



Crl.OP(MD)No.21910 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2025

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

Crl.O.P.(MD).Nos.21910 of 2025

P.Sanjaykumar

... Petitioner / Owner of the Vehicle

Vs.

The State of Tamil Nadu,
Rep . by The Inspector of Police,
Puliyangudi Police Station,
Tenkasi District.
Crime No.392/2024

... Respondent / Complainant

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records connected with the order in Crl.RC.No.2 of 2025 dated 13.06.2025 passed by the learned Principal Sessions Judge, Tenkasi, confirming the order in Crl.M.P.No.2327 of 2024 dated 07.12.2024 passed by the learned Judicial Magistrate, Sivagiri, and set aside the same, consequently directing the respondent to entrust the interim custody of the Auto bearing registration No.TN 76 X 3745 to the petitioner.



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For Petitioner : Mr.S.Malaikani

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

ORDER

Preface:

This Criminal Original Petition is directed against the concurrent orders passed by the Courts below refusing interim custody of a seized vehicle, solely on the premise that steps for confiscation have been initiated under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985. The petitioner, being the registered owner of the vehicle, seeks interference of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, contending that the refusal to grant interim custody is contrary to settled legal principles and results in grave prejudice.

Case of the prosecution:

2. The case of the prosecution is that on receipt of information regarding two persons allegedly selling ganja using an autorickshaw,



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the respondent police proceeded to a place near an overhead water tank situated west of Subbulingam Higher Secondary School.

3. It is alleged that the petitioner and one Ayyanar were found in possession of 50 grams of ganja each, whereupon a case came to be registered in Crime No.392 of 2024 for offences punishable under Sections 296(b), 132 and 351(3) of the Bharatiya Nyaya Sanhita (corresponding to Sections 294(b), 353 and 506(ii) IPC) and Section 8(c) read with Section 20(b)(ii)(A) of the NDPS Act.

4. According to the prosecution, Accused No.1 allegedly confessed to having procured the contraband from Chengalpattu and to having used the autorickshaw bearing Registration No. TN 76 X 3745 for transportation and sale.

5. The said autorickshaw was seized and produced before the learned Judicial Magistrate, Sivagiri, and was assigned P.R. No.506 of 2024.



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Procedural history:

6. The petitioner, being the registered owner of the vehicle, filed Cr.M.P. No.2327 of 2024 before the learned Judicial Magistrate, Sivagiri, seeking interim custody of the autorickshaw.

7. By order dated 07.12.2024, the learned Judicial Magistrate dismissed the petition on the ground that the prosecution had initiated steps for confiscation and, therefore, the petition was not maintainable.

8. Aggrieved by the said order, the petitioner preferred Crl.R.C. No.2 of 2025 before the learned Principal Sessions Judge, Tenkasi. The Revisional Court, by order dated 13.06.2025, confirmed the order of the learned Judicial Magistrate, holding that since confiscation proceedings were stated to be pending, interim custody could not be granted. Challenging the concurrent findings, the petitioner has approached this Court by way of the present Criminal Original Petition.



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Grounds for quash:

9. The petitioner assails the impugned orders on the following grounds:

a) The Courts below failed to appreciate that mere initiation or proposal for confiscation cannot bar grant of interim custody.

b) The petitioner, being the registered owner, has a superior possessory right pending trial.

c) Confiscation under the NDPS Act can be ordered only upon culmination of trial and proof of guilt.

d) The reliance placed on the decision in Crl.R.C.(MD) No.41 of 2019 dated 16.06.2023 is wholly misconceived and mechanically applied.

e) Continued retention of the vehicle in open custody would result in irreversible damage and loss of value.

f) The NDPS Act does not impose an absolute embargo on interim release of vehicles.



Submissions:

10. The learned counsel for the petitioner submitted that the petitioner is admittedly the registered owner of the autorickshaw and that the vehicle is his sole means of livelihood. It was contended that the vehicle is lying exposed to sun and rain in the police station and its utility and market value are rapidly deteriorating. It was further submitted that confiscation proceedings cannot be presumed or preempted during pendency of investigation or trial and that denial of interim custody amounts to punishment before adjudication. The learned counsel for the petitioner relied upon the well-settled principles laid down by the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai vs. State of Gujarat***¹ and allied judgments.

11. The learned Additional Public Prosecutor submitted that the vehicle was used for transportation and sale of ganja and that steps have been initiated for confiscation. It was contended that if interim custody is granted, there is a possibility of the vehicle being misused, altered, hypothecated or not produced during trial.

¹ (2002) 10 SCC 283



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

Point for consideration:

13. The point that arises for consideration is whether the concurrent orders passed by the Courts below refusing interim custody of the vehicle solely on the ground of proposed confiscation are sustainable in law?

Analysis and discussion:

14. It is not in dispute that the petitioner is the registered owner of the autorickshaw bearing Registration No. TN 76 X 3745. The power to grant interim custody of seized property is intended to prevent unnecessary decay, deterioration and loss of value of the property pending trial.

15. The Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai v. State of Gujarat***² has categorically held that vehicles should not be allowed to remain idle in police custody and that

² [(2002) 10 SCC 283]



interim release with appropriate safeguards is the rule rather than the exception.

16. The NDPS Act, though stringent, does not contain an express bar prohibiting interim custody of vehicles pending trial. Confiscation under the Act is a consequence of conviction and not a preliminary or automatic process.

17. A mere assertion by the prosecution that confiscation proceedings are contemplated cannot defeat the statutory discretion vested in Courts to order interim custody.

18. The Courts below have mechanically relied upon a previous decision without examining whether the factual matrix of the present case warranted denial of interim custody.

19. The apprehension expressed by the prosecution can be adequately safeguarded by imposing stringent conditions such as execution of bond, production of documents, and undertaking to produce the vehicle as and when required.



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20. Continued retention of the vehicle in open police custody would cause disproportionate hardship to the petitioner and serve no useful purpose to the prosecution.

25. This Court is of the considered view that the impugned orders suffer from legal infirmity, non-application of mind and misinterpretation of the scope of confiscation proceedings.

26. The refusal to grant interim custody merely on the ground of proposed confiscation is unsustainable and contrary to settled legal principles.

27. In the result, this Criminal Original Petition is allowed. The order dated 13.06.2025 passed in Crl.R.C. No.2 of 2025 by the learned Principal Sessions Judge, Tenkasi, and the order dated 07.12.2024 passed in Cr.M.P. No.2327 of 2024 by the learned Judicial Magistrate, Sivagiri, are set aside.



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28. The respondent is directed to release the autorickshaw bearing Registration No. TN 76 X 3745 to the petitioner on interim custody, subject to the following conditions:

- i. The petitioner shall execute a bond for a sum to be fixed by the learned Judicial Magistrate, Sivagiri.
- ii. The petitioner shall not alienate, encumber or alter the vehicle in any manner.
- iii. The petitioner shall produce the vehicle as and when required by the learned Trial Court or the Investigating Agency.
- iv. The petitioner shall cooperate with the investigation and trial.

04.12.2025

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

To

1. The Inspector of Police,
Puliyangudi Police Station,
Tenkasi District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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