



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

CRIMINAL WRIT PETITION NO. 41 OF 2026

Sheikh Rajik s/o Sheikh Anwar, aged about 25
years, Occ. Pvt. Work, r/o Near Champa
Ashram, J.N. Road, Naya godam, Kamptee,
Dist. Nagpur.

... PETITIONER

VERSUS

State of Maharashtra, through Police Station
Officer, Police Station, New Kamptee,
Dist.Nagpur.

... RESPONDENT

Shri A.K. Bhangde, Advocate for the petitioner.
Mrs. M.H. Deshmukh, APP for the State.

CORAM: M.M. NERLIKAR, J.

DATE :27.03.2026.

ORAL JUDGMENT :

1. **RULE.** Rule made returnable forthwith.
2. Heard the learned Counsel appearing for the parties.
3. By way of present petition, the petitioner is challenging the order of the Special Judge of NDPS Court, Nagpur in Special Case No. 566 of 2025 on 18.12.2025 thereby rejecting the application of the

petitioner for interim custody of his seized two-wheeler on execution of Supratnama.

4. Learned Counsel for the petitioner submits that the vehicle/two wheeler bearing No. MH-40-CY-3196 of the petitioner was not used in the crime, however the said vehicle was seized from the house of the petitioner. Other two accused persons have taken the name of the present petitioner and therefore, he was added as an accused in the crime. It is submitted that in the crime, the vehicle of the present petitioner was not used and another vehicle was used by accused nos.1 and 2 in the crime, which was already seized. It is submitted that when the vehicle of the petitioner was not involved in the crime, the Trial Court ought not to have invoked provisions of Section 60(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act'). Even if Section 60(2) is considered, the Supreme Court has considered the entire scheme of the NDPS Act in respect of release of vehicle and ultimately held that there is no specific bar or restriction under the NDPS Act for releasing the vehicle. As the impugned order is not sustainable in the eyes of law the same is prayed to be quashed and set aside.

5. *Per contra*, learned APP vehemently opposes the petition by submitting that Section 60(2) of the NDPS Act states about the

confiscation, and accordingly, the vehicle is seized by the Investigating Officer. She conceded to the fact that the vehicle of the petitioner is not involved in the crime and the same is seized from the house of the petitioner and that another vehicle was used by the accused persons. It is submitted that there is no perversity or error in the impugned order, and as there is no merit in the petition, the same deserves to be dismissed.

6. I have considered the rival submissions and perused the record. From perusal of the impugned order it appears that the vehicle which was seized from the house of the petitioner was not used in the crime, however the same was seized by the Investigating officer. The Special Court has observed in its order that “vehicle used by Accused is important material piece of evidence on record, it cannot be handed over on interim custody to the appellant”. Admittedly, though the Trial Court has observed as stated above, however there is no supporting evidence in respect of these observations. Even if it is presumed for a moment that the said vehicle is involved in the crime, still that cannot be a ground to detain the said vehicle for indefinite period.

7. The Hon’ble Supreme Court in the case of *Bishwajit Dey vs. State of Assam (2025) 3 SCC 241* while considering the entire scheme in respect of release of vehicle under the NDPS Act, has observed in

paragraphs 23, 24, 25, 26, 27, 31, 32 and 38 as under :

“23. Having heard learned counsel for the parties and having examined the issue at hand, this Court finds that different Courts have taken divergent views with regard to interim release of conveyances during the pendency of the trial in NDPS cases. While the courts in cases referred to by learned counsel for the Respondent-State of Assam have not released the vehicles in the interim during NDPS trial, yet in General Insurance Council & Ors. vs. State of Andhra Pradesh, (2010) 6 SCC 768; Gurbinder Singh @ Shinder vs. State of Punjab, 2016 SCC OnLine P&H 16026; Tej Singh vs. State of Haryana, 2020 SCC OnLine P&H 4679; Shams Tavrej vs. Union of India, 2023 SCC OnLine All 1154; Manakram vs. State of Madhya Pradesh, Crl. Rev. 2421/2021; Nirmal Singh vs. State of Punjab, CRR- 1208-2018 (O&M); Kawal Jeet Kaur vs. State of Karnataka, 2024:KHC- K:5691 and Bhagirath vs. State of Rajasthan, 2024: RJ-JD:36868, the Courts have directed release of the vehicles in the interim in NDPS cases.

24. The judgements of this Court are confined to their facts or in the context of the expression ‘owner’ and do not lay down any general proposition of law. Consequently, the issue would have to be examined on first principles.

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 NDPS Act, the Court can invoke the general power under Sections 451 and 457 of the Cr.P.C. 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.

COURTS WILL LEAN AGAINST ANY CONSTRUCTION THAT WOULD PRODUCE AN ABSURD OR UNJUST RESULT.

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31. Though the risk of misuse by the accused or third party of the same plane or bus or ship cannot be ruled out, yet the Courts do not take coercive action on the basis of fear or suspicion or hypothetical situation.

32. Undoubtedly, the Vehicle is a critical piece of material evidence that may be required for inspection to substantiate the prosecution's case, yet the said requirement can be met by stipulating conditions while releasing the Vehicle in interim on superdari like videography and still photographs to be authenticated by the Investigating Officer, owner of the Vehicle and accused by signing the said inventory as well as restriction on sale/transfer of the Vehicle.

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38. This Court is also of the view that if the Vehicle in the present case is allowed to be kept in the custody of police till the trial is over, it will serve no purpose. This Court takes judicial notice that vehicles in police custody are stored in the open. Consequently, if the Vehicle is not released during the trial, it will be wasted and suffering the vagaries of the weather, its value will only reduce."

8. So far as the present case is concerned, it is not in dispute that the petitioner is the owner of the said vehicle and there is an offence registered against the petitioner along with two others. However, as the said vehicle was not used in the alleged crime, it

cannot be kept in the custody of the police. Considering all above facts and circumstances of the case, I am inclined to allow the petition.

Hence, the following order :

- (a) The petition is allowed.
- (b) The impugned judgment and order 18.12.2025 passed by the Judge, Special Court (NDPS Court), Nagpur below Exhibit 81 in Special Case No.566 of 2025 is hereby quashed and set aside.
- (c) The interim custody of vehicle/two wheeler bearing No.MH-40-CY-3196 be given to the petitioner on executing bond/Supratnama in the sum of Rs.50,000/- in Special Case No.566 of 2025 pending in the Court of Judge, Special Court, NDPS Act, Nagpur;
- (d) The petitioner shall not use the vehicle in commission of any crime and shall not sell or create any third party interest in the vehicle;
- (e) The petitioner shall produce the vehicle as and when directed by the Trial Court;
- (f) Before releasing the vehicle, a video be prepared and still photographs of the vehicle be taken.

9. The Petition stands disposed of accordingly. Rule is made absolute in the above terms.

(M.M. NERLIKAR, J.)

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