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**IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
THARAD, BANASKANTHA.**

Cri. Misc. Application No. 116 of 2026

Exh. _____

Applicant :-

Rajput Govindbhai Pirabhai

Age : Adult,

R/o. : Dheema, Tal. : Dharnidhar, Dist. : Vav-Tharad

VERSUS

Opponent :-

The State of Gujarat,

Through Ad. P. P. Shri, Tharad

Appearance :

Ld. Advocate **Shri C. R. Trivedi** for the applicant.

Ld. A.P.P. **Shri V. A. Gandhi** for the opponent - The State.

**Application Under Sec.497 of the
Bhartiya Nagrik Suraksha Sanhita, 2023**

:: JUDGMENT ::

- 1] The present applicant has filed this application for seeking interim custody of vehicle Maruti Suzuki Swift VDI bearing registration No. GJ-27-AH-1146 which has been seized in the FIR No. 11996006251175/2025 registered at P. S. Tharad for the offences punishable under Section

137(2), 87, 64(2)M, 54 of the BNS and Section 4, 6 & 17 of the POCSO Act. The present application is supported by the R.C. Book in relation to vehicle bearing registration No. GJ-27-AH-1146.

- 2] Pursuant to filing of the application, notice came to be issued and served upon the opponent and the learned A.P.P. Mr. V. A. Gandhi has appeared on behalf of the State.
- 3] I have heard Ld. Advocate for the applicant as well as Ld. APP for the state and also perused the Documents.
- 4] It has been argued by the learned advocate for the applicant that the applicant Rajput Govindbhai Pirabhai is the owner of seized vehicle bearing registration No. GJ-27-AH-1146 at P. S. Tharad. It is further argued that the said vehicle had not been involved in the offence in any manner. It is further argued that the applicant has been using the above vehicle for the personal use. It is further argued that the seized vehicle was not involved in the offence and if it remain seized, it will lose its road worthiness and become useless. The Ld. Advocate for the applicant further submitted that; depriving the applicant from the custody of the above mentioned vehicle would result in grave injustice to him.
- 5] The Learned Advocate for applicant has further submitted that he will not sell or mortgage etc. the above vehicle ; he will produce the the above vehicle as and when ordered by the court ; he is ready to furnish the surety bond of the

amount as ordered by this Court ; he will not make any changes in the above vehicle, during the pendency of the case. In the end, he prayed to release the vehicle.

6] On the other hand, learned Addl. Public Prosecutor, opposed the application and has filed a report prepared by the I.O. and opposed the present application on the ground that the said vehicle was used in committing the offence punishable under Section punishable under Section 137(2), 87, 64(2)M, 54 of the BNS and Section 4, 6 & 17 of the POCSO Act and the investigating agency has seized the vehicle.

7] Sec. 497 of the BNSS, provides for the order of the custody and disposal of property pending trial in certain cases. It reads as :

“497. Order for custody and disposal of property pending trial in certain cases.

(1)When any property is produced before any Criminal Court or the Magistrate empowered to take cognizance or commit the case for trial during any investigation, inquiry or trial, the Court or the Magistrate may make such order as it thinks fit for the proper custody of such property pending the conclusion of the investigation, inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court or the Magistrate may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.Explanation.-For the purposes of this section, "property" includes-(a) property of any kind or document which is produced before the Court or which is in its custody;(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

(2) The Court or the Magistrate shall, within a period of fourteen days from the production of the property referred to in sub-section (1) before it, prepare a statement of such property containing its description in such form and manner as the State Government may, by rules, provide.

(3)The Court or the Magistrate shall cause to be taken the photograph and if necessary, videograph on mobile phone or any electronic media, of the property referred to in sub-section (1).

(4)The statement prepared under sub-section (2) and the photograph or the videography taken under sub-section (3) shall be used as evidence in any inquiry, trial or other proceeding under the Sanhita.(5)The Court or the Magistrate shall, within a period of thirty days after the statement has been prepared under sub-section (2) and the photograph or the videography has been taken under sub-section (3), order the disposal, destruction, confiscation or delivery of the property in the manner specified hereinafter.”

- 8] In terms of the above provisions when any property is produced before any Criminal Court during any inquiry or trial, the Court is to make such order as it thinks fit for proper custody of such property pending the conclusion of the inquiry or trial. It is well settled that the scope of inquiry and the powers exercisable in terms of Section 497 of BNSS are of a summary nature and do not, in any manner, adjudicate the civil rights of the parties. However, the discretion of the Court to make such orders as it thinks fit for the purpose of giving the custody of the property is to be based on sound reasons. The order entrusting the property on furnishing a bond during trial or inquiry of a case is to be based on prima-facie semblance of ownership which is to be recorded and reached at in the limited inquiry to be conducted by the Magistrate.
- 9] In the leading decision of **Sunderbhai Ambalal Desai V/s. State of Gujarat, AIR 2003 SC 638**, it has been held by the Hon'ble S.C. as under :

“Powers under section 451 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 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”.

