IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present:
Mr. Justice Md. Khairul Alam
And
Ms. Justice Urmee Rahman

CRIMINAL MISCELLANEOUS CASE NO. 38461 OF 2026

IN THE MATTER OF:

Md. Najrul Islam
… -Petitioner

-VERSUS-
The State
… Opposite party
Md. Sajjad Hossen, Advocate
…For the petitioner
Mr. Md. Masud Alam Doha, D.A.G
….For the State

Heard and Judgment on 04.11.2026.

Md. Khairul Alam. J

By this Rule, the petitioner, Md. Najrul Islam, prays for quashing the impugned order dated 14.09.2025 passed by the learned Sessions Judge, Lalmonirhat, in Criminal Miscellaneous Case No. 1038 of 2025, whereby the learned Sessions Judge rejected the miscellaneous case and thereby affirmed the order dated 17.08.2025 passed by the learned Senior Judicial

Magistrate, Court No. 4, Lalmonirhat, rejecting the petitioner's application for interim custody (jimma) of the battery-operated charging van seized in Hatibandha Police Station Case No. 47 dated 30.06.2025, corresponding to G.R. No. 254 of 2025, under Table 13(Kha) read with Section 36(1)/41 of the Madok Drabbaya Niyantran Ain, 2018.

The relevant facts, as disclosed from the record, for disposal of the Rule are that on 29.06.2025, at about 23:45 hours, a battery-operated charging van was seized on the allegation that it was being used for carrying 100 bottles of Phensedyl. At the time of seizure, two persons were arrested for possessing the said Phensedyl. Subsequently, Hatibandha Police Station Case No. 47 dated 30.06.2025 was registered against those two persons, wherein the present petitioner was not named as an accused. In the said case, the petitioner filed an application seeking interim custody of the seized vehicle, claiming to be its lawful owner and stating, inter alia, that the vehicle had been lying at the police station without care, exposed to the sun and rain, and was gradually losing its value. It was further stated that there was no certainty as to when the trial would be concluded and prolonged

detention of the vehicle would cause irreparable loss to the petitioner.

The learned Magistrate, by order dated 17.08.2025, rejected the said application, holding, inter alia, that in view of section 26 of the Madok Drabbaya Niyantran Ain, 2018 (hereinafter referred to as the Ain, 2018), the vehicle was liable to confiscation and, as such, there was no scope to release it on interim custody during the pendency of the trial. Being aggrieved, the petitioner preferred Criminal Miscellaneous Case No. 1038 of 2025 before the learned Sessions Judge, Lalmonirhat. The learned Sessions Judge, by the impugned order dated 14.09.2025, rejected the miscellaneous case, affirming the view taken by the learned Magistrate.

Being aggrieved by the aforesaid orders, the petitioner filed the instant application under section 561A of the Code of Criminal Procedure, 1898, and obtained the present Rule.

Mr. Md. Sajjad Hossain, the learned Advocate appearing on behalf of the petitioner, reiterates the submissions made in the application and submits that the continued detention of the vehicle in an open and unprotected place would result in its deterioration

and substantial financial loss to the petitioner and prays for making the Rule absolute.

Mr. Md. Masud Hossain Doha, the learned Deputy Attorney General appearing on behalf of the State, opposes the Rule and submits that the seized vehicle is a material exhibit in the case and, in view of section 26 of the Ain, 2018, it is liable to confiscation, and therefore, the vehicle cannot be released on interim custody during the pendency of the trial, and accordingly prays for discharging the Rule.

We have heard the learned Advocates for both sides, perused the application and the documents annexed thereto, and considered the materials on record.

It appears from the record that the vehicle was seized on 29.06.2025 and has since been lying in an open place, exposed to the sun and rain, without adequate protection. Consequently, its condition and market value are likely to deteriorate with the passage of time. It further appears that both the Courts below rejected the petitioner's prayer for interim custody solely on the ground that, in view of section 26 of the Ain, 2018, the vehicle is

liable to confiscation and, therefore, cannot be released during the pendency of the trial.

From the object and scheme of the relevant provisions of the Code of Criminal Procedure, 1898, it appears that property seized in connection with a criminal case should not ordinarily be retained in the custody of the Court or the police for an indefinite period, particularly when its continued detention may result in deterioration or loss of value, and where circumstances so warrant, the property may be restored to the person entitled to its possession during the inquiry or trial.

By virtue of section 54 of the Ain, 2018, the provisions of the Code of Criminal Procedure, 1898, apply to proceedings under the said Ain, save to the extent of any inconsistency with its provisions. We have carefully examined the Ain, 2018, including section 26 thereof, and do not find any express provision prohibiting the grant of interim custody of property seized in connection with an offence under the said Ain. In the absence of any such express prohibition, an application for interim custody of property seized in connection with an offence under the Ain, 2018, is required to be considered judiciously in the light of the

relevant provisions of the Code of Criminal Procedure, 1898. The mere fact that the property may ultimately be liable to confiscation does not, by itself, preclude its release on interim custody. Such release may be allowed subject to appropriate conditions to ensure that the property remains available for production before the Court and that the ultimate order of confiscation, if any, is not frustrated.

The power to grant interim custody and the power to order confiscation serve different purposes. An order granting interim custody does not prejudice the jurisdiction of the trial Court to pass an appropriate order regarding confiscation upon conclusion of the trial. Therefore, the provision for confiscation under section 26 of the Ain, 2018, cannot be construed as an absolute prohibition against granting interim custody of the seized property.

In the case in hand, the vehicle was seized in connection with an offence under the Ain, 2018. The petitioner claims to be its owner and has asserted that the vehicle has been lying in an open place, exposed to the elements, resulting in gradual deterioration of its condition and value. In such circumstances, the petitioner's prayer for interim custody ought to have been

considered on its own merits in the light of the relevant provisions of the Code of Criminal Procedure, 1898, instead of being rejected solely on the ground that the vehicle is liable to confiscation under section 26 of the Ain, 2018.

Having regard to the facts and circumstances of the case and the legal position discussed above, we are of the view that the Courts below proceeded on an erroneous interpretation of the law in rejecting the petitioner's application for interim custody of the seized vehicle. The impugned orders, therefore, warrant interference by this Court to secure the ends of justice.

Accordingly, the Rule is made absolute.

The impugned order dated 14.09.2025 passed by the learned Sessions Judge, Lalmonirhat in Criminal Miscellaneous Case No. 1038 of 2025, rejecting the miscellaneous case and thereby affirming the order dated 17.08.2025 passed by the learned Senior Judicial Magistrate, Court No. 4, Lalmonirhat, rejecting the petitioner's application for interim custody of the seized vehicle, is hereby quashed.

The concerned Court is directed to release the seized vehicle in favour of the petitioner, upon being satisfied as to her

lawful ownership thereof and subject to her furnishing a bond of Taka 90,000/- (ninety thousand) only, to the satisfaction of the said Court.

Upon obtaining interim custody of the vehicle, the petitioner shall not transfer, sell or dispose of the same until disposal of the case and shall produce the vehicle before the concerned Court as and when so directed. The concerned Court shall be at liberty to release the petitioner from the bond.

It is, however, made clear that the question of confiscation of the seized vehicle shall be decided by the trial Court in accordance with law, uninfluenced by any observation made herein.

Communicate this judgment and order to the concerned Court at once.

Ms. Urmee Rahman, J

I agree

Kashem, B.O