CGHC010405122026 2026:CGHC:46110

NAFR

PAWAN KUMAR JHA
Digitally signed by PAWAN KUMAR JHA

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRMP No. 2683 of 2026

- Shobhit Jajodia S/o Awadh Jajodia Aged About 30 Years R/o Near Sumangal Apartment, Link Road, Bilaspur, District Bilaspur (C.G.)

... Petitioner

versus

- State Of Chhattisgarh Through Station House Officer, Police Station Sirgitti, District Bilaspur (C.G.)

... Respondent

For Petitioner	:	Mr. Shailendra Dubey, Sr. Advocate with Mr. Shubham Tripathi, Advocate
For Respondent	:	Mr. H.A.P.S. Bhatia, Dy. Govt. Advocate

SB: Hon'ble Mr. Justice Parth Prateem Sahu

Order on Board

30.10.2026

1. Petitioner has preferred this petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') assailing the order dated 05.10.2026 passed in Criminal Revision No. 188/2026 by which learned 9th Additional Sessions Judge, Bilaspur, District Bilaspur (CG) dismissed the revision preferred by applicant while affirming the order dated 18.08.2026 passed by learned Judicial Magistrate First Class, Bilaspur, District Bilaspur, whereby application filed by applicant under Section 503 of BNSS

for custody of the seized vehicle car Kia Seltos bearing registration No. CG10-AS-3131 and one Apple iPhone 16 (hereinafter referred to as “seized articles”) has been rejected.

2. Facts of the case, in brief, are that on 10.08.2026, an F.I.R. bearing Crime No. 570/2026 was registered at Police Station Sirgitti, District Bilaspur, against the petitioner for the alleged commission of an offence under Section 20(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act'). According to the prosecution, on the basis of a secret information, police intercepted a Kia Seltos car bearing registration No. CG10-AS-3131 near Naya Bus Stand, Tifra, and allegedly recovered 5.32 grams of Marijuana/ cannabis from a transparent zipper polythene kept inside a cardboard box in the front dashboard of the vehicle. Police seized the aforesaid vehicle and an Apple iPhone 16 Pro 256 GB belonging to the petitioner and arrested him. Subsequently, petitioner was released on bail. After completion of investigation, a final report bearing No. 450/2026 dated 15.09.2026 was filed before the competent Court.

3. Petitioner thereafter filed an application under Section 503 of the BNSS before the learned Judicial Magistrate First Class, Bilaspur, seeking interim custody of the seized vehicle and mobile phone, contending that he is the registered owner of the seized articles and their continued retention would cause unnecessary financial loss and deterioration. However, learned Judicial Magistrate, vide order

dated 18.08.2026, rejected the application observing that the seized articles were allegedly used in the commission of the offence and their release might affect the investigation and the proceedings.

4. Being aggrieved by the order passed by learned Judicial Magistrate, petitioner preferred Criminal Revision No. 188/2026 before the learned 9th Additional Sessions Judge, Bilaspur. The revisional Court dismissed the revision vide order dated 05.10.2026, mainly observing that the petitioner himself is an accused in the case and the contraband was recovered from his vehicle. Hence, this petition.

5. Learned counsel for the petitioner submits that the petitioner is the registered owner of the seized vehicle and the owner of the mobile phone, which is evident from the documents produced before the Courts below. He submits that the alleged recovery is only 5.32 grams of Ganja, which is far below the prescribed small quantity of 1 kilogram. It is further submitted that the investigation has already been completed and the final report has been filed. Therefore, continuous retention of the seized articles will serve no useful purpose. The vehicle is lying in the premises of the police station under open sky and is likely to deteriorate. He further submits that the identity and evidentiary value of the seized articles can be preserved by preparing a proper panchnama, photographs and recording their identifying particulars before release. In support of his contention, he placed reliance upon the decision of the Supreme Court in **M/s ABC Express vs. State of Gujarat** passed in Criminal

Appeal No. 4172 of 2026 dated 02.09.2026 and the order passed by co-ordinate Bench of this Court in **Madhudas vs. State of Chhattisgarh** passed in CRMP No. 809 of 2026.

