

ORDER ON APPLICATION FILED UNDER
SECTION 497 & 503 OF BNSS

The applicant namely Sri. Muniraju aged about 40 years S/o. Shamanna residing at: Thoranahalli Village, Kasaba Hobli, Malur Taluk, Kolar District has filed the present application under Section 497 and 503 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (Hereinafter referred to as 'BNSS', for brevity) seeking interim custody of single barrel gun bearing number SBBL Gun No.5989 along with gun licence and small led bullets seized in Cr. No.282/2024 of Hosakote Police Station and reported at Sl. No.5 and 25 of PF. No.140/2024 dated 31.08.2024 and Vivo mobile phone hand set along with sim seized in Cr. No.282/2024 of Hosakote Police Station and reported under PF. No.145/2024 dated 03.09.2024.

2. The brief facts leading to filling of the application is that the applicant is the registered owner of Single barrel gun bearing No.SBBL gun No.5989, small led bullets and Vivo mobile phone hand set along with sim. The above Single barrel gun, small led bullets and mobile phone were not involved in the alleged offence. The above articles are required for his use. The applicant is ready and willing to

offer surety for the release of the above articles and also ready to abide by any condition to be imposed by this Court. Hence, prayed for allow the application.

3. Per contra, the learned APP resisted the application by filing objection, wherein it is contended that the investigation so far as conducted by the Investigation Officer shows that the above single barrel gun, small led bullets and mobile phone were used for commission of the offence. The above articles are required for identification during the trial and in case it is released in favour of the applicant, he may sell, change the identity and nature of the articles and also may not produce the same before the Court. Therefore, sought for dismissal of the application.

4. The points that would arise for consideration are:-

1. Whether the application filed by the applicant is deserves to be allowed?
2. What order?

5. Heard and meticulously perused the materials on record.

6. My answer to the above said points are as under:

Point No.1: In the Partly Affirmative;

Point No.2: As per final order for the following:

REASONS

7. **Point No.1:** After hearing, careful perusal of the application, objection, IO Report and material placed on record, the applicant has filed the present application seeking interim custody of single barrel gun bearing number SBBL Gun No.5989 along with gun licence and small led bullets seized in Cr. No.282/2024 of Hosakote Police Station and reported at Sl. No.5 and 25 of PF. No.140/2024 dated 31.08.2024 and Vivo mobile phone hand set along with sim seized in Cr. No.282/2024 of Hosakote Police Station and reported under PF. No.145/2024 dated 03.09.2024. The learned counsel for the applicant vehemently contended that the applicant is the owner of the articles claimed in the application and same were not required for further investigation. The articles requires proper care and custody or else its condition will be deteriorated. The applicant is ready and willing to abide by any conditions imposed by this Court. Counter to that, the learned A.P.P. contended that the said articles are very much necessary for the investigation and in

case it is released in favour of the applicant, he may sell, change the identity and nature of the articles.

8. The complainant police registered the present case for the offence punishable under Section 288, 105 and 125 of BNS, 2023 and under Section 3, 4 and 5 of Explosive Substances Act, 1908 and Section 9B of Explosive Act 1884. The alleged offences are exclusively triable by Court of Session. On careful perusal of notarized copy of Invoice placed on record fortifies that the applicant is the registered owner of the single barrel gun, small led bullets and mobile phone in question. There is no rival claim for it. It is well settled principle of law that, while considering interim custody of properties, the aspect of possession and right of possession alone will be considered by the criminal courts in an ordinary manner. It is worth to refer decision of the Hon'ble Apex Court in the case of *Sunderbhai Ambalal Desai -Vs- State of Gujrath* reported in (2002) 10 SCC 283, wherein their lordships laid general principles governing the interim release of the articles seized during investigation and further held that electronic devises will suffer damage if kept unattended for long time. In view of sacred ratio laid down in the above decision, if mobile phone in question is not released in favour of the applicant, its condition will be

deteriorated. The applicant being the owner entitled for the interim custody of the same. Under such circumstances, the applicant is made out sufficient grounds to allow the application and the apprehension of learned APP can be met with by imposing stringent conditions. Accordingly, I answer point No.1 in the '**Affirmative**'.

9. **Point No.2:-** In view of discussion and the findings arrived at point No.1, I proceed to pass the following:

ORDER

Application filed U/sec. 497 and 503 of BNSS is allowed subject to following conditions:

1. It is order to release of single barrel gun bearing number SBBL5989 and Vivo mobile phone hand set along with sim in favour of the applicant Sri. Muniraju aged 40 years, S/o. Shamanna on furnishing indemnity bond for a sum of Rs.5,00,000/-(Rupees Five Lakh) and execution of personal bond for a sum of Rs.1,00,000/- with one surety for the likesum;
2. Applicant shall not encumber or alienate the single barrel gun bearing number SBBL5989 and Vivo mobile phone hand set ;

3. Applicant shall not alter the physical features of the single barrel gun bearing number SBBL5989 and Vivo mobile phone hand set without permission of the Court;
4. Applicant shall produce the single barrel gun bearing number SBBL5989 and Vivo mobile phone hand set before the Court and I.O., as and when directed.
5. The I.O., shall take detail photographs of single barrel gun bearing number SBBL5989 and Vivo mobile phone hand set and draw mahazar to that effect by collecting necessary fee and get the signature of the concerned and submit to be court.

Issue release order subject to furnishing indemnity bond and execution of personal bond and one surety.

Call on: 06.06.2026

**Prl. Civil Judge and J.M.F.C.,
Hosakote.**