



Judgment

revn161.25

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL REVISION APPLICATION NO.161 OF 2025

Apurva Suresh Khambaswadkar, aged
about 35 years, occupation – business,
r/o 20/1B Wing C&T No.11838A,
Santoshi Mata Road, Bhandar Wadi,
Oppo Sa Dahir Thane, M.S.400601.

Through his power of attorney holder
Shaikh Amin s/o Shaikh Husain, aged
about 35 years, occupation- driver,
r/o Yusuf Ali Anjan Chowk, near
Husainiya Masjid, Indira Nagar
Akot file, Akola, taluka and district Akola. **Applicant.**

:: VERSUS ::

1. State of Maharashtra, through its
Police Station Officer, Police Station
Barshitakli, taluka and district Akola.

2. Nisar Mukhtar Niyaji, aged about 45
years, occupation- business, r/o
Akot File, near Sufa School, Akot
Road.

(At present, the respondent No.2 is in
Central Prison, Akola) **Non-applicants.**

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Shri A.B.Mirza, Counsel for the Applicant.
Shri N.B.Jawade, APP for the NA No.1/State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 16/02/2026

PRONOUNCED ON : 05/03/2026

JUDGMENT

1. Heard learned counsel appearing for the respective parties. **Admit.** Heard finally by consent.

2. The present revision application is filed by the applicant for setting aside order 8.8.2025 passed by learned Special Judge, NDPS Court, Akola in Criminal Misc. Application No.38/2025 and for *interim* custody of vehicle namely “TATA ZEST” bearing registration No.MH-47/N/6379 (the said vehicle) seized in Crime No.532/2025 registered under Sections 8(c), 22(c), 25, and 29 of the Narcotic Drugs and Psychotropic Substances Act (the NDPS Act) and under Sections 238, 318(4), 336(3), 338, and 341(2) of the BNS.

3. Brief facts necessary for disposal of the revision are as under:

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The applicant is registered owner of the said vehicle having engine No.100A20000672170 and chasis No.MAT624031HPB07480. The said vehicle is registered in the name of the applicant and he is the registered owner of the said vehicle. The crime was registered at Barshitakli Police Station for offences under Sections 8(c), 22(c), 25, and 29 of the NDPS Act under Sections 238, 318(4), 336(3), 338, and 341(2) of the BNS against five accused persons. During course of investigation, the Investigating Officer seized the said vehicle found parked within the premises of the house where the raid was conducted. The said vehicle was seized from non-applicant No.2. The seizure was made on the ground that the said vehicle was used for transportation of “Mephedrone.”

4. After registration of the crime, investigation was carried out. Seizure panchanama of the said vehicle was drawn and after completion of the investigation, chargesheet was submitted.

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5. The applicant filed an application before the Special Court for grant of *interim* custody, which came to be rejected by order dated 8.8.2025.

6. Being aggrieved and dissatisfied with the same, the applicant has preferred the present revision.

7. It is the contention of the applicant that he is neither made accused nor Power of Attorney (PoA) is named as accused in the said crime. He has no connection whatsoever with the aforesaid offence. The applicant being lawful owner of the said vehicle has filed an application, but learned Special Court has not considered the same as the entire chargesheet discloses his involvement in the alleged offence and rejected the application.

8. Learned counsel for the applicant reiterated the said contentions and submitted that the applicant is the lawful owner of the said vehicle. He is neither an accused nor his PoA is named as accused in the said crime. He has no

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connection whatsoever with the said offence. Merely on the basis of apprehension that the said vehicle may be used in commission of crime, it is seized by the investigating officer and, therefore, the order passed by the Special Court, without considering the aspect that there is no involvement of the applicant in the commission of the crime, is erroneous and perverse and liable to be quashed and set aside.

9. In support of his contentions, learned counsel for the applicant has placed reliance on following decisions:

1. Sunderbhai Ambalal Desai vs. State of Gujarat, reported in 2002 0 Supreme (SC) 982;

2. Tarun Kumar Majhi vs. The State of West Bengal, reported in 2025 Supreme (SC) 1612, and

(3) Bishwajit Dey vs. State of Assam, reported in (2025)3 SCC 241.

