

MHKO120001092026



**Cri. Misc. Appln.No.08/2026**

**Dil Bahaddur Singh**  
**Vs.**  
**Maharashtra Sarkar**

**Order below Exh.1**

01. This is an application under Section 503 & 497 of Bharatiya Nagarik Suraksha Sanhita, 2023 (in short 'BNSS'). The applicant has prayed for custody of the mobile seized by Forest Department, in C.R.No.WL02/2025 detailed below -

<b><u>Sr.No.</u></b>	<b><u>Name</u></b>	<b><u>Description of Property</u></b>
1]	Vivo Company Mobile	868770070195564
2]	Hero Honda Splendor Motorcycle	Registration No.KA-14-EY-2371, Engine No. HA11EAN5M50592, Chasis No. MBLHAW179N5M52313,

2. Say of Ld. APP and Investigating Officer has called. Ld. APP submitted that, the reasons mentioned in this application are not correct, there is a possibility of destroying and changing the said property. Hence, he prayed to reject the application.

3. The I.O. filed the say. According to him, the offences is serious in nature. He relied upon the provisions upon section 39 of Wild Life Protection Act, 1972 and further stated that any vehicle vessel weapon or trap or tool used for commission of offence will be the property of State Government/Central Government.

4. The I.O. invited my attention towards the case of **State of UP and anr vs. Lalloo singh (2007) SCC 334** wherein the Hon'ble the Apex Court taken into consideration the provisions of Wild Life Protection Act and

further held that the Magistrate cannot release the property seized under the said Act especially by relying upon the provisions of 457 of C.R.P.C. Hence, he prayed to reject the application.

5. At this juncture it would be appropriate to mention the provision of Sub Section (1) of Section 39 of Wild Life Protection Act 1972. The said Sub Section is read as under -

**39. Wild animals, etc., to be Government property.**—(1) Every— (a) wild animal, other than vermin, which is hunted under section 11 or sub-section (1) of section 29 or sub-section (6) of section 35 or kept or 1 [bred in captivity or hunted] in contravention of any provision of this Act or any rule or order made thereunder or found dead, or killed 2 \*\*\* or by mistake; and (b) animal article, trophy or uncured trophy or meat derived from any wild animal referred to in clause (a) in respect of which any offence against this Act or any rule or order made thereunder has been committed, 3 [(c) ivory imported into India and an article made from such ivory in respect of which any offence against this Act or any rule or order made thereunder has been committed; (d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act.] shall be the property of the State Government, and, where such animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal article, trophy, uncured trophy or meat 1 [derived from such animal or any vehicle, vessel, weapon, trap or tool used in such hunting] shall be the property of the Central Government.

6. I have carefully gone through the provisions of Section 39(1) (d) of Wild Life Protection Act, 1972. But, the words used in the said provision especially the word 'used for committing the offence' is important. It is settled principle of criminal jurisprudence that presumption of innocence lies in favour of accused. Unless and until guilt

is proved it cannot be said that accused has committed the offence. When the competent Court will come to the conclusion that accused has committed offence in that contingency the said provision will be applicable.

7. Reference is essential to the case of **Sayyad Rasul Rustam Vs. State of Maharashtra Cri. W. P. No. 852/2020** decided on 04/09/2020 wherein the Hon'ble Bombay High Court has taken into consideration the provisions of Section 39 (1)(d) of Wild Life Protection Act, 1972 and held that Magistrate as a jurisdiction to deal with the application filed as per provision of Section 457 of Cr.P.C. The Hon'ble Bombay High Court relied upon the case of **Principal Chief Conservator of Forest and Anr Vs. J.K. Johnson and Ors. AIR 2012 SC. 61** Wherein the Hon'ble Apex Court held that the words used in clause (d) of Section 39 (1) of Wild Life Protection Act, 1972 especially the words 'has been used for committing an offence' cannot be used against the conformity with the provisions of Constitution. It is not sufficient to deprive the property of any person seized under said Act on mere accusation that such property has been used for committing an offence. The provision of Section 39(1)(d) of said Act will not be attracted on mere accusation or suspicion. The said provision will be applicable when the competent Court of law comes to the conclusion that offence has been committed, therefore, the words 'has been used for committing an offence' cannot be read 'suspected to have been used for committing an offence.' By placing the reliance upon the ratio of said judgment Hon'ble Bombay High Court has clearly held that when the Court of competent jurisdiction comes to the conclusion that offence has been proved, then, said provision will be applicable.

8. Hence, with respect to ratio laid down in **Laloosingh's** case is not helpful for the investigating officer as relied by him. Therefore, there is no hesitation in the mind of the Court that application deserves to be allowed. Although in aforesaid case Hon'ble Bombay High Court taken

into consideration the provisions of Section 457 of Cr.P.C. and present application is filed in view of provision of Section 503 of BNSS, but, there is no material difference in both sections, hence, ratio laid down in **Sayyad Rasul Rustam's** Case is applicable to the case in hand. Hence, I pass the following order. :-

**ORDER**

01.	The application is allowed.
02.	Forest Department, Kadgaon, Dist. Kolhapur is directed to hand over the custody of the seized Mobile <b>Vivio Company Mobile</b> , IMEI No. <b>868770070195564</b> and <b>Hero Honda Splendor Motorcycle Registration No. KA-14-EY-2371, Engine No. HA11EAN5M50592, Chasis No. MBLHAW179N5M52313</b> in crime <b>No.WL 02/2025</b> to the applicant – <b>Shri. Dil Bahadur Singh</b> on executing Supurtnama Bond of Rs.60,000/- (Rs. Sixty Thousand only).
03.	The I.O. is directed to file photograph and panchnama of said muddemal mobile and vehicle at the time of filing of charge-sheet.
04.	The applicant shall not alter, make any changes, or create any third party interest in the mobile and vehicle without permission of the Court.
05.	The applicant shall not commit similar offences in future and to file undertaking in the Court.
06.	Applicant shall produce the mobile and vehicle as and when called in the Court or Police Station.

Date : 24/03/2026

**(N. D. Rudrabhate)**  
Judicial Magistrate First Class,  
Gargoti