



CRL RC(MD)No.816 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.08.2025

PRONOUNCED ON : 27.11.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.816 of 2025

Muthukumar

... Petitioner

Vs.

State of Tamilnadu,
Rep. by The Inspector of Police,
Devarkulam Police Station,
Tirunelveli District.
(Crime No.296/2023)

... Respondent

PRAYER: Criminal Revision Petition is filed under Sections 438 r/w. 442 of BNSS, 2023, to call for records pertaining to the impugned dismissal order dated 05.01.2024 passed by the learned Judicial Magistrate Court No.III, Tirunelveli, in CrI.M.P.No. 314 of 2024 and set aside the same as illegal.

For Petitioner : Mr.A.Subramanian

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

ORDER

Preface:

This Criminal Revision Petition is directed against the order dated



CRL RC(MD)No.816 of 2025

05.01.2024 passed in Crl.M.P.No.314 of 2024 by the learned Judicial Magistrate No.III, Tirunelveli, whereby the petitioner's request for interim custody of his vehicle-one Bajaj Pulsar bearing registration No.TN 79 H 6620 seized in connection with Crime No.296 of 2023 on the file of Devarkulam Police Station, was rejected.

Case of the Prosecution:

2. As per the prosecution, crime No.296 of 2023 was registered on the file of Devarkulam Police Station, Tirunelveli District, for offences punishable under Section 8(c) r/w 20(b)(ii)(B) and 25 of the NDPS Act, 1985, relating to possession and transport of ganja in a quantity falling under clause (ii)(B) of Section 20(b). In the course of patrol / surveillance, the respondent police allegedly intercepted certain persons and recovered ganja from their possession / from a bag carried in or on a vehicle.

3. A motor vehicle (hereinafter referred to as "the subject vehicle") belonging to the petitioner was found at the scene and is alleged to have been used as the conveyance for transporting the contraband. The subject vehicle was seized as case property and is presently kept in the



CRL RC(MD)No.816 of 2025

custody of the respondent police, within the station limits, pending investigation.

4. In the objection filed to Crl.M.P.No.314 of 2024, the prosecution contended, in substance, that the subject vehicle was involved in the NDPS offence and is liable for confiscation under the NDPS Act. The investigation is still pending. The petition seeking interim custody is not maintainable. If the vehicle is released to the petitioner at this stage, he may not produce it in future, thereby hampering the prosecution and any confiscation proceedings. On these premises, the prosecution opposed interim release.

Case of the Petitioner:

5. The petitioner's case, as set out in Crl.M.P.No.314 of 2024 and reiterated in this revision, may be summarised as follows:

He is the registered owner of the subject vehicle seized in Crime No.296 of 2023. The registration certificate and allied documents stand in his name. He asserts that, while his vehicle may have been seized in connection with the alleged incident, he has not been arrayed as an accused, and there is no material to show that he had knowledge of, or



CRL RC(MD)No.816 of 2025

connivance in, any use of the vehicle for transporting contraband. He contends that the vehicle is a valuable asset, necessary for his livelihood / domestic use, and has been lying at the police station exposed to sun, rain and other natural elements, causing rapid deterioration and loss of value.

6. If the vehicle is kept indefinitely in the station yard, it will become mechanically unfit, lose road-worthiness and market value, and he will suffer irreparable financial loss, despite there being no allegation of criminal intent on his part. He submits that under Sections 451 and 457 Cr.P.C., 1973 (now Sections 497 and 503 BNSS), read with Sections 36-C and 51 NDPS Act, the criminal court has ample jurisdiction to pass orders regarding interim custody, and that Sections 60(3) and 63 of the NDPS Act protect innocent owners, and that the NDPS framework does not mandate the indefinite retention of vehicles in police custody. He asserts that he is willing to furnish a substantial bond, produce solvent sureties, file an undertaking not to alienate or misuse the vehicle, and produce the vehicle whenever required by the Court or the Investigating Officer. On these grounds, he sought interim return of the vehicle.



CRL RC(MD)No.816 of 2025

Gist of the Trial Court Order:

WEB COPY

7. By order dated 05.01.2024 in CrI.M.P.No.314 of 2024, the learned Judicial Magistrate No.III, Tirunelveli, dismissed the petition. The substance of the order is:

The subject vehicle is seized in connection with Crime No.296 of 2023 registered for serious offences under the NDPS Act, and investigation is still pending. The prosecution has objected to the petition, stating that the vehicle is involved in the NDPS offence and is liable for confiscation, and that if released, the petitioner may not produce it. Having regard to the nature of the offence and the pendency of investigation, the Court held that the petition for interim custody is not maintainable / not fit to be allowed. On this reasoning, the learned Magistrate dismissed the application.

