IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 7315 OF 2025
AND
WRIT PETITION NO. 5003 OF 2026

WRIT PETITION NO. 7315 OF 2025

Satish s/o Krushnarao Gaidhane,
Aged about __ yrs, occ. Trader,
Proprietor Jai Bhawani Traders
(a sole proprietorship firm)
r/o Plot No. 3, Flat No.100,
Anmol Nagar, Wathoda, Ring Road,
Nagpur 440 034 ……PETITIONER

...V E R S U S...

1. Superintendent of Police,
Nagpur rural, Office at Civil Lines,
Nagpur 440 001

2. Collector, Nagpur,
Collector Office, Civil Lines,
Nagpur – 440 001

3. Tahsildar, Devlapar,
Office of Tahsildar, Devlapar,
Taluka Ramtek,
District Nagpur 441 106

4. Station House Officer,
Police Station Devlapar,
Police Station Devlapar,
Taluka Ramtek,
District Nagpur 441 106 .....RESPONDENTS

WRIT PETITION NO. 5003 OF 2026

1. Ashish Subhashrav Karmore,
Aged about 35 yrs, occ Agriculturist,
r/o. Ward No. 5, Kametipura,
Talegaon Dashasar, Amravati

2. Pramod s/o Haribhau Yadav,
Aged about 56 yrs, occ. Agriculturist,
R/o Ward No. 8, Dattapur,
Tah. Dhamangaon Railway,
District Amravati ……PETITIONERS

...V E R S U S...

1. The Tahsildar, Babhulgaon,
Tah. Babhulgaon, Dist. Yavatmal

2. The Police Station Officer,
Police Station Babhulgaon,
Tah. Bhabhulgaon, Dist. Yavatmal. .....RESPONDENTS

Mr. Virat S. Mishra, Advocate for petitioner in WP No. 7315/2025
Mr. Ashwin R. Ingole, Advocate for petitioner in WP No. 5003/2026
Mr. N.S. Rao, AGP for respondents/State.

CORAM:- ANIL S. KILOR, &
RAJNISH R. VYAS, JJ.

RESERVED ON : 04.11.2026
PRONOUNCED ON : 25.11.2025

JUDGMENT (PER : RAJNISH R. VYAS)

Heard learned counsels for the respective parties.

2. Since, the common question of law has arisen in these

petitions, the question is answered by this common judgment. In Writ Petition 7315/2025, motor vehicle of the petitioner was stopped by the police authorities on 15.11.2025, on the suspicion that it was transporting the sand, illegally.

3. According to petitioner, the transportation of the sand was not illegal as the Electronic Transit Permits (ETP) was in force from 15.11.2025 at 20.10.00 HRS till 16.11.2025 at 2.29.00 HRS. The stoppage of the vehicle and further detention was on 15.11.2025 at 23.45 HRS, on the ground of not having zero royalty pass. On 16.11.2025, respondent No. 4/Station House Officer of Devlapar Police Station, issued a notice stating that the vehicle is detained under Section 257 of the Motor Vehicles Act, 1988 (hereinafter, would be referred to as the "MV Act", for short), as it was necessary to verify genuineness of ETP from Tahsildar, Devlapar. The notice also directed the driver to attend safe keeping of vehicle. The person to whom communication was issued was the driver of the vehicle which was detained.

4. It is not in dispute that ultimately, the proceedings were initiated against the petitioner under the Maharashtra Land Revenue Code, 1966 (hereinafter, would be referred to as the "MLR Code") and

finally on 20.11.2025, the Additional Tahsildar directed the petitioner to deposit the amount of fine. The parties are agree that First Information Report (FIR) was not registered on the basis of aforesaid incident.

5. In Writ Petition 5003/2026, the sand which was transported in the vehicles were owned by the petitioners was unloaded and when the fact of unloading was noticed by respondent No.1 – Tahsildar, empty vehicles came to be seized on suspicion by respondent No. 2/Police Station Officer, Babhulgaon, District Yavatmal. The FIR No. 290/2026 was then registered for offence punishable under Sections 303(2), 3(5) of of the Bharatiya Nyaya Sanhita, 2023 (hereinafter, would be referred to as the "BNS", for short) and under Sections 48(7) and 48(8) of the MLR Code. According to petitioners, respondent No. 2/police authorities handed over the matter to respondent No. 1 Tahsildar for initiating action under Section 48(7) and (8) of the MLR Code.

6. In the aforesaid background, since the respective counsels have argued that police authorities have no jurisdiction to detain the vehicles in absence of registration of an offence and further have no authority to hand over the vehicle to respondents/revenue authorities, the facts in detail are not narrated.

