



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.11709 of 2026

Date of Decision: 03.09.2026

Bajaj Finance LimitedPetitioner

Versus

State of Himachal Pradesh & others ... Respondents

Coram:
Hon’ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? ¹ Yes.

For the Petitioner: Mr. Gurinder Singh Parmar, Advocate.

For the Respondents: Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocate Generals with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General, for the respondent-State.

Sandeep Sharma, Judge(oral):

Precisely, the grouse of the petitioner, which is a Non-Banking Financial Company incorporated under the provisions of the Companies Act, 1956 and engaged in the business of advancing loans against the pledge of gold ornaments and jewellery, is that it cannot be compelled to produce pledged property i.e., gold ornaments and jewellery solely on the strength of notice issued under Section 94 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which otherwise requires a person, in whose possession or power any document or electronic communication including communication

¹Whether the reporters of the local papers may be allowed to see the judgment?

devices, which is likely to contain digital evidence or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under BNSS .

2. While inviting attention of this Court to Sections 106 and 107 of the BNSS, Shri Gurinder Singh, learned counsel for the petitioner, submits that appropriate remedy, if any, available to the investigating agency is to approach the competent Court of law by moving an application under Sections 106 and 107 of the BNSS seeking therein permission to take cognizance of the offence or for attachment/seizure of the property, because in that eventuality, the person in whose possession such property lies is afforded an opportunity to explain his stand.

3. Precisely, the facts of the case, as emerge from the pleadings as well as other material adduced on record by the respective parties are that petitioner herein advanced loan to respondent No. 4 against his pledging of gold ornaments and jewellery, which were subsequently found to be stolen by respondent No. 4. During the course of the investigation, respondent No. 4 allegedly disclosed to the police that gold ornaments and jewellery stolen by him stand pledged with the petitioner company. The police without affording an opportunity of being heard to the petitioner straightway issued impugned notice under Section 94 of the BNSS,

thereby calling upon it to cause production of the stolen property. In the aforesaid background, petitioner has approached this Court in the instant proceedings under Articles 226 and 227 of the Constitution of India, praying therein for following main relief:-

- a) Issue a writ in the nature of mandamus or any other appropriate writ, order or direction, declaring that the respondents are bound to act strictly in accordance with the provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023 while dealing with the pledged gold ornaments lawfully held by the petitioner;
- b) Issue a writ, order or direction restraining the respondents from seizing or taking possession of the pledged gold ornaments merely on the strength of the notice issued under Section 94 BNSS without following the procedure prescribed by law;
- c) Direct the respondents that interest of the petitioner as pledge may also be secured as it is the petitioner who will be the ultimate sufferer;
- d) Direct the respondents to refrain from issuing oral directions, telephonic threats or adopting any coercive measure against the petitioner contrary to law."

4. Though, while referring to the reply filed on behalf of the respondent-State, Shri Vishal Panwar, learned Additional Advocate General, attempted to argue that very purpose and object of Section 94 of the BNSS, 2023 is to ensure the production of any document or property, which is directly or indirectly is result of criminal activity or has been obtained from the commission of any offence, however, having carefully perused Section 94 of the BNSS, 2023 vis-à-vis

Sections 106 and 107 of the BNSS, this Court finds force in the submission of learned counsel for the petitioner that appropriate remedy, if any, available to the investigating agency is to approach the competent Court of law under Section 106 and Section 107 of the BNSS, but certainly the petitioner herein, which is a Non-Banking Financial Company cannot be compelled to produce pledged property in terms of notice, if any, issued under Section 94 of Bharatiya Nagarik Suraksha Sanhita.

5. At this stage, it would be profitable to take note of Sections 94, 106 and 106 of Bharatiya Nagarik Suraksha Sanhita, which reads as under:-

“94. Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document, electronic communication, including communication devices, which is likely to contain digital evidence or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Sanhita by or before such Court or officer, such Court may issue a summons or such officer may, by a written order, either in physical form or in electronic form, require the person in whose possession or power such document or thing is believed to be, to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document, or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-(a) to affect sections 129 and 130 of the Bharatiya Sakshya Adhiniyam, 2023 or the Bankers' Books Evidence Act, 1891 (13 of 1891); or (b) to apply to a letter, postcard, or other document or any parcel or thing in the custody of the postal authority.

