



CRL RC(MD)No.880 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 29.08.2025

PRONOUNCED ON : 27.11.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.880 of 2025

Amoha

... Petitioner

Vs.

The State of Tamilnadu,
Rep. by, The Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram District.
(Crime No.98/2025)

... Respondent

PRAYER: Criminal Revision Petition is filed under Sections 438 r/w. 442 of BNSS, 2023, to set aside the order passed by the learned Additional District and Sessions Judge/Presiding Officer Special Court for E.C and NDPS Act Cases, Pudukottai, in Cr.M.P.No.1533/2025 dated 26.06.2025 and allow this petition by grant interim custody of the petitioner's bike bearing registration No.TN-65-BC-9316 to her.

For Petitioner : Mr.B.Mahendarajan

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



CRL RC(MD)No.880 of 2025

ORDER

WEB COPY

This Criminal Revision Case is directed against the order dated 26.06.2025 passed in CrI.M.P.No.1533 of 2025 by the learned Additional District and Sessions Judge / Presiding Officer, Special Court for Essential Commodities and NDPS Act Cases, Pudukottai, whereby the petitioner's request for interim custody of her Hero Pleasure two-wheeler bearing Registration No. TN-65-BC-9316 was rejected.

2. The said vehicle has been seized in connection with Crime No. 98 of 2025 on the file of Kenikkarai Police Station, Ramanathapuram District, registered for offences under Sections 8(c) r/w 20(b)(ii)(B) and 25 of the NDPS Act, 1985. The petitioner is described as a third-party claimant and asserts that she is the registered owner of the vehicle, which is essential for her livelihood.

Case of the Prosecution:

3. The prosecution version, as reflected in the FIR and in the written objection filed before the Special Court, may be summarised as follows:



CRL RC(MD)No.880 of 2025

The respondent police, Kenikkarai Police Station, registered Crime No.98 of 2025 for offences punishable under Sections 8(c) r/w 20(b)(ii) (B) and 25 of the NDPS Act, 1985. According to the prosecution, the accused in the said crime were found in possession / transport of ganja in a quantity falling within the contour of Section 20(b)(ii)(B) (intermediate quantity). The case is that the accused used a Hero Pleasure two-wheeler bearing Reg. No. TN-65-BC-9316 in connection with the commission of the offence. The police seized the said two-wheeler, treating it as a conveyance used in the commission of the NDPS offence, and kept it in station custody as case property.

4. The respondent takes the position that the petitioner is connected with the accused and that the vehicle is part of the nexus used for the alleged NDPS activity, though the present materials placed before this Court do not indicate that she has been arrayed as an accused. In the written objection before the Special Court, the learned Special Public Prosecutor contended that if the vehicle is handed over to the petitioner on interim custody, she will commit similar kinds of offences, and that, therefore, the petition for interim custody should be dismissed. On the basis of this apprehension, the prosecution opposed release of the two-wheeler.



CRL RC(MD)No.880 of 2025

Case of the Petitioner:

WEB COPY

5. The case of the petitioner, as disclosed in CrI.M.P.No.1533 of 2025 and reiterated in this revision, is as follows:

The petitioner is the third-party claimant and registered owner of the two-wheeler Hero Pleasure bearing Registration No. TN-65-BC-9316. The vehicle stands in her name. She states that the respondent / complainant has registered a false case and, in that context, has recovered and seized her two-wheeler. The petitioner asserts that the two-wheeler is vital for her livelihood. She uses it for her daily commute / official and personal purposes, and without the vehicle, she faces severe hardship.

6. The case in Crime No.98 of 2025 has been registered for offences under Sections 8(c) r/w 20(b)(ii)(B) and 25 NDPS Act against the accused; the vehicle was seized and is kept in the police station. The petitioner maintains that she had no role in the alleged offences and is not an accused. The vehicle is kept in an open yard, exposed to heat, rain and other natural elements. Over time, such exposure leads to rapid deterioration, affecting its mechanical condition and market value. If the vehicle is kept indefinitely in police custody, it will eventually



CRL RC(MD)No.880 of 2025

become unfit for use and practically valueless.

WEB COPY

7. She contends that, as the owner of the vehicle and a third party to the alleged crime, she is entitled to seek interim custody, subject to whatever conditions the Court may impose, in order to prevent needless destruction of her property and to continue earning her livelihood. On this basis, the petitioner prayed before the Special Court, and now before this Court, for interim custody of the two-wheeler.