7. The respondent/State in both the cases has come with a specific contention that power to seize the vehicle flows from Section 102 of the Criminal Procedure Code(hereinafter, would be referred to as the “Cr.P.C.”, for short), similar provision under Section 106 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS) authorizes the police officer to 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.

8. Thus, the arguments and counter arguments boil down to the issue as to whether the police officer can detain the vehicle carrying minor minerals without satisfying itself about requirements of Section 106(1) of the B.N.S.S./Section 102 of the Cr.P.C and hand over the vehicle to the revenue authorities to take appropriate action under the MLR Code.

9. In this background, we have given thoughtful consideration to the arguments advanced by the learned counsels for respective parties, so also, have perused the record of the cases.

10. As already stated, in Writ Petition 7315/2025, it is not at all disputed that the petitioner was carrying the minor mineral in a vehicle and the vehicle was detained by the police authorities. The police authorities communicated the petitioner that appropriate safety of the vehicle shall be taken by the petitioner. The powers which are exercised by the respondent/police authorities while issuing aforesaid communication dated 16.11.2025 informing the petitioners about detention of the vehicle, according to the said communication, flows from Section 257 of the Motor Vehicles Act. The subsequent challenge is also raised to the final order passed on 28.11.2025 imposing fine on the petitioner by the Additional Tahsildar.

11. Since, the learned AGP Mr. N.S. Rao has specifically contended that power to seize the vehicle flows from Section 102 of the Cr.P.C. (predecessor provision), which is pari materia to Section 106 of the Bharatiya Nagrik Suraksha Sanhita (BNSS), 2023, it is required to be seen what the aforesaid provisions deal with.

> ***102. 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, of 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 for 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 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.]

106. Power of police officer to seize certain property.-(1) Any police officer may seize any property which may be alleged or susp 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.

At this stage, since the provisions of Section 106 of B.N.S.S. and Section 102 of Cr.P.C. are pari materia, in the judgment for better appreciation of the arguments advanced by the respective counsels, reference is made to Section 102 of the Code of Criminal Procedure.

12. Section 106 of the B.N.S.S. and Section 102 of the Cr.P.C. falls under Chapter VII which deals with compelling production of things. The aforesaid section prescribes the procedure and authorizes the police officer to seize the vehicle but under certain circumstances. The ingredients of Sub-section (1) of Section 102 can be said to be (i) there has to be police officer (ii) who may seize any property (iii) which may be alleged or suspected to have been stolen. (iv) or it may be found under circumstances which create suspicion of any offence.

13. At this juncture, it is necessary to mention here that the offence is defined under Chapter I of the Cr.P.C. section 2, clause (n)/ under Chapter (I), section 2(q) of the BNSS which reads thus:

Chapter I, Section 2, clause (n) of Cr.P.C. -

> *(n) "offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle-trespass Act, 1871.*

Chapter (I), Section 2(q) of the BNSS

> *(q) "offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle-trespass Act, 1871.*

The aforesaid definition would reveal that an act or omission made punishable by the law in an offence.

14. There is one more condition, which empowers the police officer to seize certain property which states that property may be seized which may be alleged or suspected to have been stolen. Thus, it can either be seized on the basis of allegation or there must be suspicion that the property is stolen. The record shows that the allegations are not made against the petitioner before or at the time of detention of the vehicle that it was stolen or it created suspicion of the commission of any

offence. The suspicion that property is stolen is also not supported by any material produced on record.

15. The word “suspicion” is weaker and broader expression than “reasonable belief” or “satisfaction”. The expression “circumstances which create suspicion of the commission of any offence” in Section 102 does not refer to a firm opinion or an adjudication/finding by a police officer to ascertain whether or not any property is required to be seized. There ought to be a direct link between the property which is seized and the offence which alleged to have been committed. Certainly, that would come during the course of investigation, which may require registration of an offence. Thus, the circumstances creating suspicion of commission of offence will have to be taken to the logical end by the police officer under Section 106 of the B.N.S.S. The police officer after seizing the property can either report the seizure to the superior officer or to the Court or hand over the custody to the person on executing his bond. There is no provision to hand over the custody of the property to the revenue authorities.

16. In this background, if the facts in Writ Petition 7315/2025 are perused, it would be crystal clear that the State has not come with a case

as to which offence the petitioners have committed, so also, it could not point out which of the act or omission of the petitioners is made punishable under any law.

17. The first communication dated 16.11.2025, which is at page 40 of Writ Petition 7315/2025 only shows that enquiry regarding the vehicle was done from the petitioner which was carrying minerals and the petitioner had produced ETP. It was further stated in said communication that the ETP are to be verified from the office of Tahsildar, Devlapar and therefore, the vehicle is detained under Section 257 of the MV Act. The communication dated 16.11.2025 fails to satisfy any of the ingredients of Sub-section(1) of Section (102) of Cr.P.C. and similar provision in BNSS.