6. Per contra, learned State counsel opposes the submission of learned counsel for petitioner and submits that the contraband (Ganja) was recovered from the vehicle belonging to the petitioner himself and, therefore, the vehicle and mobile phone are liable to be retained in connection with the proceedings under the NDPS Act. It is further submitted that the petitioner himself is an accused and the vehicle is liable to confiscation under Section 60(3) of the NDPS Act.

7. I have heard learned counsel for the parties and perused the orders impugned and the documents available on record.

8. The question which arises for consideration of this Court is whether interim custody of the vehicle and mobile phone can be granted to the petitioner during pendency of the proceedings under the NDPS Act, particularly when he himself is an accused in the case.

9. Before proceeding further, it would be appropriate to consider the relevant statutory provisions governing the custody of seized property.

10. Section 503 of the BNSS (corresponding to Section 457 of the CrPC) empowers the Magistrate to pass appropriate orders regarding delivery of seized property to the person entitled to its possession,

subject to such conditions as may be considered appropriate, which reads thus:

> "**503. Procedure by police upon seizure of property.** (1)Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Sanhita, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.
>
> (2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

11. Further, Sections 36-C and 51 of the NDPS Act make the provisions of the BNSS applicable to proceedings before the Special Court, insofar as they are not inconsistent with the provisions of the NDPS Act.

12. At this stage, it would also be appropriate to refer to Section 60(3) and Section 63 of the NDPS Act, which read as under:

"**60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation**.—

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

63. Procedure in making confiscations.—(1) In the trial of offences under this Act, whether the accused is convicted or acquitted or discharged, the court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62 and, if it decides that the article is so liable, it may order confiscation accordingly.

(2)Where any article or thing seized under this Act appears to be liable to confiscation under section 60 or section 61 or section 62, but the person who committed the offence in connection therewith is not known or cannot be found, the court may inquire into and decide such liability, and may order confiscation accordingly:

Provided that no order of confiscation of an article or thing shall be made until the expiry of one month from the date of seizure, or without hearing any person who may claim any right thereto and the evidence, if any, which he produces in respect of his claim:

Provided further that if any such article or thing, other than a narcotic drug, psychotropic substance, controlled substance, the opium poppy, coca plant or cannabis plant is liable to speedy and natural decay, or if the court is of

> opinion that its sale would be for the benefit of its owner, it may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale."

13. From the above-extracted provision, it is clear that Section 60(3) of the NDPS Act provides for liability of a conveyance to confiscation, subject to the defence available to its owner. The procedure for determining such liability is prescribed under Section 63(1), which requires the trial Court to decide the question of confiscation in the trial, irrespective of whether the accused is convicted, acquitted or discharged. Therefore, the question of confiscation of the seized vehicle is to be determined by the trial Court upon conclusion of the trial, after affording the concerned claimant an opportunity of hearing. So far as interim release is concerned, mere allegation that marijuana/ cannabis was recovered from the petitioner's vehicle does not, by itself, require the vehicle to remain in police custody throughout the trial. Its interim custody can be entrusted to the petitioner on appropriate conditions, without prejudice to the trial Court's power to decide the question of confiscation independently and in accordance with law.

14. Hon'ble Supreme Court in **Bishwajit Dey v. State of Assam**, reported in **(2025) 3 SCC 241** has held as under:

> "**25.** Upon a reading of the NDPS Act, this Court is of the view that the seized vehicles can be confiscated by the trial court only on conclusion of the trial when the

> accused is convicted or acquitted or discharged. Further, even where the court is of the view that the vehicle is liable for confiscation, it must give an opportunity of hearing to the person who may claim any right to the seized vehicle before passing an order of confiscation. However, the seized vehicle is not liable to confiscation if the owner of the seized vehicle can prove that the vehicle was used by the accused person without the owner's knowledge or connivance and that he had taken all reasonable precautions against such use of the seized vehicle by the accused person.
>
> 26. This Court is further of the opinion that there is no specific bar/restriction under the provisions of the NDPS Act for return of any seized vehicle used for transporting narcotic drug or psychotropic substance in the interim pending disposal of the criminal case.
>
> 27. In the absence of any specific bar under the NDPS Act and in view of Section 51 of the NDPS Act, the Court can invoke the general power under Sections 451 and 457CrPC for return of the seized vehicle pending final decision of the criminal case. Consequently, the trial court has the discretion to release the vehicle in the interim. However, this power would have to be exercised in accordance with law in the facts and circumstances of each case."

15. Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai v. State of Gujarat**, reported in **(2002) 10 SCC 283** while dealing with question of proper custody of the seized articles has emphasised that the powers relating to the custody and disposal of seized property should be exercised expeditiously and judiciously. The Court observed that keeping seized vehicles at police stations for long periods serves no useful purpose and that appropriate orders may be passed by taking bonds, guarantees and security to ensure that the

property remains available for production whenever required and observed thus:-

> "**7.** In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:-
>
> 1. owner of the article would not suffer because of its remaining unused or by its misappropriation;
>
> 2. court or the police would not be required to keep the article in safe custody;
>
> 3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
>
> 4. this jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles."
>
> x x x x x
>
> **17.** In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles."

16. In **Bishwajit Dey (supra)**, Hon'ble Supreme Court has explained the circumstances in which interim custody of a vehicle seized under the NDPS Act may be considered and has emphasised that each case has to be examined on its own facts and circumstances. The Court has also clarified that the principles laid down therein are not to be applied as a rigid formula and further observed thus:-

> **“33.** Though seizure of drugs/substances from conveyances can take place in a number of situations, yet broadly speaking there are four scenarios in which the drug or substance is seized from a conveyance. Firstly, where the owner of the vehicle is the person from whom the possession of contraband drugs/substance is recovered. Secondly, where the contraband is recovered from the possession of the agent of the owner i.e. like driver or cleaner hired by the owner. Thirdly, where the vehicle has been stolen by the accused and contraband is recovered from such stolen vehicle. Fourthly, where the contraband is seized/recovered from a third-party occupant (with or without consideration) of the vehicle without any allegation by the police that the contraband was stored and transported in the vehicle with the owner's knowledge and connivance. In the first two scenarios, the owner of the vehicle and/or his agent would necessarily be arrayed as an accused. In the third and fourth scenario, the owner of the vehicle and/or his agent would not be arrayed as an accused.
>
> **34.** This Court is of the view that criminal law has not to be applied in a vacuum but to the facts of each case. Consequently, it is only in the first two scenarios that the vehicle may not be released on superdari till reverse burden of proof is discharged by the accused-owner. However, in the third and fourth scenarios, where no allegation has been made in the charge-sheet against the owner and/or his agent, the vehicle should normally be released in the interim on superdari subject to the owner furnishing a bond that he would produce the vehicle as and when directed by the Court and/or he would pay the value of the vehicle as determined by the Court on the date of the release, if the Court is finally of the opinion that the vehicle needs to be confiscated.”

17. Hon’ble Supreme Court in above referred case has issued the word ‘may’ and not ‘shall’ in particular circumstances as instance. In view

of above, in the facts where the owner tavelling in vehicle, on inspection found with contraband kept in vehicle will only not sufficient not to consider other aspect and factors of the case. In the case at hand, the quantity is only 5.32 grams, found kept in small zipper polythene pouch.

18. Therefore, in the facts of present case, while the fact that the petitioner himself is an accused and the alleged contraband was recovered from his vehicle is certainly a relevant circumstance. The prayer for interim custody requires consideration of all other relevant circumstances as well like conscious possession in facts of the cse still is a fact required to be proved.

19. On applying the aforesaid principles to the facts of the present case, the following circumstances emerge from the material available on record:

(i) *Firstly*, the petitioner has produced the registration certificate of the seized Kia Seltos car bearing registration No. CG10-AS-3131, which establishes his ownership. The ownership of the seized Apple iPhone 16 Pro is also supported by the purchase bill produced before the Courts below.

