



Order below Exh. No. 01 in Other Misc. Criminal Application
No. 29/2026
(30/06/2026)

This present application is filed by the applicant, Sunita Narendra Butke, through her Special Power of Attorney holder, Nikhil Dilip Rathod. The applicant filed this application under section 503 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. The applicant seeks the interim release of her Hyundai Hydraulic Excavator R 210, Model Robex 210 Smart, bearing **Engine No. 22E84980050** and **Machine Serial No. HYNDN533KE0005712**, which the Wadki Police seized in connection with crime no. 152/2026.

02. The prosecution case arises from a raid conducted on 08/03/2026. Mahendra Madhukarrao Deshpande, Mandal Adhikari (Circle Officer), Dhanora, Tahsil Office, Ralegaon, lodged a written report at Wadki Police Station. The report alleged that several persons were executing illegal sand excavation and unauthorized transportation on the Wardha River bed at Rohini village. Based on this report, the Wadki Police registered FIR No. 152/2026 for the offences punishable under sections 303(2) of the Bharatiya Nyaya Sanhita (BNS), 2023, sections 48(7) and 48(8) of the Maharashtra Land Revenue Code, 1966, sections 9 and 15 of the Environment (Protection) Act, 1986, and sections 3, 4, and 21 of the Mines and Minerals (Development and Regulation) Act, 1957. During the raid, the police seized various trucks, tippers, iron boats, and two Poclain excavators, including the excavator

03. The applicant claims to be the owner of the seized excavator. She purchased the excavator from Water Logistic Services, Nagpur, through a sale agreement dated 05/07/2024. Kotak Mahindra Bank financed this purchase. The loan statement from Kotak Mahindra Bank shows that the applicant is a co-borrower and has a consistent repayment record. The bank statement up to 10/04/2026 confirms that the applicant has successfully cleared twenty installments with zero defaults. The applicant leased the excavator to Nikhil Dilip Rathod for six months via a rent agreement dated 25/02/2026 at a monthly rent of Rs. 1,80,000/-. Because she resides in Yavatmal and cannot attend court proceedings frequently, she executed a Special Power of Attorney on 13/03/2026 in favour of Nikhil Dilip Rathod to file this application and manage the litigation.

04. The applicant contends that the excavator has been parked idle at Wadki Police Station since its seizure on 08/03/2026. The police station premises are open to the sky. The vehicle is exposed to rain, sunlight, and extreme weather, which are causing natural decay, rust, and physical deterioration. The electrical components, paint, and hydraulic systems will suffer permanent damage. This idle parking deprives the applicant of her source of income and causes severe financial loss. The investigation is substantially complete, and the police do not require the vehicle for further probe. The applicant is willing to furnish sufficient security, promises not to alienate the vehicle, and undertakes to produce it whenever directed by this Court.

05. The learned Special Assistant Public Prosecutor (APP) filed a written say strongly opposing the release of the excavator. The Special

APP submitted that the excavator is muddamal (case property) used directly in illegal sand mining. The investigation is still ongoing, and the police may require the vehicle for spot verification and trial. The Special APP also contended that the applicant has not submitted complete original ownership documents. The Special APP raised concerns that if the vehicle is released, the applicant might change its physical appearance, sell it, or use it to commit similar environmental offences.

06. The Investigation Officer has also filed the say and submitted that the police seized the excavator from the Wardha River bed under a proper seizure panchanama. The report states that the police have no objection to releasing the excavator to the applicant, provided she complies with the terms and conditions and submits appropriate security bonds before this Court.

07. To determine the entitlement of the applicant, this Court must evaluate her ownership documents. The applicant has produced the agreement of sale dated 05/07/2024 executed with Water Logistic Services. The Kotak Mahindra Bank loan account details confirm active finance on the asset with a flawless repayment history of twenty cleared EMIs. The bank issued a No Objection Certificate (NOC) on 17/04/2026 confirming the sale to the applicant. The TATA AIG contractors' plant and machinery insurance policy is valid from 04/01/2026 to 03/01/2027. The applicant also produced her Aadhaar card verifying her identity. These documents establish her prima facie ownership and right to possession. No other rival claimant has come forward to claim the excavator. The Special Power of Attorney executed on 13/03/2026 legally empowers Nikhil Dilip Rathod to represent her in these proceedings.

08. The prosecution raised an objection that parallel administrative and revenue proceedings are pending under section 48 of the Maharashtra Land Revenue Code, 1966. The prosecution argued that under section 48(8)(2) of the MLR Code, only the Collector or the Sub-Divisional Officer has the authority to release vehicles seized for transporting minor minerals, and the Magistrate lacks jurisdiction. This Court finds this objection unsustainable. The applicant has produced the Treasury Challan dated 08/04/2026 showing that she deposited **Rs. 7,50,000/-** as a penalty to the Sub-Divisional Office, Ralegaon, through the State Bank of India. This deposit proves her complete bona fides and satisfies the revenue interest of the State.

09. In **Tanvir Kadir Shaikh V/s. The State of Maharashtra and Ors. MANU/MH/3777/2026**, the Hon'ble Bombay High Court have observed as under:-

“We therefore, find that the action of respondents in retaining the said vehicle without complying with the statutory provision of Section 48 (8) (1) and (2) of MLR Code despite there being an order passed by the learned Judicial Magistrate First Class for handing over possession of the said vehicle is erroneous and therefore, we are inclined to exercise our jurisdiction under Article 226 of the Constitution of India.”