18. The matter further suffers from one more illegality. Under Section 102 of the Cr.P.C., police officer is require to report the seizure to the superior officer if the officer who has seized the vehicle is subordinate to the officer in charge of the Police Station. Not only this, Sub-section 3 of Section 102 also casts duty on the police officer acting under Sub-section (1) to forthwith report the seizure to Magistrate having jurisdiction and if the property is of such nature that it cannot be

conveniently transported to the Court then police authority may give custody thereof on executing a bond undertaking to produce the property before the Court as and when required.

19. Thus, seizure of the property of the citizen is not taken lightly by the legislature. Two safeguards which are provided under Section 102 of Cr.P.C/section 106 of the BNSS protects not only property of the person but also provide supervision over the illegal seizure. Reporting of the seizure by the officer if he is subordinate to the police officer in charge of the police station shows that power to seize the vehicle is required to be exercised in the manner prescribed under the statute. The police officer is further required to report the seizure to the Magistrate concern.

20. It is in this background, when the record of Writ Petition 7315/2025 is perused, it would be clear that neither any document is produced on record to show that report of the seizure made by the subordinate officer to the police station officer or the Magistrate was informed about the same. The aforesaid inaction of the respondents/police authorities thus speaks volume for itself. It is settled position of law that power of seizure is, in fact, a sovereign power of the

State which is delegated to the police officers in discharge of their duties of law enforcement and in the enforcement of orderly society. The power therefore is required to be exercised with care and caution and only when pre-conditions are totally satisfied. As already stated, compliance to Section 102 of the Cr.P.C/106 of the BNSS is not at all brought to our notice. Further, learned counsel for petitioner is right in saying that though recourse to Section 257 of MV Act is taken which is reflected from communication dated 16.11.2025, but there is no such provision in the MV Act. This fact also shows casual attitude on the part of the respondents.

21. Learned AGP has relied upon the judgment of the Hon'ble Supreme Court in the case of [1]***Nevada Properties Private Limited Vs. State of Maharashtra and Another*** and has contended that the procedure prescribed under Section 102 is to help and assist the investigation and to enable the police officer to collect and to collate evidence to be produced to prove the charge complained of and set up in the charge sheet. There cannot be dispute regarding the law laid down by the Hon'ble Apex Court but when the said argument is advanced, it cannot be ignored that in Writ Petition 7315/2025, till this date, FIR is not

[1] 2019(20) SCC 119

registered. The learned AGP then invited our attention to the law laid down by the Hon'ble Apex Court in the case of [2]***State (NCT of Delhi) Vs. Sanjay***, more particularly, on paragraphs 13,31,44 and 60, which read thus:

> "*13. In the case of Sengol, Charles and K. Kannan, etc.etc. vs. State Rep. by Inspector of Police, 2012 Cri LJ 1705, 2012(2) CTC 369, a similar question also came for consideration before the Madras High Court where a batch of writ petitions were heard and disposed of. The allegation made against the writ petitioner in the FIR was that they committed theft of sand from rivers and river-bed belonging to the Government, which act also constitutes violation of the provisions of MMDR Act. Accordingly, they were prosecuted for the offence punishable under Section 21 of the MMDR Act and also under Section 379 IPC.*
>
> *31. A Perusal of aforementioned provisions would show that a police officer of his own authority has the duty to prevent any injury attempted to be committed to any public property or national assets and to prosecute such person in accordance with law.*
>
> *44. In the case of Maqbool Hussain vs. State of Bombay, AIR 1953 SC 325, the question that fell for consideration before the Constitution Bench of this Court was whether by reason of the proceedings taken by the Sea Customs authorities the appellant could be said to have been prosecuted and punished for the same offence with which he was charged in the court of the Chief Presidency Magistrate, Bombay. In the said case, gold had been brought by the appellant from Jeddah in contravention of the provisions of Foreign Exchange Regulation Act, 1947. He was also liable to be prosecuted under the Sea Customs Act. The prosecution was challenged as being violative of Article 20(2) of the Constitution.*

[2] (2014)9 SCC 772

> *60. There cannot be any two opinions that natural resources are the assets of the nation and its citizens. It is the obligation of all concerned, including the Central and the State Governments, to conserve and not waste such valuable resources. Article 48-A of the Constitution requires that the State shall endeavour to protect and improve the environment and safeguard the forests and wild life of the country. Similarly, Article 51-A enjoins a duty upon every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for all the living creatures. In view of the Constitutional provisions, the Doctrine of Public Trust has become the law of the land. The said doctrine rests on the principle that certain resources like air, sea, waters and forests are of such great importance to the people as a whole that it would be highly unjustifiable to make them a subject of private ownership.*

22. He then argued that police officer of his own authority has a duty to prevent any injury attempted to be committed to any public property or national asset and to prosecute such person in accordance with law. According to him, even it is the obligation of all concerned, including the Central and the State Governments, to conserve and not waste such valuable resources. He submitted that Article 51-A of the Constitution of India enjoins a duty upon every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for all the living creatures. According to him, merely because the proceedings for violation of illegal excavation of

sand is required to be reported, on the basis of complaint to the Magistrate, it does not debar the police officer from taking action against the person for committing theft of sand by exercising powers under the Cr PC/BNSS.