10. *Per contra*, learned APP for the State has strongly opposed the said contentions and submitted that the trial

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court in the order impugned considered that certificate of registration *prima facie* shows ownership of the applicant over the said vehicle. The said vehicle was kept in custody of PoA Shaikh Amin Shaikh Hussain who resides at Akola. His occupation is labour work. It is claimed that the applicant and his PoA are good friends and acquainted with each other and, therefore, the said vehicle was in his possession appears to be improbable. There is no nexus between the businessman residing at Thane and labour residing at Akola. The offences for which the said vehicle is seized at the spot are under NDPS Act for huge commercial quantity of “Mephedrone” weighing 5.5 kilograms worth in crores. The vehicle was used in transportation of the said “Mephedrone” and, therefore, there is likelihood of use of the said vehicle in future also in the similar type of offence and prays for rejection of the application.

11. On hearing both sides and perusing the entire investigation papers, it reveals that the FIR came to be

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registered against the accused persons on the basis of report lodged by the PI Prakash Tunkalwar. As per the allegations, on the day of the incident, i.e. 24.10.2024, he along with other police officials were patrolling at Barshitakli. At the relevant time, they received a secret information that on Barshitakli-Mahagaon Road one person by name Mohd.Shafi Mohd.Suleman is having his ginning factory. In the said ginning factory, some persons are involved in manufacturing “Mehedrone” and to manufacture the “Mephedrone” some raw materials were called by them. He immediately along with panchas visited the said ginning factory and found that the said vehicle was parked in front of the said factory and one person was keeping carton box in the said vehicle. Therefore, they conducted a raid and during the raid, raw materials used for preparation of “Mephedrone” were seized in huge quantity. On the basis of the said FIR, the crime was registered.

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12. During investigation, the said raw material was seized as well as accused persons Adil Mohd. Shamim Ansari resident of Mumbai, Pawan Manik Muddanar resident of Mumbai, Firoz Khan Shabbir Khan resident of Akola, Nisar Niyaji Mukhtar resident of Akot, and Mohd. Irfan Mohd. Yusuf resident of Akola were found at the spot of the incident. At the same time, the said vehicle was seized. During the investigation, all seized materials are forwarded to the Chemical Analyzer. The CA Report shows that Exh.1 white colour crystalline powder stapled in polythene, brown colour crystalline powder stapled in polythene, white colour crystalline powder, colourless liquid and pale yellowish colourless liquid were forwarded for analysis. On analysis, "Mephedrone" is detected in Exhs.1 and 2 i.e. white colour crystalline powder in a stapled polythene and brown colour crystalline powder in Exh.3 and white colour crystalline powder in Exh.4. Methylpropylphenone is detected in colourless liquid. "Mephedrone" in Exh.5 i.e. colourless liquid

and chloroform are detected. Thus, the CA Analysis Report also supports the allegations that the raw material were used for manufacturing of “Mephedrone”. Thus, there is no dispute that the said vehicle was seized by the investigating agency when it was found in front of the said ginning factory where the raid was conducted.

13. Recital of the FIR further shows that where the raid was conducted, one person was seen placing carton box in the said vehicle. Therefore, the said vehicle was seized.

14. The present application is filed for releasing of the said vehicle seized during the investigation of the said crime.

15. Section 451 of the CrPC deals with order for custody and disposal of property pending trial in certain cases.

The said Section is reproduced below for reference:

“451. Order for custody and disposal of property pending trial in certain cases.

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When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.”

16. Section 457 of the CrPC deals with procedure by police upon seizure of property.

The said Section is reproduced below for reference as under:

“457. 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 Code, 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

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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.”

17. Admittedly, the crime is registered under the provisions of the NDPS Act. Chapters-IV and V (Offences and Penalties) of the NDPS Act are relevant which deal with provisions as to disposal of seized narcotic drugs and psychotropic substances.

