



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

CRIMINAL WRIT PETITION NO. 245 OF 2026

PETITIONER : Mohammad Bilal S/o Mohd. Hanif Nagani,
Aged about 39 years, Occu. Private,
R/o Dr. Shaikh Bunkar Colony,
Kamptee, Dist. Nagpur.

VERSUS

RESPONDENT : The State of Maharashtra,
through Police Station Officer,
Police Station, Kamptee.

Ms. F. N. Haidari, Advocate for the petitioner.
Ms. T. H. Udeshi, A.P.P. for the respondent/State.

CORAM : M. M. NERLIKAR, J.
DATE : APRIL 28, 2026

ORAL JUDGMENT:

1. **RULE.** Rule made returnable forthwith. Heard finally
by the consent of the learned counsels appearing for the parties.

2. The petitioner by way of this Writ Petition under Article
227 of the Constitution of India, is challenging the order dated
18.12.2025 passed by the learned Judge, Special Court (NDPS
Court), Nagpur below Exh.79 in Special Case No. 566/2025,
whereby the application filed by the petitioner for release of two

wheeler vehicle Suzuki Burgman bearing registration No. MH-40/DA-7456 was rejected.

3. The learned counsel for the petitioner submits that the vehicle Suzuki Burgman bearing registration No. MH-40/DA-7456 was not at all involved in the present crime. The vehicle was standing in the parking lot of Hotel Sher-E-Punjab. In the search of the vehicle by the Investigating Officer, nothing was found in the said vehicle. It was neither used for transportation of the contraband nor the contraband was found in the said vehicle. According to the learned counsel, the vehicle ought not to have been seized by the Investigating Officer. The trial Court has failed to consider the aforesaid and has erred in rejecting the application at Exh.79. Therefore, the learned counsel submits that the order impugned is bad in law.

4. On the other hand, learned APP vehemently opposed the application. She submits that the petitioner was in a room of Hotel New Sher-E-Punjab. She further submits that 1.5 gm MD drug was found on personal search of the petitioner. The petitioner is the owner of the vehicle in question and he came to the said hotel in that vehicle. Therefore, it cannot be said that the

vehicle was not used in the crime. Therefore, it was submitted that there is no merit in the petition and the same deserves to be dismissed.

5. I have considered the rival submissions. Perused the record. From perusal of the record, it is revealed that Suzuki Burgman two-wheeler vehicle bearing registration No. MH-40/DA-7456 was seized from the parking lot of the hotel. Upon search of the said vehicle, nothing was found in the dicky of the said vehicle. Under such situation, it cannot be said that the vehicle in question was used in commission of the crime. Though, it was not used in commission of the crime, still the Investigating Officer seized the said vehicle. In the impugned order, the learned Special Judge has observed that under Section 60(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”) the vehicle is liable to be seized.

6. It would be useful to refer to the judgment of the Hon'ble Supreme Court in the case of *Bishwajit Dey vs. State of Assam (2025) 3 SCC 241* wherein Hon'ble Supreme Court 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.

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."*

7. Considering the above observations of the Hon'ble Supreme Court and the fact that the petitioner is the owner of the vehicle i.e. Suzuki Burgman bearing No. MH-40/DA-7456 as well as the fact that the vehicle was not used in the alleged crime, no purpose would be served by keeping the said vehicle in the custody of the police. Therefore, in the above facts and circumstances of the case, I am inclined to allow the petition. Hence, the following order :-

- (a) The petition is partly allowed.
- (b) The impugned judgment and order dated 18.12.2025 passed by the Judge, Special Court (NDPS Court), Nagpur below Exhibit-79 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/DA-7456 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.

8. It is necessary to mention at this juncture that the petition filed by the petitioner seems to have been filed for releasing Suzuki Burgman vehicle/two wheeler bearing No.MH-40-DA-7456 and two mobile phones. However, there is no observation in the impugned order nor there is any pleading in the application in respect of the mobile phones. Therefore, the petitioner is at liberty to apply once again before the trial Court for release of mobile phones.

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

(M. M. NERLIKAR, J.)

Diwale