(ii) *Secondly*, the alleged contraband recovered from the vehicle is only 5.32 grams of Ganja, which is substantially below the prescribed small quantity of 1 kilogram.

(iii) *Thirdly*, although the petitioner himself is an accused, investigation has already been completed and the final report has been filed. Thus, the apprehension regarding interference with the investigation, which weighed with the learned Magistrate, no longer survives.

(iv) *Fourthly*, the seized vehicle is a valuable property and its continued retention in the open premises of the police station is likely to cause deterioration and unnecessary financial loss to the petitioner.

(v) *Lastly*, the identity and evidentiary value of the seized articles can be sufficiently preserved by preparing a detailed *panchnama*, taking photographs and recording their identifying particulars before handing over their interim custody. In respect of the mobile phone, its relevant data, if required for the prosecution, can first be secured by the investigating agency in accordance with law.

20. Thus, considering the overall facts and circumstances, particularly the quantity of contraband allegedly recovered, ownership documents produced by the petitioner, completion of investigation and the possibility of preserving the evidentiary value of the seized articles through appropriate safeguards, this Court is of the considered opinion that their continued retention in police custody is not warranted. The fact that the petitioner himself is an accused cannot, by itself, be treated as an absolute ground to deny interim custody. The question of his culpability and the ultimate liability of the vehicle to confiscation are matters to be decided during the proceedings in accordance with law. The interests of the prosecution can adequately be protected by imposing appropriate conditions upon the petitioner.

21. For the foregoing discussion, in the considered opinion of this Court learned Courts below have not properly appreciated the scope of Section 503 of the BNSS read with the relevant provisions of the

NDPS Act and the principles laid down by the Supreme Court in **Sunderbhai Ambalal Desai (supra)** and **Bishwajit Dey (supra)**. Therefore, the impugned orders are not sustainable and are liable to be set aside.

22. Accordingly, the petition is **allowed**. The order dated 05.10.2026 passed by the learned 9th Additional Sessions Judge, Bilaspur, District Bilaspur, in Criminal Revision No. 188/2026 and the order dated 18.08.2026 passed by the learned Judicial Magistrate First Class, Bilaspur, in the application filed under Section 503 of the BNSS are hereby set aside.

23. The application filed by the petitioner seeking interim custody of the seized articles is allowed. The seized Kia Seltos car bearing registration No. CG10-AS-3131 and Apple iPhone 16 Pro 256 GB bearing IMEI No. 356656206281437 shall be released in favour of the petitioner on interim custody, subject to the following conditions:

(i) The petitioner shall furnish a personal bond of ₹7,50,000/- with one surety of the like sum to the satisfaction of the learned trial Court, undertaking to produce the seized articles whenever directed by the competent Court.

(ii) Before release of the vehicle, its ownership documents, registration particulars, engine number and chassis number shall be duly verified and recorded. A detailed panchnama along with photographs of the vehicle shall be prepared and placed on record.

(iii) Before release of the mobile phone, its IMEI number and other identifying particulars shall be recorded. The investigating agency shall ensure that any necessary forensic examination and preservation of

relevant data is completed in accordance with law before its release. A panchnama and photographs shall also be prepared.

(iv) The petitioner shall not sell, transfer or create any third-party interest in the vehicle without prior permission of the competent Court during pendency of the proceedings.

(v) The petitioner shall not destroy, tamper with or materially alter the identity or condition of the seized articles and shall produce them before the competent Court whenever directed.

(vi) The petitioner shall not use or permit the use of the vehicle for commission of any offence.

(vii) The release of the seized articles shall not affect the jurisdiction of the competent Court to proceed in accordance with law regarding the alleged offence or their ultimate confiscation under the NDPS Act

(viii) The release of the seized articles shall not be construed as an expression of opinion on the merits of the criminal case or the question of their ultimate liability to confiscation.

24. It is made clear that this Court has not expressed any opinion on the merits of the criminal proceedings arising out of Crime No. 570/2026. The observations made herein are confined only to the question of interim custody of the seized articles.

Certified copy as per rules.

Sd/-
(**Parth Prateem Sahu**)
Judge

pwn