Grounds of Revision:

8. The impugned order is assailed broadly on the following grounds:

The learned Magistrate erred in holding, in effect, that an application under Sections 451 and 457 Cr.P.C., 1973 / Sections 497 and 503 BNSS is not maintainable in relation to a vehicle seized in an



CRL RC(MD)/No.816 of 2025

NDPS case, ignoring Sections 36-C and 51 NDPS Act, which preserve the applicability of the Code. The Court below failed to consider the statutory protection afforded by Section 60(3) NDPS Act, which requires proof of an owner's knowledge or connivance before a conveyance can be confiscated, and Section 63 of the NDPS Act, which mandates a judicial determination of confiscation after notice and hearing.

9. The impugned order does not even advert to, much less apply, the binding judgments of the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai v. State of Gujarat***¹, ***Sainaba v. State of Kerala***², ***Bishwajit Dey v. State of Assam***³, and ***Denash v. State of Tamil Nadu***⁴. The learned Trial Court failed to consider that the Hon' ble Supreme Court has repeatedly stressed that seized vehicles should not be left to rot in police custody and that courts retain jurisdiction to grant interim custody even in NDPS cases, subject to suitable safeguards.

1 (2002) 10 SCC 283

2 2022 SCC OnLine SC 1784

3 2025 INSC 32

4 2025 SCC OnLine 2276



CRL RC(MD)No.816 of 2025

10. The Court below has uncritically accepted the prosecution's apprehension that the vehicle will not be produced in future, without examining whether such apprehension can be sufficiently mitigated by bonds, sureties and undertakings. The order is thus contrary to law, mechanically passed and unsustainable, warranting interference in revisional jurisdiction.

Submissions:

11. Mr. A. Subramanian, learned counsel for the petitioner, submitted that:

The petitioner is the undisputed owner of the subject vehicle. On the available material, he has not been arrayed as an accused and there is no prima facie allegation of his knowledge or connivance in the alleged NDPS offence. Under Section 36-C NDPS Act, the provisions of the Code of Criminal Procedure (and now BNSS) apply to proceedings before NDPS Courts, save where a different procedure is provided, and under Section 51 of the NDPS Act, the Code applies to warrants, arrests, searches and seizures, insofar as it is not inconsistent.



CRL RC(MD)/No.816 of 2025

12. Sections 451 and 457 Cr.P.C., 1973 / Sections 497 and 503

BNSS confer power on criminal courts to make orders regarding interim custody and proper preservation of seized property, and these powers are not ousted by the NDPS Act. Section 60(3) of the NDPS Act clearly mandates that a conveyance is liable for confiscation only if the owner fails to prove lack of knowledge/connivance and due precautions. Section 63 of the NDPS Act reserves the determination of confiscation to a Court, after notice and hearing. No such proceeding has been initiated, much less concluded.

13. Relying on **Sunderbhai Ambalal Desai v. State of Gujarat**⁵, he submitted that there is no justification in keeping vehicles in police custody for prolonged periods, as they deteriorate materially and lose value. The Supreme Court has repeatedly discouraged such practice. Placing reliance on **Bishwajit Dey v. State of Assam**⁶, he urged that where the owner is not an accused and there is no prima facie material of complicity, the normal rule should be to return the vehicle to the owner on *superdari*, subject to appropriate conditions.

⁵ (2002) 10 SCC 283

⁶ 2025 INSC 32



CRL RC(MD)No.816 of 2025

14. By citing ***Denash v. State of Tamil Nadu***⁷, he submitted that NDPS disposal rules and Drug Disposal Committees cannot override the judicial power of criminal courts under Sections 451 and 457 Cr.P.C., 1973 (497 and 503 BNSS) or the owner's rights under Sections 60(3) and 63 of the NDPS Act. Administrative mechanisms cannot convert a judicially unconfiscated vehicle into "government property". He submitted that the petitioner is ready to comply with any stringent conditions, including execution of a substantial bond, production of solvent sureties, and an undertaking to produce the vehicle whenever required.