Gist of the Impugned Order:

8. By order dated 26.06.2025 in Crl.M.P.No.1533 of 2025, the learned Additional District and Sessions Judge / Presiding Officer, Special Court for E.C. & NDPS Act Cases, Pudukottai, dismissed the petitioner's application. The reasoning, in substance, is:

The vehicle bearing Reg. No. TN-65-BC-9316 was seized in Crime No.98 of 2025 in connection with alleged offences under Sections 8(c) r/w 20(b)(ii)(B) and 25 NDPS Act. The prosecution has taken the stand that if the two-wheeler is returned to the petitioner on interim custody, she will commit similar kinds of offences in future. Having regard to the



CRL RC(MD)/No.880 of 2025

nature of the offence under the NDPS Act and the apprehension expressed by the prosecution, the learned Special Judge held that the petitioner was not entitled to interim custody. On that footing, the petition was dismissed.

Grounds of Revision:

9. The petitioner assails the impugned order on various grounds, including: The learned Special Judge failed to appreciate that the petitioner is a third-party owner, not an accused, and that her right to property and livelihood cannot be denied solely on conjectural apprehensions. The Court below did not properly apply the provisions of Sections 451 and 457 Cr.P.C., 1973 (now Sections 497 and 503 BNSS), read with Sections 36-C and 51 NDPS Act, which clearly confer jurisdiction on criminal courts to deal with interim custody and proper preservation of seized property, including vehicles.

10. The learned Judge ignored the statutory scheme of Sections 60(3) and 63 of the NDPS Act, which stipulate that confiscation of a conveyance is a judicial determination after evidence and hearing, and cannot be presumed at the interlocutory stage. The impugned order



CRL RC(MD)No.880 of 2025

does not consider, or give effect to, the principles laid down by the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai v. State of Gujarat***¹, ***Bishwajit Dey v. State of Assam***² and ***Denash v. State of Tamil Nadu***³, which emphasise that vehicles should not be allowed to rot in police custody and that interim custody should ordinarily be granted to owners on stringent conditions.

11. The impugned order is cryptic and one-sided, as it accepts the prosecution's apprehension at face value, without examining whether such apprehensions can be reasonably addressed by imposing conditions, bonds and undertakings, and without weighing the hardship and irreparable loss to the petitioner. The learned Judge has effectively adopted a "no release" policy in the NDPS context, which is inconsistent with the statutory provisions and binding Supreme Court precedents.

1 (2002) 10 SCC 283

2 2025 INSC 32

3 2025 SCC OnLine 2276



CRL RC(MD)No.880 of 2025

Submissions:

WEB COPY

12. Mr. B. Mahendarajan, learned counsel for the petitioner, submitted that the petitioner is the registered owner of the Hero Pleasure two-wheeler; she is not arrayed as an accused and is, at this stage, a bona fide third-party owner whose vehicle is alleged to have been used by someone else. Section 36-C of the NDPS Act provides that the provisions of the Code of Criminal Procedure (and now BNSS) apply to the proceedings before a Special Court, except where inconsistent with the NDPS Act. Similarly, Section 51 of the NDPS Act applies the Code to searches and seizures to the extent not inconsistent.

13. Under Section 451 Cr.P.C., 1973 / Section 497 BNSS, the criminal court is empowered to make orders for the proper custody and, where necessary, disposal of property pending inquiry or trial; Section 457 Cr.P.C., 1973 / Section 503 BNSS enables the court to decide the person entitled to possession of property reported as seized and to order its delivery on interim custody. Confiscation of a conveyance under the NDPS Act is governed by Section 60(3) and the procedure in Section 63, which require a judicial adjudication after evidence and after hearing the owner. The present stage is only interlocutory; the question is merely one of proper interim custody.



CRL RC(MD)No.880 of 2025

14. He relied on **Sunderbhai Ambalal Desai v. State of Gujarat**⁴, where the Supreme Court held that keeping seized vehicles in police custody for long periods causes unnecessary loss and that courts should ordinarily release vehicles to the owners on superdari, with proper documentation and conditions. He heavily relied on **Bishwajit Dey v. State of Assam**⁵, wherein the Supreme Court examined different categories of cases involving seizure from conveyances and observed that where an owner or bona fide claimant is not clearly complicit in the crime, the vehicle should normally be released on appropriate conditions, as the criminal court's discretion under Sections 451 / 457 must be exercised pragmatically and not mechanically.

15. He further relied on **Denash v. State of Tamil Nadu**⁶, where the Supreme Court clarified that administrative disposal mechanisms under the NDPS regime cannot divest criminal courts of their jurisdiction to order interim custody, and cannot override the rights of owners under Sections 60(3) and 63 of the NDPS Act. The learned

⁴ (2002) 10 SCC 283

⁵ 2025 INSC 32

⁶ 2025 SCC OnLine 2276



CRL RC(MD)No.880 of 2025

WEB COPY
counsel submitted that the prosecution's apprehension of future misuse is speculative; in any event, such apprehensions can be addressed by imposing stringent conditions, such as bonds, sureties, prohibition of alienation and an undertaking to produce the vehicle whenever required. On these grounds, he prayed that the impugned order be set aside and that the vehicle be released on interim custody.

