

ORDER BELOW EXH: 01

1. The present application is filed under Section 497 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking release of Muddamal cheque bearing No. 196821, issued by the complainant Mr. Rameshbhai Babubhai Vala for an amount of Rs. 75,000/-, in favour of the accused i.e. the present applicant Mr. Gigabhai Vijabhai Bhadarka.
2. This Court has carefully perused the complaint as well as the muddamal cheque seized by the Investigating Officer during the course of investigation. This Court has also sought and considered the opinion of the Investigating Officer with regard to the release of the said cheque. It is an admitted position on record that the complainant has issued the cheque in question in favour of the present applicant towards certain payment. Notably, there is no allegation in the complaint that the said cheque was obtained by the accused by committing any offence, nor is it the case of the prosecution that any offence was committed by the accused in procuring the issuance of the cheque.
3. While adjudicating the present application, this Court deems it appropriate to refer to the provisions contained in Section 497 of BNSS, which empowers the Court to pass appropriate orders for custody and disposal of property pending trial. The term "property" includes any document produced before the Court or

any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

4. This Court is of the considered opinion that a cheque constitutes a valuable security, and in the present case, the issuance thereof in favour of the applicant is unequivocally admitted by the complainant. It is pertinent to note that the complaint subsequently lodged pertains to allegations of criminal intimidation and extortion. However, the complaint is conspicuously silent regarding any illegality, coercion, or criminality in the issuance of the cheque bearing No. 196821. The sequence of events prima facie suggests that after voluntarily issuing the cheque, the complainant has resorted to criminal proceedings, thereby effectively restraining the applicant from encashing the said cheque through legal process.
5. At this stage, this Court is not required to adjudicate upon the existence or legality of any underlying debt or liability, as such issues may fall within the domain of separate civil or criminal proceedings, including proceedings under the Negotiable Instruments Act, 1881. The limited scope of consideration herein is whether the cheque falls within the ambit of "property" connected with the commission of an offence as contemplated under Section 497 of BNSS.
6. In this regard, it would be apposite to refer to the settled

principles laid down by the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai v. State of Gujarat, AIR 2003 SC 638 : (2002) 10 SCC 283**, wherein it has been categorically held that the powers under Sections 451 and 457 of the Code of Criminal Procedure (now corresponding to Section 497 of BNSS) ought to be exercised expeditiously and judiciously to ensure that the property is not unnecessarily kept in custody of the Court or police for a long period. The Hon'ble Apex Court has observed that keeping such property in custody results in avoidable deterioration, loss of value, and causes unnecessary hardship to the rightful owner. The Hon'ble Supreme Court in the aforesaid judgment has further emphasized that the object of the provision is to ensure proper custody of the property pending trial and to pass appropriate orders for its release or disposal at the earliest, subject to appropriate conditions, so that the property is preserved and its value is not diminished. Further, in **General Insurance Council v. State of Andhra Pradesh, (2010) 6 SCC 768**, the Hon'ble Supreme Court reiterated the principles laid down in *Sunderbhai Ambalal Desai* (supra) and directed all criminal courts to exercise powers under Sections 451 and 457 CrPC promptly and effectively, particularly for release of seized property, so as to avoid unnecessary retention of property in police custody. Similarly, in **Basavva Kom Dyamangouda Patil v. State of Mysore, AIR 1977 SC 1749 : (1977) 4 SCC 358**, the Hon'ble Supreme Court has held that the object of the law is that the property which has been the subject matter of an offence

should not be allowed to lie idle in custody of the Court or police, and proper orders should be passed for its custody or disposal so that its value is preserved and the rights of the parties are not prejudiced.

7. Applying the aforesaid settled principles of law to the facts of the present case, this Court finds that the Investigating Officer has failed to demonstrate that the cheque in question is either property in respect of which any offence appears to have been committed or that it has been used for the commission of any offence. In absence of such foundational requirement, the continued seizure and retention of the cheque cannot be said to be justified in law.

8. Moreover, the muddamal in question being a cheque, which is a negotiable instrument and a valuable security, its retention in custody would directly frustrate its utility and purpose. The continued seizure would result in irreparable prejudice to the applicant by depriving him of his right to present the cheque for encashment. In light of the law laid down by the Hon'ble Supreme Court and considering the facts of the present case, this Court is of the considered opinion that continued retention of the cheque would not be in consonance with the object and scheme of Section 497 of BNSS, and therefore, the same deserves to be released on appropriate terms and conditions.

ORDER

I. The Application stands allowed.

CRMA No. 170/2026

- II. The original muddamal Cheque bearing No. 196821 dtd. 17/01/2026 for the amount of Rs. 75,000/- issued by the complainant Mr. Rameshbhai Babubhai Vala be released by the Investigating officer and handed over to the present applicant by executing Panchnama within 2 days of the receipt of the order of this court.
- III. The applicant will be entitled to produce the cheque for its encashment.
- IV. The Investigating officer may keep photocopy of the original cheque for his reference.
- V. This court has not gone in determining the existence of legally recover debt from the complainant.

Order signed and pronounced in open court today.

Date:30/03/2026

Talaja


(Ms. M. J. Kikani.)

GJ01549

Additional Judicial Magistrate First Class

Talaja @ Bhavnagar.