15. Per contra, Mr. T. Senthil Kumar, learned Additional Public Prosecutor, submitted that the subject vehicle was used in the commission of an NDPS offence, as per the prosecution version, and is thus liable to be dealt with under the confiscation provisions of the NDPS Act. The investigation is still pending, and interim release of the vehicle at this stage may hamper the effective prosecution of the case. There is a genuine apprehension that if the vehicle is handed over to the petitioner, he may not produce it in future for trial or confiscation proceedings. In this backdrop, the learned Magistrate exercised his discretion in refusing interim custody, and such order does not warrant

7 2025 SCC OnLine 2276



CRL RC(MD)No.816 of 2025

interference.

WEB COPY

16. Heard the learned counsel on either side and carefully perused the materials available on record.

Point for Consideration:

17. In the light of the rival submissions, the point that arises is whether the impugned order dated 05.01.2024 in CrI.M.P.No.314 of 2024 declining interim custody of the subject vehicle to the petitioner is legally sustainable, or whether, in view of the statutory scheme and the decisions in ***Sunderbhai Ambalal Desai v. State of Gujarat***⁸, ***Bishwajit Dey v. State of Assam***⁹ and ***Denash v. State of Tamil Nadu***¹⁰, the petitioner is entitled to interim custody on suitable conditions.

8 (2002) 10 SCC 283

9 2025 INSC 32

10 2025 SCC OnLine 2276



CRL RC(MD)No.816 of 2025

Analysis:

WEB COPY

18. The NDPS Act is undoubtedly a special statute, but Section 36-C of the NDPS Act expressly applies the provisions of the Code of Criminal Procedure to proceedings before NDPS Courts, save as otherwise provided. Section 51 of the NDPS Act applies the Code to warrants, arrests, searches and seizures under the Act, insofar as they are not inconsistent with the NDPS Act.

19. Section 451 Cr.P.C., 1973 / Section 497 BNSS empowers criminal courts to make orders for proper custody and disposal of property pending trial. Section 457 Cr.P.C., 1973 / Section 503 BNSS deals with cases where property is seized by police and reported to a Magistrate, and empowers the Court to decide who is entitled to possession and to deliver the property to such person on appropriate terms.

20. Section 60(3) of the NDPS Act makes a conveyance liable to confiscation only if the owner fails to establish lack of knowledge or connivance and absence of negligence. Section 63 of the NDPS Act mandates that confiscation shall be ordered by the Court, after notice



CRL RC(MD)No.816 of 2025

and an opportunity of hearing to the person claiming any right in the property.

21. From this statutory architecture, it is evident that the NDPS Act prescribes the substantive liability and the judicial process for confiscation. The Code / BNSS continues to regulate interim custody and preservation of property pending such process. There is no provision in the NDPS Act which bars a criminal court from granting interim custody to an owner of a seized vehicle. On the contrary, Sections 60(3) and 63 of the NDPS Act presuppose that the owner's rights subsist until a judicial confiscation order is passed.

22. In ***Sunderbhai Ambalal Desai v. State of Gujarat***¹¹, the Hon'ble Supreme Court emphasised that the vehicles should not be kept in police custody for long periods, prolonged station custody results in loss of value and utility, and there is no purpose in allowing vehicles to become junk. Magistrates should promptly pass orders to release vehicles on *superdari*, after recording detailed identification and photographs.

¹¹ (2002) 10 SCC 283



CRL RC(MD)No.816 of 2025

23. In ***Bishwajit Dey v. State of Assam***¹², the Hon'ble Supreme Court classified typical scenarios of vehicle seizure. It highlighted that, where an innocent owner claims the vehicle and there is no material suggesting his complicity, interim release should ordinarily be granted, subject to adequate safeguards. And it reiterated that courts must adopt a realistic and balanced approach, instead of mechanically refusing release.

24. In ***Denash v. State of Tamil Nadu***¹³, the Supreme Court clarified that NDPS disposal rules, and the constitution of Drug Disposal Committees, are administrative mechanisms, which cannot override or curtail the jurisdiction of criminal courts under Sections 451 / 457 Cr.P.C., 1973 (497 / 503 BNSS). The Hon'ble Apex Court held that confiscation is a judicial function under Sections 60(3) and 63 of the NDPS Act, and that Drug Disposal Committees cannot assume the role of adjudicating ownership or confiscation and emphasised that the rights of owners, especially bona fide owners or those not implicated as accused, must be protected, and that interim custody may, and often should, be granted to them, on conditions.

