HC-KAR

NC: 2026:KHC:13001
WP No. 4606 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 4606 OF 2026 (GM-RES)

BETWEEN:

K.Y.GURUPRASAD
S/O LATE K. MALLAPPA,
AGED ABOUT 64 YEARS,
R/O NO.26, 4TH CROSS,
VINAYAKA LAYOUT,
MARATHAHALLI,
BENGALURU – 560 037.

…PETITIONER

(BY SRI ARUNACHALAM SHIVAKUMAR, ADVOCATE)

AND:

Digitally signed by SANJEEVINI J KARISHETTY
Location: High Court of Karnataka

STATE OF KARNATAKA
BY CHALLAKERE POLICE STATION,
CHITRADURGA DISTRICT,
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA,
BENGALURU – 560 001.

…RESPONDENT

(BY SRI B.N.JAGADEESHA, ADDL.SPP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA READ WITH SECTION 528 OF BNSS, 2023 PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION TO QUASH THE ORDER DATED 15.12.2025 PASSED

BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, CHITRADURGA, IN CRL.R.P.NO.108/2025, THE ORDER DATED 15.12.2025 IS HEREWITH FURNISHED AND MARKED AS ANNEXURE – A; ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION, TO QUASH THE ORDER DATED 30.10.2025 PASSED BY THE PRINCIPAL CIVIL JUDGE AND JMFC, CHALLAKERE, IN CRIME NO.396/2025 OF CHALLAKERE POLICE STATION (C.C. NO.2274/2025), THE ORDER DATED 30.10.2025 IS HEREWITH FURNISHED AND MARKED AS ANNEXURE – B; AND CONSEQUENTLY ALLOW THE APPLICATION FILED BY THE PETITIONER DATED 17/10/2025 ANNEXED AS ANNEXURE K., BY DIRECTING THE RESPONDENT NO.1, TO RELEASE THE CASH AMOUNTING TO RS.96,96,800/-, SEIZED AND REPORTED UNDER PF NO.240/2025 DATED 27/08/2025 ANNEXED AS ANNEXURE F AND PF NO.238/2025 DATED 26/08/2025 ANNEXED AS ANNEXURE G IN CRIME NO.396/2025 OF CHALLAKERE POLICE STATION (C.C. NO.2274/2025), IN FAVOUR OF THE PETITIONER HEREIN.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioner is before the Court seeking the following prayer:

> "45. Issue a writ of Certiorari or any other appropriate writ, order or direction to quash the order dated 15.12.2025 passed by the Principal District & Sessions Judge, Chitradurga, in Crl.R.P. No.108/2025, The order dated 15.12.2025 is herewith furnished and marked as **Annexure - A**;
>
> 46. Issue a writ of Certiorari or any other appropriate writ, order or direction, to quash the order dated

30.10.2025 passed by the Principal Civil Judge & JMFC, Challakere, in Crime No.396/2025 of Challakere Police Station (C.C. No.2274/2025), The order dated 30.10.2025 is herewith furnished and marked as **Annexure- B.**

47. And consequently allow the application filed by the Petitioner dated 17/10/2025 annexed as **Annexure K**., by directing the Respondent No. 1, to release the cash amounting to Rs.96,96,800/-, seized and reported under PF No.240/2025 dated 27/08/2025 annexed as **Annexure-F** and PF No.238/2025 dated 26/08/2025 annexed as **Annexure G** in Crime No.396/2025 of Challakere Police Station (C.C. No.2274/2025), in favour of the Petitioner herein.

48. Grant such other and further reliefs as this Hon'ble Court may deem fit in the interests of justice and equity."

2. Heard Sri Arunachalam Shivakumar, learned counsel for petitioner and Sri B.N.Jagadeesha, learned Additional State Public Prosecutor for the respondent.

