

MHAU030067172025



R.C.C. No.790/2025

The State of Maharashtra Vs. Harshkumar and others.

ORDER BELOW EXH.262 & 272.

Read application and say. The application Exh.262 was given to return the seized property in Cr.No.427/2024 of Jawahar Nagar Police Station, Aurangabad connected with RCC No.790/2025. The applicant is the original accused No.5. This applicant gave application Exh.262. However, after getting say on Exh.262 from I.O., the applicant got knowledge about typographical mistake and typed as BMW car instead of BMW motorcycle. So, the word BMW car was corrected by permission and the corrected application was given under Exh.272.

2. Ld. Advocate for applicant submitted that, the applicant is the registered owner of the BMW motorcycle. The said motorcycle was seized since long and if still kept in police station, the property will be wasted, damage or may suffer loss. This could be suffered to this applicant. The applicant also produced the copy of RC book issued by

RTO which made it clear that, this applicant is the registered owner of the said motorcycle. As per Section 503 of BNSS, 2023, if Magistrate things fit then the property can be delivered to the registered owner. Here nobody claiming the property and applicant already shown he is the registered owner. So, applicant entitled for getting delivery of the said. If this property required, applicant will produced. Court may pass order with any kind of conditions to release the property which will be abide by the applicant. There are two purpose of applicant i.e. one to pay the insurance and for insurance if already over then the motorcycle needs to inspected by the insurance authority, the second purpose is that to save the property from wasting or damage. So, applicant prayed for release the property on a bond which applicant will abide. So, no chance will be there that applicant would transfer the same or misuse the same.

3. Ld. Advocate for applicant placed his reliance on the following judgment;

“AIR 2003 Supreme Court 638 : 2002 AIR SCW 5301, Supreme Court of India, Sunderbhai Ambalal Desai Vs. State of Gujarat, in Special Leave Petns. (Cri.) Nos. 2745 with 2755 of 2002, decided on 01/10/2002,

“Criminal P.C. (2 of 1974), S.451 – Disposal of property pending trial powers of Court. Powers under S.451 should be exercised expeditiously and judiciously. Court to pass appropriate orders immediately and articles are not to be kept for a long time at police station, in any case, for not more than 15 days to one month. Procedure for disposal of seized valuable articles and currency notes, vehicles, seized liquor and Narcotic drugs suggested”.

Hence, Ld. Advocate for applicant prayed for allow the application.

4. Ld. A.P.P. strongly objected and submitted that, this motorcycle is a crime proceed in a crime of misappropriation, cheating, forgery, forgery for cheating, criminal breach of trust along with Section 66 of the IT Act, and all these was done with criminal conspiracy by accused No.1 to 11. So, at the time of investigation motorcycle was seized. Further, this is the stolen property as per the provision of BNSS and for the said already application under Section 107 BNSS, 2023 filed for attachment and sale. The applicant has no source of income, in such situation how he can purchase the property for worth more than Rs.38,00,000/-. Further, the accused No.1 was the clerk in the office of Divisional Sports Complex on contractual basis and he along with other accused No.2 with the help other accused committed the offence. The accused No.3 to 7 and 9 to 11 are

nothing but beneficiaries of the offence, they received various items or amount from accused No.1. So, this motorcycle was also purchased in the name of accused No.5. Considering the price of the motorcycle it was not easy to purchase for any general person, but it is definitely crime proceed. Though it was in the name of accused No.5, the amount involved in the offence was utilized to purchase this motorcycle. The court has discretion to return it or not. There is no mandate to return the property. This accused No.5 is not entitled for possession or custody. In fact the offence was committed to grab the money from the account of Divisional Sports Complex. So, this is the material object for which the offence was committed. Hence, no need to allow the application. If, really this accused want to insure the motorcycle, he may visit the premises where the motorcycle was kept with the permission of court and get it insurance. No need to return the property for said. Hence, application not tenable and may kindly be rejected.

Section 503 is as under -

“Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Sanhita, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting

the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property”.

5. It is the general law that, any motorcycle was seized under Section 106 of BNSS, 2023, then, after proper compliance if it is not material object it can be returned. However, here in this case, the case of the prosecution is that, accused No.1 was working in Divisional Sports Complex as a Clerk on the contractual basis and he made some forged documents by which he obtained internet banking of the Divisional Sports Complex in his name to operate and then, transfer the amount by making forged documents. The accused No.1 utilized the said amount to purchase the property i.e. flats in Mumbai and Aurangabad. Accused No.1 also utilized the said amount to purchase the various items including gold, BMW motorcycle, BMW car, other cars and other various items. The accused No.1 also help by accused No.2 and accused No.2 and 3, they also received huge benefits. Accused No.4 is the girl friend of accused No.1 and accused No.1 purchased the properties in the name of accused No.4. Accused No.5 and 6 are father and mother of accused No.1, accused No.1 purchased the property in their name also. Accused No.7 is the maternal uncle of accused No.1, accused No.1 gave amount to purchase the flat to him.

Accused No.8 and 9 are from the bank who help to do the same, accused No.10 is from the Divisional Sport Complex who help accused No.1 and accused No.11 received the benefit of hand loan of Rs.90,00,000/- from accused No.1. So, after investigation various items were seized under Section 106 of BNSS, 2023 and charge-sheet was filed. Accused pleaded not guilty at the time of charge frame. The evidence was proceeded, now this application. However, the prosecution also moved an application through I.O. with the permission of Commissioner of Police, Aurangabad under Section 107 of BNSS, 2023 for attachment of the said property and sale of the said property, to make it return the amount to the Divisional Sport Complex, the institute who suffered the loss.

6. So, considering the entire proceeding it clearly appears from the record that, accused No.5 or this applicant though shown to be registered owner of the said motorcycle, but having no economical capacity to purchase the motorcycle, so expensive of the price of Rs.38,00,000/-. Further, accused No.5 is the father of accused No.1 who was shown to be main accused and master mind of the said crime. So, this amount for the motorcycle given by accused No.1 and as per the prosecution this is nothing but crime proceed. So, at present

it appears more probable that, this motorcycle is nothing but the crime proceed. So, the offence was committed and then various properties purchased by accused No.1 though in the name of accused No.4 to 7. So, if the crime proceed is there then definitely court could not permit to return it. Hence, the items which application made for return to the applicant is nothing but crime proceed and the application for the attachment and sale Exh.118 is pending. So, the above cited judgment (*Sunderbhai Ambalal Desai Vs. State of Gujarat,*) not helpful to the applicant. The amount went from the government account. So, this Court can not find it fit to return the said motorcycle. Hence, I proceed to pass the following order -

ORDER

The application Exh.262 & 272 are rejected.

Date : 06/05/2026.

(R. S. Jambotkar)
Chief Judicial Magistrate,
Aurangabad.

CERTIFICATE

I affirmed that the contents of this P.D.F. file Judgment/order are same, word to word, as per the original order.

Name of the Stenographer	:	Gajanan R. Tehere Stenographer Grade-II.
Court C.J.M.,	:	(Shri. R.S. Jambotkar) Aurangabad.
Date	:	06/05/2026
Judgment/Order signed by the Presiding Officer on	:	06/05/2026
Order uploaded on	:	06/05/2026
