



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

982 CRIMINAL WRIT PETITION NO. 1683 OF 2025

SHAHBAJ KURBAN KHAN

VERSUS

THE STATE OF MAHARASHTRA

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Advocate for the Petitioner : Mr.V.A.Bagidya

APP for Respondent-State : Mr.N.S.Tekale

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CORAM : MEHROZ K. PATHAN, J.

DATE : 24.02.2026

P.C. :

1] The petitioner has approached this Court, challenging the order dated 17.11.2025 passed by the learned Additional Sessions Judge-5, Aurangabad in Criminal Misc. Application No.225/2025 and vehicle seized in the offence shall be released, which is in possession of the petitioner.

2] The learned counsel for the petitioner submits that the petitioner is the owner of vehicle, namely, Mahindra Thar bearing registration No.MP-10-ZD-7222, which was seized by the police during raid conducted to

seize contraband from the house of the accused no.1 Nashikkha Pathan. While conducting raid, contraband of 400 kg was seized from the house of the accused no.1. The said vehicle, which was standing in the courtyard of the house of the accused no.1, was seized as it was informed by the arrested accused that contraband ganja was also in the said vehicle. Accordingly, after seizure of the entire contraband even vehicle owned by the present applicant which was standing in the courtyard of the house of the accused no.1, was also seized by the police. Thereafter, crime came to be registered vide Crime No.104/2025 under Sections 8, 20, 25, 29 of the NDPS Act. After completion of the investigation, the charge sheet is also filed. The petitioner being owner of the said vehicle has moved an application for release of the vehicle under Section 457 of the Criminal Procedure Code on supratnama.

3] The learned counsel for the petitioner further submits that the petitioner was not having knowledge about vehicle being used by the accused no.1 for transportation of

the prohibited contraband ganja. The accused no.3 was acquaintance of the present petitioner and vehicle was entrusted to him for his private work. The petitioner was not even aware of such activity of contraband was being transported in the said vehicle. The petitioner had, thus, moved an application under Section 457 of the Criminal Procedure Code for release of the vehicle on supratnama. The learned counsel further submits that the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **Bishwajit Dey Vs. State of Aasam** reported in **AIR 2025 SC 549** wherein the Hon'ble Supreme Court was pleased to carve out scenarios to be considered the application moved for release of the vehicle. The case of the petitioner is squarely covered in the item no. (iv) of the categories carved out by the Hon'ble Supreme Court in the case of Bishwajit Dey [supra]. The petitioner is owner of the vehicle and was not having any knowledge about transportation of the contraband in the said vehicle. The petitioner was not even arrayed as an accused in the said crime and s such the petitioner should be handed over

possession of the vehicle. The learned trial Court has wrongly appreciated the law laid down by the Hon'ble Supreme Court and was pleased to reject the application of the petitioner for release of the vehicle. The impugned order is erroneous and liable to be interfered with by this Court in extra ordinary / inherent jurisdiction under Section 226 of the Constitution of India.

4] As against this, the learned APP strongly opposes the present Writ Petition on the ground that the vehicle was involved in the serious offence where contraband ganja to the extent of 400 kg were seized in the offence. Even though the quantity of 4 kg was also seized from the vehicle and cumulative effect of the entire crime is to be seen where the present vehicle was being used by all the accused persons for transportation of the said prohibited substance in the State of Maharashtra. The contraband ganja weighing 400 kg is worth Rs.1,22,82,000/- was found in a tin shed at an agricultural land bearing block no.82, at vilage Kunjkheda, Taluka Kannad and the said vehicle was

standing near the said land and 4 kg ganja was also found in the present vehicle. In so far as judgment relied upon by the petitioner before the trial Court, the learned trial Court has also considered the judgment in the case of **Bishwajit Dey [supra]** and has found that the petitioner has failed to prove that enough due care was taken by the petitioner to ensure that the vehicle is not used in any offence of transportation of the contraband. The learned trial Court has, therefore, rightly rejected the application of the petitioner for release of the vehicle. The impugned order is just and proper and the present Writ Petition is deserves to be rejected.