3. The story would commence from the journey of the petitioner and his wife in a Car, which undertook from Bangalore to Bellary to register a land and to finalise the marriage arrangements of their daughter. They stopped at Udupi Garden Hotel, at Challakere, finished their lunch and when they come back to the Car, neither the Car, nor the cash that was in the Car found and the driver was also found absconding. Immediately a complaint comes to be registered

in Crime No.396/2025. The very next two days, *i.e.,* on 26.08.2025 and 27.08.2025, the police trace out the driver, seized the cash and registered the recovered cash in P.F.Nos.238 and 240 of 2025. Seizure of the cash is reported to the learned Magistrate on 27.08.2025.

4. The petitioner then files an application under Section 503 of the BNSS seeking interim custody of the seized cash. On 21.10.2025, the accused - driver is said to have rendered a voluntary statement admitting that the seized cash belongs to the petitioner. The application is objected to by the respondent - police and charge sheet is filed on the basis of the said statement. Though there is no rival claimant before the concerned Court for the cash in P.F.Nos.238 and 240 of 2025, the petitioner's application filed under Section 503 of the BNSS comes to be rejected by the concerned Court, in terms of the order dated 17.10.2025. The petitioner then challenges the said order by filing criminal revision petition in Crl.R.P.No.108/2025, seeking interim custody of cash by obliterating the order of the learned Magistrate, which also comes to be rejected in terms of the order dated 15.12.2025.

It is these two orders that has driven the petitioner to this Court in the subject petition.

5. Learned counsel for the petitioner would submit that the petitioner in the memorandum of petition as well as before the concerned Court has clearly indicated as to how he secured the said cash and for what purpose they were travelling with that said cash. He would submit that accused himself appeared before the concerned Court and admits that the cash belongs to the petitioner and he was the one who had stolen it. Despite there being no rival claim, the concerned court has not released the cash in favour of the petitioner.

6. Learned Additional State Public Prosecutor would however, submit that the cash in the event is required adequate security need be furnished by the petitioner, but, would admit the fact that there is no rival claimant to the said cash.

7. I have given my anxious consideration to the submissions made by the learned counsel for the parties and have perused the material on record.

8. The afore-narrated facts are not in dispute. There is no rival claimant to the cash it is also a matter of record. In an identical circumstance in Crl.P.No.8041/2021, disposed on 23.08.2022, this Court considered the issue of release of cash seized by the police therein, in favour of the complainant. It reads as follows:

> "…. …. ….
>
> 8. The afore-narrated facts are not in dispute. The transaction between the parties or the recovery of Rs.50/- lakhs from two sources is not in dispute. The application filed by the petitioner under Section 457 of the CrPC is turned down partially by permitting release of Rs.15/- lakhs and denying insofar as it pertained to Rs.35/- lakhs. Against the rejection, the petitioner prefers two criminal revision petitions which also come to be dismissed on the ground that there were rival claimants. The reason rendered by the concerned Court for dismissing the application insofar as it pertains to Rs.35/- lakhs on the ground that there are rival claimants would run counter to the judgment rendered by this Court in the case of ***MANGHARAM & SONS, BANGALORE V. R.C.MORZARIA***[1] wherein a learned single Judge of this Court has held as follows:
>
> "…. ….. …..
>
> 11. In a case like this where the person from whom the property is seized also claims the custody of that property, two things are required to be considered. Normally the person from whom the property is seized is entitled to the custody of the same (with or without conditions) but he will not be entrusted with the property if there is prima facie material on record showing that he has committed some offence re : the same. In such an event, the claim, if any, of the other person, or the complainant as in this case, may be considered. While examining the rival claims the question as to who was in lawful possession firstly, at the time of seizure and secondly,

[1] MANU/KA/0028/1984

earlier, that is to say, earlier to the event which gave cause to that seizure, is very important. If no prima facie case for any offence is made out against the person from whom the property is seized he can be presumed to have been in lawful possession of the same at the time of seizure and may be entrusted with it."

Further, in the case of ***K.W.GANAPATHY V. STATE OF KARNATAKA***[2], this Court holds as follows:

"…. …. ….

4. After hearing the counsel for the State and the petitioner, I find that the grievance made out by the petitioner is genuine. Of course, in the usual course of routine conditional orders are passed while delivering the property to the interim custody. When the property has any evidentiary value, it is to be kept intact and to ensure its production during the course of evidence for the purpose of marking as a material object the condition of non alienation is imposed. However, when the property has no evidentiary value and only the value of the property is to be properly secured for passing of final order under Section 452, Cr.P.C, the necessity of keeping such properties intact by imposing onerous conditions, prohibiting its alienation or transfer would not be necessary in law.