10. The Hon'ble Bombay High Court has settled the question of the Magistrate's jurisdiction in such overlapping situations. In the landmark case of **Tanvir Kadir Shaikh V/s. The State of Maharashtra and Ors. MANU/MH/3777/2026**, the Hon'ble High Court held that the criminal court's jurisdiction to release seized vehicles under criminal provisions remains alive. The Hon'ble High Court ruled that once a

competent Criminal Court directs the release of a vehicle or machine on supratnama, the authorities must comply and handover possession.

11. The statutory provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023, are designed to prevent the unnecessary detention of seized property. The landmark decision of the Hon'ble Supreme Court of India in **Sunderbhai Ambalal Desai V/s State Of Gujarat, AIR 2003 SC 638**, governs the release of seized vehicles. The Hon'ble Apex Court held that keeping seized vehicles at police stations for a long period is of no use. The Hon'ble Supreme Court directed the Magistrates to pass prompt orders to release such vehicles on executing appropriate bonds and guarantees to prevent them from becoming junk. In the present case, the excavator has been parked in the open for over a month. Keeping it parked indefinitely will cause its hydraulic systems to seize and the machine to reduce to scrap, resulting in a total loss of its utility and value. Since the applicant has established her prima facie ownership and paid the administrative penalty of **Rs.7,50,000/-**, it is just and fair to release the excavator on stringent conditions.

12. Balancing the fundamental rights of the owner to protect her property against severe depreciation, and the duty of the Court to ensure the property is available for trial and eventual confiscation, I find it just, proper, and expedient in the interest of justice to grant interim custody of the excavator to the applicant, subject to strict and heavy conditions. In view of the observations of the Hon'ble Apex Court as made in the above reported case law, it appears that, it will be just & proper by imposing certain conditions the seized excavator be released. As the applicant has shown her ownership over the seized excavator, she is entitled for the possession of the same. In the result, following

order is passed :-

ORDER

01. The application is allowed.
02. The Police Officer, Police Station, **Wadki**, Tal. Ralegaon, Dist. Yavatmal is hereby directed to handover the interim custody of the the seized property i.e. Hyundai Hydraulic Excavator R 210, Model Robex 210 Smart, bearing **Engine No. 22E84980050** and **Machine Serial No. HYNDN533KE0005712** seized in Crime no. 152/2026 registered at Police Station, Wadki, Tal. Ralegaon, Dist. Yavatmal to the applicant to the applicant (through his constituted attorney **Nikhil Dilip Rathod**) still the conclusion of the trial, on the applicant's executing indemnity bond of **Rs.50,00,000/- (Rs. Fifty Lakhs only)** on her proper identification.
03. The applicant shall provide the necessary documents in respect of said excavator to the investigating officer.
04. The applicant to undertake that she shall not sell or transfer the said excavator without prior permission of the Court.
05. The applicant is further directed that she shall not change the shape, colour and the nature of the said excavator.
06. The applicant to preserve & maintain the said excavator in all respects and shall not hire the same for illegal purposes.
07. The applicant is further directed that she shall not use the said excavator for unauthorized extraction, removal, collecting replacement, picking up or disposal of Minor Minerals or Transportation of the same.
08. The applicant shall produce the said excavator as and when directed by this Court or Investigation Officer or Revenue

Authorities in connection with action under the Revenue Act & Maharashtra Land Revenue Code.

09. The Investigating Officer shall take clear, high-resolution color photographs of the excavator from all angles, clearly capturing the engine number. These photographs, along with the Panchnama, shall be countersigned by the applicant's attorney and the Investigating Officer, and shall be submitted to the Court to be kept on record as secondary evidence during the trial. The cost of these photographs shall be borne entirely by the applicant.
10. The investigating officer is directed to produce indemnity bond, photographs, panchnama and copy of this order along with charge sheet, if filed.
11. The applicant is also directed not to use the said excavator for the purpose to commit any offence and also not to hand over the same to anyone who will use the same for the commission of any offence.
12. The present order shall be without prejudice to the powers of the Executive Magistrate to proceed against the said excavator according to section 48 of the Maharashtra Land Revenue Code and the provisions of Mines and Minerals Act. The aforesaid order no way came across or affect the right of the Revenue Authorities to proceed against the said excavator under the law if they desire.
13. It is made it clear that the handing over of the said excavator to the applicant for interim custody shall not stand in the way of initiating confiscation proceedings.
14. In the event of confiscation order by the competent authority, the applicant shall keep the said excavator present positively for confiscation.

15. The concern Revenue Officer is at liberty to take legal action against the said excavator as per legal provisions. However, investigating officer shall not detain the said excavator on the said ground in the present crime. He shall hand over the interim custody of said excavator in present crime on aforesaid conditions.
16. Inform concerned police station accordingly.

Place : Ralegaon.

Date : 30/06/2026.

(U. M. Patil)
Judicial Magistrate First Class,
Ralegaon.

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment/order :-

- a) Name of the Stenographer :- R. R. Hardiya,
- b) Court :- Civil Judge Junior Division
and Judicial Magistrate First
Class, Ralegaon.