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CRL OP No. 8536 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-04-2026

CORAM

THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

CRL OP No. 8536 of 2026

S.Jayakumar
S/o.Swamikannu,
No.365, Mariyamman Kovil Street,
Vallam Village,
Gingee taluk,
Villupuram District-604206.

..Petitioner(s)

Vs

State rep.by its, The Inspector of Police,
Gingee Police Station,
Villupuram district.
Cr.No.437/2025.

..Respondent(s)

Criminal Original Petition is filed under Section 528 BNSS to direct the learned Judicial Magistrate, Gingee, Villupuram District, to number the Return of Property Petition filed under Sections 497 and 503 of BNSS, through online filing vide E-Filing No.ATN20240013985C202500009, in Cr.No.437 of 2025 on the file of the said Learned Judicial Magistrate, and to pass such further or other order or orders as this Honble Court may deem fit and proper in the circumstances of the case.

For Petitioner(s):

Mr.G.Mohammed Aseef

For Respondent(s):

M/S. LEONARD ARUL JOSEPH SELVAM
ADDITIONAL PP
Assisted by Harshana.T

**ORDER**

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The petitioner had filed an application in Cr.No.437/2025 seeking return of his two wheeler bearing Reg.No. TN-16-T-6152 (Hero Splendor + 135) and the trial Court has returned same, against which the present petition has been filed by the petitioner.

2. The contention of the petitioner is that he is the owner of a two wheeler bearing Reg.No. TN-16-T-6152 (Hero Splendor + 135) and he had lent his bike to his friend and later it was found by the petitioner that the respondent police had seized the said vehicle and a case was registered in Cr.No.437 of 2025 for the offences punishable under Section 111(2), 123 of BNS r/w. Section 2191) NDPS Act, as they have recovered some Psychotropic Substances from the said bike. It is submitted by the learned counsel for the petitioner that the petitioner had only lent his bike to his friend and he had no knowledge about the offences committed by his friend. Hence, the petitioner had filed an application through online on 02.12.2025 before the Judicial Magistrate, Gingee, seeking to return his vehicle. The trial Court, on 05.12.2025, has returned the said application for want of jurisdiction.



3. Considering the submissions made and on perusal of the materials, admittedly, the petitioner is the owner of the two wheeler bearing Reg.No. TN-16-T-6152 (Hero Splendor + 135) and he is not an accused in this case. The petitioner's friend took the said two wheeler and alleged to have committed the above offences by using the petitioner's bike.

4. It is seen that from the date of seizure, the vehicle is kept in open space exposing to vagaries of weather, further detention would cause damage to the vehicle, in result, the value of the vehicle will get diminished and vehicle would become immobile. Added to it, the Apex Court in the case of ***Sainaba vs. The State of Kerala and another in Criminal Appeal No.2005/2022 [SLP (CRL.) No.72080/2022]*** by following the judgment of the Apex Court in the case of ***“Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 283”*** released the vehicle which was involved in the NDPS Act. Further, the learned Additional Public Prosecutor objected return of property by referring to the order of this Court in CrI.R.C.(MD).No.41 of 2019 dated 16.06.2023, but it is seen that in the said order, the decision of the Apex Court in ***Sainaba's*** case has not been referred to.

5. In view of the decision of the Hon'ble Apex Court on this point as laid down which is binding under Article 141 of the Constitution of India, this Court is of the view that the trial Court cannot refuse to receive the petitioner's



application for return of property as each case has to be decided on considering the merits of the case.

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6. Admittedly, in this case the petitioner is not an accused and his vehicle was has been seized. Hence, the petitioner is entitled for interim custody of the vehicle. The petitioner shall file a fresh application along with this order copy before the learned Judicial Magistrate, Gingee, Villupuram District and the learned Judicial Magistrate shall entertain the same as per the decision of the Hon'ble Apex Court in *Sainaba's case* (cited supra).

7. In view of the above, this Criminal Original Petition is disposed.

08-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

BKN



To:

1. Judicial Magistrate, Gingee, Villupuram.
2. The Inspector of Police,
Gingee Police Station,
Villupuram district.
Cr.No.437/2025.



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M.NIRMAL KUMAR, J.

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