5. The production of property which has evidentiary value during evidence is a part of a fair trial. With the advanced technology, it is not necessary that the original of the property inevitably has to be preserved for the purpose of evidence in the changed context of times. The reception of secondary evidence is permitted in law. The techniques of photography and photo copying are far advanced and fully developed. Movable property of any nature can be a subject matter of photography and taking necessary photographs of all the features of the property clearly is not a impossible task in photography and photo copying. Besides, the mahazar could be drawn clearly describing the features and dimensions of the movable properties which are subject matters of criminal trial. Many a time, we find as a routine course, the Courts impose condition of non alienation and to keep the property intact without alteration in any manner. Many a time such conditions

[2] MANU/KA/0847/2002

act harshly upon rightful owners of the property from exercising their lawful ownership rights.

6. Irrespective of the fact whether the properties have evidentiary value or not it is not necessary that the original of the property has to be kept intact without alienation. As suggested above, the photography or photostat copy of the property can be taken and made a part of the record duly certified by the Magistrate at the time when the interim custody of the property is handed over to the claimant. In the event of the original of the property not produced in the evidence, photograph could be used as secondary evidence during the course of evidence. Ultimately, while passing final orders, it is only the value of the property that becomes a prime concern for the Court. If a person to whom the interim custody is granted, is not entitled to the property or its value and if some other person is held to be entitled to have the property or its value by taking necessary bonds and security from the person to whom interim custody is granted, the value could be recovered and made payable to the person entitled to. The rightful, owners, who have lost the property by an act of crime even after detection and recovery are continued to be prevented from beneficial possession and enjoyment of the same by the archaic conditions imposed as a regular routine despite the changed context of scientific developments.

7. To illustrate, a situation one X loses gold jewellery by theft. The police successfully detect and discover the gold jewellery the same is produced before the Court. Production of gold jewellery and marking of the same in evidence to prove the same as corpus delecti is one of the insistence of law as a part of fair trial. Even after the gold jewellery is given to the custody of X to deprive him by imposing the condition of non alienation from exercise of right ownership for unreasonable length of time would be too harsh and one sided, and a nonchalant approach towards the victims of crime. It may be that X require the gold jewellery for the purpose of the marriage of his daughter or may be that he may require funds for medical treatment or other genuine needs, when he has no alternative source except by sale of the gold jewellery, the condition of non alienation in such situation would be onerous and unreasonable. The production of property during the trial having incriminating value is a insistence to secure the rights of accused as a part of fair trial. At the same time, when there is a possibility of having a secondary

evidence of the said property, it is no longer necessary in law to insist that the property to be kept intact without alteration and non alienation.

8. In order to ensure the recovery of value, it is necessary that the trial Court shall take all necessary diligent steps to get the market value of the property, correctly assessed the photography of the property,, properly taken depicting all its features and dimensions and before the property is delivered to the interim custody, the photographs have to be certified by the Magistrate. Further necessary bonds and security to be taken from the person to whom interim custody to be given for the value of the property in order to ensure prompt recovery of value from the person to whom interim custody is given. By following the said safeguards, it is no longer necessary to follow the archaic convention of imposing condition of non alienation. After all the Court while passing a judicial order of interim custody is guided by the investigation material and other prima facie material, which support the claim and title of the person to whom interim custody is given. Having once given the interim custody to the person who is supposed to be the owner of the property, depriving him to effectively use and exercise the lawful ownership rights would be unlawful."

Therefore, the order directing keeping Rs.35/- lakhs in safe custody is rendered unsustainable. But, the release of the amount would be in terms of the judgment of the Apex Court in the case of ***SUNDERBHAI AMBALAL DESAI AND OTHERS V. STATE OF GUJARAT***[3] wherein the Apex Court considering an identical circumstance has held as follows:

"7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. court or the police would not be required to keep the article in safe custody;

3. if the proper panchnama before handing over possession of the article is prepared, that can be used in

[3] MANU/SC/1110/2002

evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

... ...

