpose for the vehicle being borrowed from him.

3. It is submitted by ld. Counsel for applicant/owner that the applicant was not made an accused in the present case by the CBN and release of the vehicle to him is paramount for his survival, since otherwise he would not be able to earn his livelihood. The Ld. Counsel has relied upon the decision of

Hon'ble Supreme Court of India in "***Bishwajit Dey Vs. State of Assam***", Neutral Citation 2025: INSC: 32.

4. CBN had filed the reply. The Ld. SPP for CBN has strongly objected to the release of present application on the ground that the application is not maintainable and the vehicle in question was used for transporting the illicit contraband. There was a secret cavity made for transporting the substances. The vehicle has been seized legally under the provision of the NDPS Act and same is liable to confiscation. Furthermore, the vehicle is a case property and it needs to be exhibited during the testimony of the witnesses. Therefore, it was prayed that the present application be dismissed.

5. I have carefully gone through the submissions made by Ld. Counsels for the parties. I have also carefully perused the decision of Hon'ble Supreme Court of India in ***Bishwajit Dey (Supra)***. Although, this court is in full conformity with the law laid down therein, that in absence of any specific provision in the NDPS Act, the provisions of CrPC/BNSA shall apply. It is also correct that in the present case, the prosecuting agency is not prosecuting the applicant as one of the accused, however, since, the accused is absconding in the present case and repeated processes u/s 84 BNSA are issued against him and his presence is

yet to be secured, therefore, the facts of the present case are distinguishable from the facts of the case before the Hon'ble Supreme Court of India, since it was categorically held in that case that when the vehicle in question was to be released on interim on superdari, the authentication of the documents prepared i.e. video and still photographs had to be done not only by the IO, the owner, but also from the accused. Till the time the accused is not apprehended and produced before this Court, no authentication can be made by the accused and till then this Court is not going to entertain any application seeking release of the vehicle on superdari, as the said release at this stage without securing the presence of the accused might prejudice the case of the prosecuting agency.

6. The application is hereby dismissed accordingly
7. Copy of this order be given dasti as prayed for.

(Atul Ahlawat)
ASJ/Spl. Judge, NDPS/N. Delhi
26.07.2025