¹² 2025 INSC 32

¹³ 2025 SCC OnLine 2276



CRL RC(MD)/No.816 of 2025

25. Applying the above to the case at hand the petitioner is the registered owner of the subject vehicle. There is nothing placed before this Court to show that he is an accused in Crime No.296 of 2023 or that the prosecution has asserted his knowledge or connivance in the alleged NDPS offence. The vehicle is lying in the custody of the respondent police, presumably in an open yard, exposed to natural elements, and undergoing permanent deterioration.

26. The learned Magistrate declined interim custody primarily on two grounds:

Pendency of investigation, and apprehension that the petitioner may not produce the vehicle in future, as per the prosecution's objection. Pendency of investigation is not a bar to the Court exercising jurisdiction under Sections 451 and 457 Cr.P.C., 1973 / 497 and 503 of the BNSS. These provisions are specifically designed to operate during the pendency of investigation and trial. The apprehension of non-production is speculative and can be adequately addressed through stringent conditions such as a substantial bond, solvent sureties, an undertaking not to alienate or alter the vehicle, documentation of the vehicle's identity, and directions for production as and when required.



CRL RC(MD)/No.816 of 2025

27. There is no indication that any judicial confiscation proceeding has been initiated under Section 63 of the NDPS Act, hence, the petitioner remains an owner with subsisting rights, which cannot be nullified merely by seizure. Keeping the vehicle indefinitely in police custody is directly contrary to the guidance in **Sunderbhai Ambalal Desai v. State of Gujarat**¹⁴, **Bishwajit Dey v. State of Assam**¹⁵ and **Denash v. State of Tamil Nadu**¹⁶ and leads to a disproportionate hardship to the petitioner, who may ultimately be found entirely innocent as an owner. In these circumstances, the learned Magistrate's refusal to consider conditional release amounts to a failure to exercise jurisdiction in accordance with law, and the impugned order is liable to be interfered with.

28. In the result, the Criminal Revision Petition is allowed. The impugned order dated 05.01.2024 passed in CrI.M.P.No.314 of 2024 by the learned Judicial Magistrate Court No.III, Tirunelveli, is set aside.

¹⁴ (2002) 10 SCC 283

¹⁵ 2025 INSC 32

¹⁶ 2025 SCC OnLine 2276



CRL RC(MD)/No.816 of 2025

29. The respondent police are directed to release the subject vehicle (seized in Crime No.296 of 2023 of Devarkulam Police Station) to the petitioner on interim custody, subject to the following conditions:

- (a) the petitioner is directed to deposit a sum of **Rs.25,000/- (Rupees Twenty Five Thousand only)** as non-refundable deposit for the said vehicle to the credit of the Manolaya, Indian Overseas Bank, Kottaram Branch, Account No. 025302000000284, IFSC Code: IOBA0000253;
- (b) the petitioner shall execute a bond for a sum of **Rs.10,000/- (Rupees Ten Thousand only)**, with two sureties for a likesum to the satisfaction of the learned Judicial Magistrate Court No.III, Tirunelveli;
- (c) the petitioner shall deposit the original Registration Certificate of the vehicle before the learned Judicial Magistrate Court No.III, Tirunelveli;
- (d) The petitioner shall give an undertaking before the respondent/ authority concerned stating that he will not use the vehicle in question for any illegal activities in future, failing which the respondent/trial Court is at liberty to confiscate the vehicle;
- (e) the petitioner shall not alienate and shall not make any



CRL RC(MD)No.816 of 2025

alteration in the vehicle;

WEB COPY

(f) the petitioner shall produce the vehicle before the learned Trial Court on 1st Monday of every English calendar month.

30. It is made clear that this order pertains only to the question of interim custody of the vehicle, and shall not be construed as expressing any opinion on the merits of the prosecution in Crime No.296 of 2023 or on the ultimate question of confiscation under the NDPS Act, which shall be decided independently by the competent Court based on evidence.

31. With the above directions, this Criminal Revision case is allowed.

27.11.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml



CRL RC(MD)No.816 of 2025

To

WEB COPY

- 1.The Judicial Magistrate Court No.III,
Tirunelveli.
- 2.The Inspector of Police,
Devarkulam Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CRL RC(MD)No.816 of 2025

L.VICTORIA GOWRI, J.,

Sml

CRL RC(MD)No.816 of 2025

27.11.2025