18. Section 52A of the NDPS Act deals with disposal of seized narcotic drugs and psychotropic substances.

The said Section is reproduced below for reference as under:

12**“52A. Disposal of seized narcotic drugs and psychotropic substances.**

(1) The Central Government may, having regard to the hazardous nature, vulnerability to theft, substitution, constraint of proper storage space or any other relevant consideration, in respect of any narcotic drugs, psychotropic substances, controlled substances or conveyances, by notification in the Official Gazette, specify such narcotic drugs, psychotropic substances, controlled substances or conveyance or class of narcotic drugs, class of psychotropic substances, class of controlled substances or conveyances, which shall, as soon as may be after their seizure, be disposed of by such officer and in such manner as that Government may, from time to time, determine after following the procedure hereinafter specified.

(2) Where any ³[narcotic drugs, psychotropic substances, controlled substances or conveyances] has been seized and forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53, the officer referred to in sub-section (1) shall prepare an inventory of such ³[narcotic drugs, psychotropic substances, controlled substances or conveyances] containing such details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the ³[narcotic drugs, psychotropic substances,

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controlled substances] or conveyances or the packing in which they are packed, country of origin and other particulars as the officer referred to in sub-section (1) may consider relevant to the identity of the ³[narcotic drugs, psychotropic substances, controlled substances or conveyances] in any proceedings under this Act and make an application, to any Magistrate for the purpose of--

(a) certifying the correctness of the inventory so prepared; or

(b) taking, in the presence of such magistrate, photographs of [such drugs, substances or conveyances] and certifying such photographs as true; or

(c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.

(3) Where an application is made under sub-section (2), the Magistrate shall, as soon as may be, allow the application.

(4) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1972) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs of [narcotic drugs,

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psychotropic substances, controlled substances or conveyances] and any list of samples drawn under sub-section (2) and certified by the Magistrate, as primary evidence in respect of such offence.”

19. Section 60 of the NDPS Act deals with liability of illicit drugs, substances, plants, articles and conveyances to confiscation.

The said Section is reproduced below for reference as under:

“60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.

[(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance [or controlled substances] lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic

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substance [or controlled substances] which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance [or controlled substances], materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance [or controlled substances], 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.”

20. Sub section (3) of Section 60 of the NDPS Act states that any animal or conveyance used in carrying any narcotic drug or psychotropic substance [or controlled substances], or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of

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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.

21. Second proviso to Section 63 of the NDPS Act states that, “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 subsection shall, as nearly as may be practicable, apply to the net proceeds of the sale.”

22. 451 of the CrPC deals with order for custody and disposal of property pending trial in certain cases.

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23. Thus, provisions of Section 451 of the CrPC provide for order for interim custody and disposal of property pending trial is identical in case the property is subject to speedy and natural decay and if it is otherwise in the interest of the owners.

24. The provisions of Section 451 of the CrPC are not applicable in view of decision in the case of **Assistant Collector of Customs vs. Shaikh Abdul Karim, reported in 1989 SCC OnLine Bom 33** wherein it has been observed that, “The object of the Act is to see that the vehicle which is used for such an offence is not made available to the persons who have indulged in these activities. They shall not have the benefit of such a vehicle. By and large if an accused person himself is the owner of the vehicle and he uses such a vehicle for the purpose of conveying the drugs, then of course, it is possible for the prosecution to contend that it is against the interest of justice that such a vehicle be given to the accused pending the trial. But in a given case, it might be that a

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vehicle belonging to an innocent owner is stolen by the accused, and in that event, later on, if the vehicle is intercepted and seized by the officer, it does not mean that such an owner has to wait till the trial is completed, for the purpose of getting an order of return of the vehicle from the Magistrate. In such cases, subject to a guarantee that the vehicle becomes available for the purpose of confiscation, if any, the Court has necessarily the jurisdiction to pass an order for interim custody either u/s 451 or 457(1) of the Cr.P. Code, as the case may be. An order u/s 451 or 457(1) of the Cr.P. Code guarantees return of the vehicle at the time of the final hearing of the matter, or as and when called upon by the Court. It secures, subject to certain terms and conditions, the interim custody of the vehicle, pending the trial. In fact, the operation of section 451 or 457(1) of the Cr.P. Code comes into existence only after the vehicle is seized and brought into safe custody, as provided u/s 55 of the Act. If that is so, it

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cannot be said that section 451 or 457(1) of the Cr.P. Code is not any way inconsistent with the scheme of the Act.”