106. Power of police officer to seize certain property.

(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same:

Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of sections 503 and 504 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

107. Attachment, forfeiture or restoration of property.

(1) Where a police officer making an investigation has reason to believe that any property is derived or obtained, directly or indirectly, as a result of a criminal activity or from the commission of any offence, he may, with the approval of the Superintendent of Police or Commissioner of Police, make an application to the Court or the Magistrate exercising jurisdiction to take cognizance of the offence or commit for trial or try the case, for the attachment of such property.

(2) If the Court or the Magistrate has reasons to believe, whether before or after taking evidence, that all or any of such properties are proceeds of crime, the Court or the Magistrate may issue a notice upon such person calling upon him to show cause within a period of fourteen days as to why an order of attachment shall not be made.

(3) Where the notice issued to any person under sub-section (2) specifies any property as being held by any other person on

behalf of such person, a copy of the notice shall also be served upon such other person.

(4) The Court or the Magistrate may, after considering the explanation, if any, to the show-cause notice issued under sub-section (2) and the material fact available before such Court or Magistrate and after giving a reasonable opportunity of being heard to such person or persons, may pass an order of attachment, in respect of those properties which are found to be the proceeds of crime:

Provided that if such person does not appear before the Court or the Magistrate or represent his case before the Court or Magistrate within a period of fourteen days specified in the show-cause notice, the Court or the Magistrate may proceed to pass the ex parte order.

(5) Notwithstanding anything contained in sub-section (2), if the Court or the Magistrate is of the opinion that issuance of notice under the said sub-section would defeat the object of attachment or seizure, the Court or Magistrate may by an interim order passed ex parte direct attachment or seizure of such property, and such order shall remain in force till an order under sub-section (6) is passed.

(6) If the Court or the Magistrate finds the attached or seized properties to be the proceeds of crime, the Court or the Magistrate shall by order direct the District Magistrate to rateably distribute such proceeds of crime to the persons who are affected by such crime.

(7) On receipt of an order passed under sub-section (6), the District Magistrate shall, within a period of sixty days distribute the proceeds of crime either by himself or authorise any officer subordinate to him to effect such distribution.

(8) If there are no claimants to receive such proceeds or no claimant is ascertainable or there is any surplus after satisfying the claimants, such proceeds of crime shall stand forfeited to the Government.

6. Careful perusal of Section 94 of BNSS clearly reveals that Whenever any Court or any officer in charge of a police station considers that the production of any document, electronic communication, including communication devices, which is likely to contain digital evidence or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under

this Sanhita by or before such Court or officer, such office may issue a summons or by a written order, require the person in whose possession or power such document or thing is believed to be, to attend and produce it. The aforesaid provision of law nowhere talks about property derived or obtained, directly or indirectly, as a result of criminal activity or from the commission of any offence, rather it only talks about production of documents, electronic communications, including communication devices.

7. Though, learned Additional Advocate General attempted to argue that aforesaid section, besides referring to documents and electronic communication, also mentions "other thing" necessary or desirable for the purpose of investigation, inquiry, or trial, however this Court is not persuaded to agree with the learned Additional Advocate General for the reason that words "other thing" as used in the aforesaid provision directly relate to digital evidence or other things contained in electronic communication and communication devices.

8. Sections 106 and 107 of the BNSS, as reproduced hereinabove, specifically deal with property suspected to have been stolen and production thereof can only be caused with the prior permission of the Court. Aforesaid provisions of law clearly reveals that where a police officer making an investigation has reason to believe that any property is derived or obtained, directly or indirectly,

is a result of a criminal activity or from the commission of any offence, he can make an application to the Court or the Magistrate exercising jurisdiction to take cognizance of the offence or commit for trial or try the case, for the attachment of such property. It is only after the directions issued by the competent Court of law that stolen property can be directed to be produced, that too before the competent Court of law.

9. Since in the case at hand, petitioner, being a Non-Banking Financial Company, had advanced loan against the pledged property, which is subsequently has been found to be stolen, interest of the petitioner is also required to be protected. While dealing with the application filed by the investigating agency, praying there to cause production of stolen property, Court concerned may have to issue notice to the person who is in possession of the property required to be produced and in that process such person i.e. petitioner herein shall get a chance to explain its position.

10. Consequently, in view of the above, this Court finds merit in the present petition and accordingly same is allowed. The impugned notice issued under Section 94 of the BNSS (Annexure P-6) is quashed and set aside, reserving liberty to the investigating agency to approach the competent Court of law under the relevant provisions of law, as indicated hereinabove, for seeking production of

the alleged stolen property, which is stated to be in possession of the petitioner. Pending applications, if any, also stand disposed of.

**(Sandeep Sharma),
Judge**

September 03, 2026
(shankar)

High Court of HP