23. We are absolutely in agreement with the law laid down by the Hon'ble Apex Court. The police authorities have every power to take recourse to the criminal law but not in a half-hearted manner. If police officer comes to a conclusion that there is theft of minerals and seizes the vehicle, then it is expected to lodge the FIR. Seizure of vehicle without even taking recourse to Section 102 Cr.P.C. in its entity would be something unknown to the provisions of Cr.P.C/BNSS. The power of police to register an offence, if cognizable case is made out, is not at all doubted. Again at the cost of repetition, we are saying that in Writ Petition No. 7315/2025, nothing has been brought on record to show that any FIR was registered or circumstances create suspicion of commission of offence.

24. The learned AGP and the learned counsel for petitioners have brought to our notice the law laid down by the Single Bench of this Court

(**Mr. Anil S. Kilor, J.**, one of the members of the present Bench) in ***Writ Petition No. 2623/2022 (Salman Illiyas Kha Pathan Vs. State of Maharashtra and ors***) and has contended that the issue is already decided by this Court and it has been categorically held that under Section 207 of the MV Act, there is no provision to hand over the vehicle to any other authority including the revenue authority. In that case also the police authority had seized the truck for transportation of minor minerals which action was challenged by preferring writ petition. The Single Judge then considering the relevant provisions of MV Act and the Mineral Minerals (Development and Regulation Act), 1957, gave a finding that in absence of specific provision under the relevant Acts, custody of the vehicle cannot be handed over to any authority including the revenue authority, more particularly, under section 207 of the MV Act.

25. Much emphasis was laid by the learned AGP on Section 102 of Cr.P.C. and therefore, we would like to state that intention of legislature is required to be gathered from the language used. Reading the provisions of Section 102 of the Cr.P.C./Section 106 of the BNSS, plainly and literally, does not advance any mischief. Said provision clearly says

that it is only under the circumstances which are mentioned in Sub section 1 that vehicle can be seized and once it is seized, recourse to Sub-sections 2 and 3 is required to be followed. Accepting argument of learned AGP that Section 102 authorizes detention and permits the police officer to inform the revenue authorities or any other authorities, would be adding something to the language of the statute which has not been done by the legislature.

Thus, we hold that Section 106 of the B.N.S.S. does not authorize the police to transfer a seized vehicle to revenue authorities for action under the MLR Code, merely by handing it over.

26. As regards Writ Petition No. 5003/2026 vehicle was detained by the police on 19.6.2026 and immediately FIR No. 290/2026, was registered. Thus, even the revenue authorities has drawn a detail panchanama. The FIR is under Sections 303(2), 3(5) of Bharatiya Nyaya Sanhita and Section 48(7) (8) of Maharashtra Land Revenue Code. The seizure form is also produced on record which clearly shows that the police authorities have seized the truck in the crime. In the aforesaid background, we are not inclined to entertain Writ Petition No. 5003/2026.

27. At this stage, we would like to state that almost every week, we come across few petitions challenging the action on the part of the respondents/police authorities of detaining the vehicle for transportation of sand in similar circumstances. The said action results into filing of petitions and consequently unnecessary litigation. In spite of the law being laid down by the Single Bench of this Court, the police authorities have not taken any serious efforts to follow the procedure. We therefore, by this judgment direct the Director General of Police, Maharashtra to issue appropriate circular to all Police Stations in the State of Maharashtra providing necessary guidelines to deal with the similar cases.

28. In that view of the matter, in Writ Petition No. 7315/2025, following order is passed:

ORDER

i) Writ Petition No. 7315/2025 is allowed.

i-a) The order/intimation dated 16.11.2025 intimating the petitioner about detention of his vehicle is quashed and set aside, so also, all the consequential actions thereupon.

i-b) The seized vehicle be immediately released in favour of the petitioner if not required in any other proceedings.

ii) Writ Petition No. 5003/2026 is dismissed.

ii-a) The petitioners can file appropriate application before the appropriate forum for release of their vehicle.

29. The petitions are disposed of accordingly.

(RAJNISH R. VYAS, J.) (ANIL S. KILOR, J.)

Signed by: Mr. R. S. Belkhede
Designation: PS To Honourable Judge
Date: 25/11/2026 16:06:32