25. Thus, there would be two yardsticks to be used, one in case the person carrying the contraband is the owner of the vehicle, that vehicle would not be given on interim custody to its owner, and another in case some other person claims ownership of the vehicle, the vehicle could be given to him by way of interim custody.

26. Learned counsel for the applicant placed reliance on the decision in the case of **Bishwajit Dey vs. State of Assam** *supra* wherein this aspect is considered by the Hon'ble Apex Court and it is observed, “assuming the petitioner is the owner of the vehicle but the question whether the vehicle was used without her knowledge or connivance is a question of fact to be determined after evidence, if any, is produced in proper inquiry. It may not be safe always to accept such a plea as a gospel truth to give interim custody of the vehicle to such

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a person. Question remains that the vehicle in question was used as a conveyance by the accused who is the husband of the petitioner for carrying the contraband. There seems to be no sound reason that if the owner is not entitled to interim custody of such vehicle because the vehicle is liable to be confiscated, why another person who may be the owner of the vehicle should be given the custody of the vehicle during the pendency of the case till he proves his non-complicity. As also observed by the Bombay High Court, the purpose of the Act is to see that the vehicle which is used for such conveyance is not made available to the persons indulging in these activities. Confiscation of the vehicle is an additional safeguard to discourage this crime.”

27. Here, in the present case, the said vehicle is involved in respect of contraband articles under the NDPS.

28. As per sub section (3) of Section 60 of the NDPS Act, any animal or conveyance used in carrying any narcotic drug

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or psychotropic substance is liable to confiscation unless the owner of the 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.

29. There is no dispute that the said vehicle in question was found to be involved in transportation of certain of narcotics.

30. The contention of the present applicant is that the said vehicle was in the custody of his PoA Shaikh Amin s/o Shaikh Husain who is a resident of Akola, whereas, the applicant is resident of Thane.

31. It is nowhere contention of the applicant that there is some relationship between the PoA and the applicant and, therefore, the said vehicle was in his possession. The said vehicle was in possession of the said PoA and, therefore, the

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observations of the trial court, that it is difficult to accept that out of the acquaintance, the said vehicle was in the custody of PoA, at this stage.

32. The applicant is the registered owner of the said vehicle. However, the contention of learned counsel for the applicant, that due to the acquaintance, the said vehicle was handed over to the said PoA, is not acceptable at this stage. It is also not acceptable, at this stage, that the said vehicle was not used in transportation of the said contraband articles. The contention of the applicant that he is not the accused in the said crime as well as PoA is also not accused and, therefore, there is nothing on record to show that the said vehicle was used in the commission of the crime, is also not acceptable. Whether the said vehicle was used without his knowledge or connivance, is a question of fact to be determined after the evidence.

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33. Admittedly, there is no bar to hand over interim custody of the seized vehicle under the NDPS Act. However, at the same time, the apprehension, that the said vehicle can be used in the similar type of the crime, cannot be rule out. As observed by the Hon'ble Apex Court in the case of **Bishwajit Dey vs. State of Assam** *supra*, that even assuming the petitioner is the owner of the vehicle but the question whether the vehicle was used without her knowledge or connivance is a question of fact to be determined after evidence, such plea cannot be accepted as a gospel truth to give interim custody of the said vehicle to such a person. At the same time, purpose behind sub section (3) of Section 60 of the NDPS Act is to be taken into consideration which shows that the very purpose for engrafting sub-section (3) of Section 60 of the NDPS Act is to have it as a deterrent measure to check the offences under the Act in question which have been found to be dangerous to the entire society.

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34. For all above these grounds, the order of rejection of the application by the Special Court under the NDPS Act appears to be proper and legal one. As such, the application deserves to be rejected and the same is **rejected**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!