16. Per contra, Mr. T. Senthil Kumar, learned Additional Public Prosecutor, submitted that the case in Crime No.98 of 2025 under Sections 8(c), 20(b)(ii)(B) and 25 of the NDPS Act involves serious allegations of NDPS offence. The two-wheeler bearing Reg. No. TN-65-BC-9316 was used in connection with the offence, and is a crucial piece of case property. The prosecution apprehends that if the vehicle is handed over to the petitioner on interim custody, she may commit similar offences in future, and the vehicle may again be used as an instrumentality for NDPS activity. Given the seriousness of NDPS offences and this apprehension, the Special Court has rightly refused to release the vehicle. He therefore supported the impugned order and prayed for dismissal of the revision.



CRL RC(MD)No.880 of 2025

17. Heard the learned counsels on either side and carefully perused the materials available on record.

Point for Consideration:

18. In the light of the above, the point arising for determination is whether the learned Special Judge was justified in refusing interim custody of the Hero Pleasure bike bearing Registration No. TN-65-BC-9316 to the petitioner solely on the basis of an apprehension of future misuse, or whether, in view of Sections 36-C, 51, 60(3) and 63 of the NDPS Act read with Sections 497 and 503 BNSS and the law laid down in ***Sunderbhai Ambalal Desai v. State of Gujarat***⁷, ***Bishwajit Dey v. State of Assam***⁸ and ***Denash v. State of Tamil Nadu***⁹, this Court ought to set aside the impugned order and grant interim custody on appropriate conditions.

Analysis:

19. The NDPS Act is a special statute but, by its own design, it

7 (2002) 10 SCC 283

8 2025 INSC 32

9 2025 SCC OnLine 2276

11/20



CRL RC(MD)No.880 of 2025

does not displace the general criminal procedure except where inconsistent Section 36-C of the NDPS Act provides that the provisions of the Code of Criminal Procedure apply to proceedings before the Special Court, save as otherwise provided in the Act. Section 51 of the NDPS Act mandates that the provisions of the Cr.P.C., 1973 apply to warrants, arrests, searches and seizures under the Act, insofar as they are not inconsistent with its provisions.

20. Section 451 Cr.P.C., 1973 / 497 BNSS deals with the power to order proper custody and interim disposal of property pending trial, including for sale or return where expedient. Likewise, Section 457 Cr.P.C., 1973 / 503 BNSS envisages the power to determine the person entitled to possession of property seized and reported by police, and to deliver it on such terms as the Court thinks fit.

21. Section 60(3) of the NDPS Act provides that a conveyance used in carrying narcotic drugs is liable to confiscation unless the owner proves that it was used without his knowledge / connivance and that he and his agent took reasonable precautions. Section 63 of the NDPS Act requires the Court, at the conclusion of trial or in appropriate



CRL RC(MD)/No.880 of 2025

circumstances, to decide whether any article or conveyance is liable to confiscation, after giving notice and hearing to the person claiming any right thereto. Thus, the statutory architecture draws a sharp distinction between Interim custody of property pending trial (governed by the Code / BNSS), and final confiscation, which is a judicial act under Sections 60 and 63 of the NDPS Act. Granting interim custody on conditions does not amount to negation of potential confiscation; it merely ensures that the property is not destroyed by neglect while the case is pending.

22. In **Sunderbhai Ambalal Desai v. State of Gujarat**¹⁰, the Supreme Court held that prolonged retention of vehicles in police custody is undesirable. Courts should expeditiously pass appropriate orders for return of vehicles to their owners on superdari, subject to suitable terms. Photographs, panchnamas and descriptions can sufficiently preserve evidentiary value.

23. In **Bishwajit Dey v. State of Assam**¹¹, the Hon'ble Supreme Court discussed typical categories of cases involving seizure of vehicles, including where owners are not clearly implicated in the crime. It

10 (2002) 10 SCC 283

11 2025 INSC 32

13/20



CRL RC(MD)No.880 of 2025

emphasised that in such cases, and subject to securing the prosecution's interest through bonds and undertakings, release of the vehicle to the owner on interim custody should normally be favoured, as prolonged detention leads to waste and hardship. It stressed that criminal courts must adopt a practical, balanced approach in exercising powers under Sections 451 / 457 Cr.P.C., 1973.

