



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

CRIMINAL WRIT PETITION NO. 178 OF 2026

Balu s/o Baburao Jadhav, Age 51 yrs, Occ.
Labour, r/o Kaikadi Pura, Buldana, Tq.
Buldana, Dist. Buldana.

... PETITIONER

VERSUS

The State of Maharashtra, through Police
Station Officer, Buldana City Police Station,
Buldana, Tq. & Dist. Buldana.

... RESPONDENT

Shri S.M. Awachar, Advocate for the petitioner.
Mrs. S.Z. Haider, APP for the State.

CORAM: M.M. NERLIKAR, J.

DATE :27.04.2026.

ORAL JUDGMENT :

1. **RULE.** Rule made returnable forthwith.
2. Heard the learned Counsel appearing for the parties.
3. By way of this petition, the petitioner is challenging the judgment and order of the Additional Sessions Judge, Buldhana passed in Criminal Misc. Appeal No.81 of 2025 rejecting the application of the

petitioner for releasing the vehicle, on the ground that the accused was found in the possession of Ganja of 1.828 grams worth Rs.18,000/- in his motorcycle bearing registration no. MH-28-BV-3999.

4. Learned Counsel for the applicant submits that the accused is the nephew of the petitioner, and the petitioner is the owner of the vehicle in question. He further submits that the present case is covered by the judgment of the Hon'ble Supreme Court in the case of *Bishwajit Dey vs. State of Assam, (2025) 3 SCC 241*. However, the learned Trial Court failed to consider the true spirit and perspective of the aforesaid judgment and wrongly interpreted the same. He further submits that by keeping the vehicle in the custody at the police station, would not serve any useful purpose. Section 51 of the NDPS Act does not bar from releasing the vehicle. The petitioner is ready to produce the vehicle before the Trial Court as and when required. He further submits that the Trial Court has erred in observing that the case of the petitioner falls in first scenario contemplated in the aforesaid judgment. Considering the factual position that the accused, who is nephew, has taken the petitioner's motorcycle and was found in possession of 1.828 grams of Ganja, therefore, considering this fact the petitioner is the owner of the vehicle, the first scenario, which is mentioned in the above referred case, would not be applicable as the contraband Ganja

was not seized from the possession of the petitioner itself. In the case of *Bishwajit Dey vs. State of Assam (supra)* particularly in paragraph 35, it is stated that the said 4 scenarios should not be treated as laying down a rigid formula. It is open for the Trial court to take a different view, if the facts of the case so warrant and therefore, under such circumstances, the petitioner's vehicle liable to be released on an interim custody and the petition prayed to be allowed.

5. On the other hand, learned APP supports the reasons given by the Additional Sessions Judge, Buldhana while passing the impugned judgment and order.

6. I have considered the rival submissions and perused the record. The Hon'ble Supreme Court in the case of *Bishwajit Dey vs. State of Assam (supra)*, particularly in paragraphs 33 to 35 has observed as under :

"BROADLY SPEAKING THERE ARE FOUR SCENARIOS

"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.

35. This Court clarifies that the aforesaid discussion should not be taken as laying down a rigid formula as it will be open to the trial Courts to take a different view, if the facts of the case so warrant."

7. Therefore, after considering the four scenarios laid down by the Supreme Court, it can be gathered that in the present case, at the most fourth scenario would be applicable. While considering the third and fourth scenarios, the Hon'ble Supreme Court has specifically stated that if there are no allegations in the charge-sheet against the owner of the vehicle, the vehicle should normally be released on interim custody on Supratnama to the owner, upon furnishing a bond that he would

produce the vehicle as and when directed by the Court. The Supreme Court has also observed that this does not lay down a rigid formula, and it would be open to the Trial Court to take a different view if the facts of the case so warrant. Again it will be useful to refer to the observation of the Supreme Court in the case of *Bishwajit Dey vs. State of Assam (supra)*, particularly in paragraphs 23 to 32 which reads 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.

28. It is trite law that the more absurd a suggested conclusion of construction is, the more the court will lean against that conclusion. That is ordinarily so whether one is construing a contract or a statute. [See: Hatzl v. XL Insurance Co. Ltd. [2009] EWCA Civ. 223].

29. The presumption against absurdity is found in the brief observation of Lord Saville agreeing with his

colleagues in the case of Noone [R (on the application of Noone) v. Governor of HMP Drake Hall [2010] UKSC 30]. Lord Saville says simply:

“41. I would allow this appeal. For the reasons given by Lord Phillips and Lord Mance, I have no doubt that by one route or another the legislation must be construed so as to avoid what would otherwise produce irrational and indefensible results that Parliament could not have intended”

30. If the respondent-State’s interpretation is accepted, then in a case where an accused is arrested carrying heroin in a private plane or a private bus or a private ship without the knowledge and consent of the management and staff of the private plan or bus or ship, the plane/bus/ship would have to be seized till the trial is over!

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.”

8. From the above facts and circumstances, it is crystal clear that the Hon’ble Supreme Court has observed that the vehicle can be released by granting interim custody to the owner. There is no bar under Section 51 of the NDPS Act for the return of a seized vehicle

pending the final decision of the criminal case. It has been further observed that the vehicle is a critical piece of material evidence and may be required for inspection to substantiate the prosecution case; however, such requirement can be addressed by verifying its condition while releasing the vehicle on interim custody on Superdari, such as through videography and still photographs duly authenticated by the Investigating Officer. It is also observed that if the vehicle is allowed to remain in police custody till the trial is over, it would serve no useful purpose. Considering the above exposition of law, to my mind, no fruitful purpose would be served by keeping the vehicle in the police station till the conclusion of the trial, and the same can be released on Supratnama as an interim arrangement. In view of the above exposition of law and in the interest of justice, I am inclined to allow the petition. Hence, the following order:

- (a) The petition is allowed.
- (b) The impugned judgment and order dated 19.12.2025 passed in Criminal Misc. Application No.81 of 2025 passed by the Additional Sessions Judge, Buldana is hereby quashed and set aside.
- (c) The interim custody of vehicle/two wheeler bearing No.MH-28-BV-3999 be given to the petitioner on executing bond/Supratnama in the sum of Rs.50,000/-.
- (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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