- 10] The Hon’ble Apex Court in *Manoj v. Shiram Transport Finance Ltd., 2002 (2) R.C.R. (Cr.) 730* upheld an order of release of the vehicle on sapurdari pending trial in favour of the registered owner subject to the decision of the Civil Court. *In Rajendra Prasad v. State of Bihar, 2002 (2) R.C.R. (Cr.) 812*, the Hon’ble Apex Court considered the claims of parties regarding the vehicle lying in the Police compound. It was observed that the rival versions regarding the transactions relating to the vehicle were not being considered. However, the Court did not want the vehicle to remain in the compound of the Police Station exposed to heat and cold because the automobile was likely to be lost to all in such situation. To avert such situation, the custody of the vehicle was temporarily given to the appellant in the said case who was the ostensible name-holder in the registration certificate. It was held that the custody of the vehicle in favour of the person in whose name the registration certificate was, would be on behalf of the Court and the said arrangement was only till the stage

when the Court passes the order regarding disposal of the property on the conclusion of the trial.

- 11]** The legal position, therefore, is that the custody of a vehicle in proceedings under Section 497 BNSS should be given to the person who is prima facie owner of the vehicle and there is some semblance of ownership in the shape that it is so recorded in the records of the registering authorities. The person in whose name vehicle stands registered in the records of the motor vehicles authorities can, therefore, be taken to be the prima facie owner of the vehicle. This, however, would be subject to determination of the rights of the parties before the Civil Court. A criminal Court is not the forum for determining the issue of title or ownership of the vehicle. However, as a temporary measure by an arrangement the vehicle in question is liable to be given to the person who is prima facie owner of the vehicle and that too on certain terms and conditions so as to provide for its safe custody and prevent its decay and deterioration.
- 12]** According to Sec. 497 of BNSS, the custody given is the interim custody of the property on behalf of court. It has been held in a catena of cases that; it is an erroneous exercise of judicial discretion to casually postpone the issue of a custody of a Motor Vehicle, by the Court till the final decision of a case, which may take a long time because if a mechanically propelled vehicle is kept idle for a long time, not only there are chances of it being spoiled,

but the person who is deprived of the possession of the vehicle is likely to put a great loss in his business.

- 13]** I have perused the record. The perusal of the record shows that the investigation qua the vehicle in question, has been completed. It has been submitted in the report that the vehicle may not be released as it was seized in a serious offence. Further, the report filed by the I.O. does not reveal what investigation has been remained pending qua the vehicle. Further, the copy of the Registration Certificate of vehicle bearing registration no. GJ-27-AH-1146 shows that the applicant Rajput Govindbhai Pirabhai is the owner of the seized vehicle.
- 14]** In light of above discussion, this court is of the view that there is no bar to interim release the vehicle bearing registration no. GJ-27-AH-1146, on bond or surety to the applicant. Hence, following order is passed.

::: ORDER :::

- 1) The Criminal Misc. Application No. 116 of 2026 of the applicant is hereby allowed.
- 2) The Maruti Suzuki Swift VDI vehicle bearing registration No. GJ-27-AH-1146, Chassis No. MA3FHEB1S00745026 and Engine No. D13A2452005 which was seized in the FIR No. 11996006251175/2025 registered at P. S. Tharad, is ordered to be released to the **Rajput Govindbhai Pirabhai**, on furnishing the bond of **Rs. 2,00,000/-**

(Rupees Two Lacs Only), on the following terms and conditions:

- a) That the applicant shall not sell vehicle bearing registration No. GJ-27-AH-1146 till the final outcome of this case.
- b) That the applicant will produce the said Muddamal vehicle as and when called for, by the Court.
- 3) The officer in-charge of concerned Police Station is directed to prepare a proper panchnama of the vehicle with the photographs of the vehicle before handing it over to the applicant and shall also ensure that the conditions laid down by Hon'ble Supreme Court of India in case titled as ***Sunderbhai Ambalal Desai and C. M. Mudaliar v/s State of Gujarat; (2002) 10 SCC 283*** be followed at the time of release of vehicle.
- 4) Bond be furnished before the Police Station.

Pronounced today on this 11th day of March, 2026 in the open Court at Tharad, Banaskantha.

THARAD
DATE : 11/03/2026

(P. M. SAYANI)
ADDL. SESSIONS JUDGE,
THARAD, BANASKANTHA,
CODE No. GJ00575