11. With regard to valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, the Magistrate should pass appropriate orders as contemplated under Section 451 CrPC at the earliest.

12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:

(1) preparing detailed proper panchnama of such articles;

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security.

13. For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition.

... ...

> 21. However, these powers are to be exercised by the Magistrate concerned. We hope and trust that the Magistrate concerned would take immediate action for seeing that powers under Section 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly."
>
> (Emphasis supplied)

In the light of the judgment of the Apex Court, the maximum period for the currency notes seized can be held in safe custody is 15 days or a month and the same should be released by way of interim custody to the victim by imposing conditions. Therefore, the amount of Rs.35/- lakhs that is now directed to be held in safe custody is necessarily to be handed over by way of interim custody to the complainant/petitioner herein by imposing conditions.

9. Insofar as the amount of Rs.15/- lakhs that is directed to be handed over to the petitioner for its interim custody, the Court has imposed the following conditions:

> "1. The petitioner is directed to submit the photos of the seized currency notes from 4 angles before taking them to his custody.
>
> 2. The petitioner shall execute indemnity bond for Rs.15,00,000/- with a surety for the likesum before the court.
>
> 3. He shall produce the seized currency notes before the court whenever called for identification purpose.
>
> 4. At the time of handing over the seized currency notes to the petitioner, the concerned police is directed to prepare detailed proper Panchanama of the said seized currency notes.
>
> *5.* The petitioner shall not alienate, transfer the said cash in favour of anybody."

> The petitioner is aggrieved by conditions 3 and 5 which direct that the petitioner shall produce the seized currency notes before the Court whenever called for identification purpose and condition No.5 directs that the petitioner shall not alienate, transfer the said cash in favour of anybody. In the considered view of this Court, conditions 3 and 5 would take away the benefit given in the order itself. If the currency notes are not put into use as is directed by the Court, it would become an order to keep it in safe custody which defeats the reason rendered in allowing the application. So goes condition No.5. Therefore, both these conditions are required to be effaced from the order directing release of Rs.15/- lakhs."

In the light of the issue being similar, the reasons for the possession of the cash being explained and that there being no rival claimant to the cash that is seized, I deem it appropriate to direct the respondent to release the cash in P.F.Nos.238 and 240 of 2025, in favour of the petitioner, by observing the law laid down by the Apex Court in the case of in the case of **SUNDERBHAI AMBALAL DESAI AND OTHERS V. STATE OF GUJARAT[4],** wherein the Apex Court considering an identical circumstance has held as follows:

> "7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:
>
> **1. owner of the article would not suffer because of its remaining unused or by its misappropriation;**

[4] MANU/SC/1110/2002

2. court or the police would not be required to keep the article in safe custody;

3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

… … …

11. With regard to valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, the Magistrate should pass appropriate orders as contemplated under Section 451 CrPC at the earliest.

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13. For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles

> **are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition.**
>
> **... ... ...**
>
> 21. However, these powers are to be exercised by the Magistrate concerned. We hope and trust that the Magistrate concerned would take immediate action for seeing that powers under Section 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly."
>
> (Emphasis supplied)

In the light of the afore-quoted judgment of the Apex Court and of this Court, the petition deserves to succeed.

9. For the aforesaid reasons, the following:

O R D E R

(a) The writ petition is allowed.

(b) The order dated 30.10.2025, passed by the Principal Civil Judge and JMFC, Challakere, on the application in Crime No.396/2025 and the order dated 15.12.2025, passed by the Principal District

and Szessions Judge, Chitradurga, in Crl.R.P.No.108/2025, stand quashed.

(c) The application filed by the petitioner under Section 503 of the BNSS stands allowed.

(d) The concerned Court shall impose such conditions as is directed by the Apex Court in the case of ***SUNDERBHAI (supra),*** before release of the amount***.***

Ordered accordingly.

SD/-
(M.NAGAPRASANNA)
JUDGE

nvj
List No.: 2 Sl No.: 18