5] I have gone through the allegations in the FIR dated 2nd May, 2025, which was registered on the basis of the raid conducted on 02.05.2025 as Crime No.104/2025. The FIR would show that the accused no.1 Nashibkha was found to be in possession of huge contraband whereas accused no.3 Mukhtiyar was known to the present petitioner, who owns the vehicle i.e. Mahindra Thar bearing

No. MP-10-ZD-7222. As stated by the petitioner, the petitioner was registered owner of the said vehicle. However, perusal of the FIR as well as the impugned order would show that the petitioner was not even arrayed as an accused in the said crime, which is registered against the [5] accused persons. Had there been any suspicion to the prosecution about involvement of the present petitioner or his connivance in the said crime, the prosecution ought to have implicated the present petitioner as one of the accused in the said crime. This Court in identical situation, in the case of **Barikrao Somnath Chandanshive Vs. The State of Maharashtra & another** in Criminal Writ Petition No.7 of 2026, decided on 03.02.2026, has allowed owner of the vehicle therein to be handed over the possession of the vehicle involved in the identical crime of sale of illicit liquor in which owner of the vehicle was not arrayed as an accused.

6] Thus, in absence of any specific bar under NDPS Act, the Hon'ble Supreme Court in the case of **Bishwajit Dey**

Vs. State of Assam, [2025] 3 SCC 241, was pleased to observed in paragraph nos. 33 and 34, as under :

“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. (i) Firstly, where the owner of the vehicle is the person from whom the possession of contraband drugs/substance is recovered. (ii) 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. (iii) Thirdly, where the vehicle has been stolen by the accused and contraband is recovered from such stolen vehicle. (iv) 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 Special Leave Petition (Crl.) No. 13370/2024 Page 28 of 31 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.

7] In the present case, the petitioner is not arrayed as an accused in the present crime. The alleged crime is registered against 5 other accused persons. The contention of the petitioner that the petitioner was not even aware about such activities being undertaken by the accused persons of contraband using the vehicle owned by the petitioner, appears to be probable at this stage, particularly taking into consideration that the prosecution has not implicated the petitioner as an accused in the aforesaid crime.

8] The Hon'ble Supreme Court in the case of

Sunderbhai Ambalal Desai Vs. State of Gujarat reported in [2002] 10 SCC 283 has given guidelines and directions to substantiate Courts to see that the vehicles are not kept idle and the proceedings filed for interim custody is decided immediately. The observations made in the case of **General Insurance Council and Ors. Vs. State of Andhra Pradesh and Ors.** Reported in [2010] 6 SCC 768 can be found at para no.14 which is as follows :

14. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only do they occupy substantial space in the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road.

9] Thus, in the absence of any specific bar under the NDPS Act for return of seized vehicle used for transportation of contraband in disposal of the criminal

case, the Court can invoke the general power under Sections 451 and 457 of the Criminal Procedure Code for return of the seized vehicle pending final decision of the criminal case, however, upon imposing certain conditions.

10] Thus, taking into consideration the aforesaid submissions and particularly law laid down by the Hon'ble Apex Court in the case of **Bishwajit Dey [supra]** as well as this Court in the case of **Barikrao Somnath Chandanshive [supra]**, a case is made out for interference by this Court under its supervisory jurisdiction for quashing and setting aside the impugned orders and directing handing over possession of the vehicle to the petitioner, however, on certain conditions. Hence the following order :

ORDER

i] The impugned order dated 17.11.2025 passed by the learned Additional Sessions Judge-5, Aurangabad in Criminal Misc. Application No.225/2025 is hereby quashed and set aside.

ii] The vehicle of the petitioner be released in his

favour upon executing a P.R. bond of Rs.2 lacs before the learned trial Court that he would pay the value of the vehicle if the Court is finally of the opinion that the vehicle needs to be confiscated upon conclusion of trial.

iii] The necessary photographs shall be taken duly authenticated and certified and a detailed panchanama shall be prepared before such release.

iv] The petitioner shall not create third party interest.

v] The petitioner shall pay all monthly installments of the vehicle and clear the bank dues.

vi] The vehicle shall be brought for inspection as and when called by the Court.

vii] The petitioner shall furnish indemnity bond in terms of above as also for payment of cost of vehicle.

viii] The petitioner shall make the vehicle available as and when required and called for by the prosecution during the trial.

ix] The petitioner shall not transfer the ownership of the vehicle without the permission of the trial Court.

x] With the above observations, the Writ Petition stands disposed of.

[MEHROZ K. PATHAN]
JUDGE

DDC