24. In ***Denash v. State of Tamil Nadu***¹², the Supreme Court clarified that administrative or subordinate mechanisms under the NDPS regime cannot divest the criminal courts of jurisdiction under Sections 451 / 457 Cr.P.C., 1973 (497 / 503 BNSS) to deal with seized property. It reaffirmed that Sections 60(3) and 63 of the NDPS Act preserve the rights of owners to a judicial determination of confiscation, which cannot be overridden by fear of misuse alone.

25. These decisions collectively stand for the proposition that the vehicles should not be allowed to rot in police custody; Courts must actively consider interim release to legitimate owners; and apprehensions of future misuse or non-production should be addressed by stringent conditions, not by a blanket policy of refusal.

¹² 2025 SCC OnLine 2276



CRL RC(MD)No.880 of 2025

WEB COPY

26. Applying the above principles to the facts at hand that the petitioner is a third-party claimant and the registered owner of the two-wheeler. There is no material before this Court to show that she has been arrayed as an accused or that there is prima facie evidence of her knowledge or connivance in the alleged NDPS offence. The prosecution's objection is not that she previously engaged in NDPS offences, but that if the vehicle is returned, she will commit similar offences. This is purely speculative at this stage.

27. The vehicle is presently in station custody, exposed to natural elements and, by the passage of time, will suffer mechanical deterioration and loss of value. This is the very mischief highlighted in **Sunderbhai Ambalal Desai v. State of Gujarat**¹³ and **Bishwajit Dey v. State of Assam**¹⁴. There is nothing to indicate that the evidentiary process (seizure mahazar, photographs, noting of engine / chassis numbers, etc.) is incomplete. Preservation of the vehicle's evidentiary identity can be ensured by proper documentation before release.

28. The petitioner asserts, without serious contradiction, that the

13 (2002) 10 SCC 283

14 2025 INSC 32

15/20



CRL RC(MD)No.880 of 2025

vehicle is vital for her livelihood. The law does not require that a bona fide owner's livelihood be crippled for years merely on the basis of conjectural apprehensions, especially when the statute itself contemplates a post-trial judicial determination of confiscation under Section 63. The apprehension of future misuse can be adequately dealt with by imposing strict conditions: substantial bond, solvent sureties, undertaking not to alienate or encumber the vehicle, restrictions on its use, and a continuing obligation to produce it before the Court whenever required.

29. Viewed in the light of ***Bishwajit Dey v. State of Assam***¹⁵ and ***Denash v. State of Tamil Nadu***¹⁶, the impugned order, which simply accepts the prosecution's apprehension and refuses interim custody outright, without exploring whether conditions could sufficiently protect the prosecution's interest, suffers from a misdirection in law. This Court is, therefore, of the considered view that the impugned order is unsustainable and that the petitioner is entitled to interim custody, subject to stringent safeguards.

15 2025 INSC 32

16 2025 SCC OnLine 2276



CRL RC(MD)No.880 of 2025

30. In the result, the Criminal Revision Petition is allowed. The order dated 26.06.2025 passed in CrI.M.P.No.1533 of 2025 by the learned Additional District and Sessions Judge / Presiding Officer, Special Court for E.C. and NDPS Act Cases, Pudukottai, is set aside.

31. The respondent police are directed to release the Hero Pleasure two-wheeler bearing Registration No. TN-65-BC-9316 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 the Siddha Clinic, Madurai Bench of Madras High Court (A/c No. 6865578213, Indian Bank, Madurai Bench of Madras High Court);
- (b) the petitioner shall execute a bond for a sum of **Rs.25,000/- (Rupees Twenty Five Thousand only)**, with two sureties for a likesum to the satisfaction of the learned Additional District and Sessions Judge/Presiding Officer Special Court for E.C and NDPS Act Cases, Pudukottai;
- (c) the petitioner shall deposit the original Registration Certificate



WEB COPY



CRL RC(MD)No.880 of 2025

of the vehicle before the learned Additional District and Sessions Judge/Presiding Officer Special Court for E.C and NDPS Act Cases, Pudukottai;

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

32. 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.98 of 2025 or on the ultimate question of confiscation under the NDPS Act, which shall be decided independently by the Trial Court on the basis of evidence.

33. With the above directions, this Criminal Revision Petition is allowed.

18/20



CRL RC(MD)No.880 of 2025

27.11.2025

WEB COPY

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

To

- 1.The Additional District and Sessions Judge
Presiding Officer
Special Court for E.C and NDPS Act Cases,
Pudukottai.
- 2.The Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CRL RC(MD)No.880 of 2025

L.VICTORIA GOWRI, J.,

Sml

CRL RC(MD)No.880 of 2025

27.11.2025