

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1588 OF 2022

1. Govansh Raksha Samiti Goshala, Malegaon .. Petitioners
Through It's Authorized Signatory,
Subhash Pruthwiraj Malu
Age. 39 years, Occ. Nil,
R/o. Near MSJ College Canteen,
Malegaon Camp, Malegaon, Dist. Nashik.
2. Guru Ganesh Mishri Gopalan Seva Sangh
Through It's Authorized Signatory
Prakash Inderchand Bothara
Age. 35 years, Occ. Nil,
R/o. Vaijapur, Dist. Aurangabad.

Versus

1. The State of Maharashtra .. Respondents
Through Police Station, Vaijapur,
Aurangabad Rural.
2. Shakil Sharif Pathan
Age.46 years, Occ. Agri & Business
R/o. Laadgaon Road, Mustafa Park,
Tq. Vaijapur, Dist. Aurangabad.
3. Mosin Ayyub Qureshi
Age.24 years, Occ. Business,
R/o. Gawandi Galli, Vaijapur,
Dist. Aurangabad.
4. Sahil Sattar Qureshi
Age. 20 years, Occ. Business,
R/o. Kasaai Galli, Vaijapur,
Dist. Aurangabad.

5. Nadim Jabbar Qureshi
Age. 30 years, Occ. Business,
R/o. Qureshi Galli, Vaijapur,
Dist. Aurangabad.
6. Sahil Sattar Qureshi
Age. 18 years, Occ. Business,
R/o. Qureshi Galli, Vaijapur,
Dist. Aurangabad.

Mr.Siddhant S. Varma, Advocate for the petitioners.

Mr.Y.G.Gujarati, APP for the respondent/State.

Mr.Satej S. Jadhav, Advocate for respondent Nos. 2 to 6.

CORAM	:	KISHORE C. SANT, J.
RESERVED ON	:	18.04.2023
PRONOUNCED ON	:	04.05.2023

J U D G M E N T :-

01. Rule. Rule returnable forthwith by consent of the parties.

02. This petition is filed by Govansh Raksha Samaiti and Guru Ganesh Mishri Gopalan Seva Sangh through their authorized signatories. The challenge is to an order passed by the learned Additional Sessions Judge, Vaijapur, Dist. Aurangabad in Criminal Revision Application No. 10 of 2022, dismissing the Criminal Revision Application. A common order passed in Criminal M.A. Nos. 332, 336, 343, 349, 350, 357 of 2022 by the learned

JMFC, Vaijapur was under challenge. The learned JMFC by his order had allowed the applications of the owners i.e. Cri.M.A. Nos. 332, 336, 343, 350 and 357 of 2022 directing to give interim custody of the cows and other cattles to the owners on executing Supurtnama. Cri.M.A. No.349 of 2022 filed by the petitioner came to be rejected seeking to retain custody.

03. The facts in short are that one FIR came to be lodged by API, Vaijapur Police Station bearing No.282 dated 09.07.2022 for the offence punishable under sections 5(qa), 11(1)(e) and 11 (1)(h) of the Prevention of Cruelty to Animals Act, 1960 (for short “The Cruelty Act”). It is alleged that at 07.30 p.m. on 08.07.2022 he received secret information that respondent No.5 herein, namely, Nadim Jabbar Qureshi, respondent No.6 – Sahil Sattar Qureshi and respondent No.4 – Sahil Sattar Qureshi have detained cattles in the shed for the purpose of slaughtering. On receiving the information police party raided the said shed along with two panchas. They raided the shed at Millat Nagar, Vaijapur at 08.30 p.m. They found 19 cattles of Govansh breed. In the second shed they found 21 cattles including one calf and in third shed they found 10 cattles detained in cruel manner. The cattles in the first shed were belonging to Sahil Sattar Shaikh. The cattles in the second shed were

belonging to Nadim Khan and cattles in the third shed were belonging to Sattar Qureshi. The owners were not found on the spot. By conducting raid the said cattles were seized under panchanama and were taken to petitioner No.2 Goshala. The cattles were thereafter shifted to petitioner No.1 – Goshala at Malegaon, Dist. Nashik.

04. In the Trial Court, Respondent no.2-Shakil Sharif Pathan filed Cri. Misc. Application 332 of 2022 for possession of four cows and one calf. Respondent No.3-Moshin Ayyub Qureshi filed Cri.Misc. Application No.336 of 2022 for possession of 2 cows and 2 calves. Respondent No.4-Sahil Sattar Qureshi filed Cri.M.A. No.343 of 2022 for possession of 16 cattles. Respondent No.5 – Nadim Jabbar Qureshi filed Cri.M.A. No.350 of 2022 for possession of 2 cows and 4 female calves. Respondent No.6 – Sahil Sattar Qureshi filed Cri.M.A. No.351 of 2022 for possession of 2 cows and 1 calves.

05. Guru Ganesh Mishri Gopalan Seva Sangh petitioner No.2 filed application praying for direction to comply with the mandatory provisions of Rule 3(a) of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 and for custody of the said 50 cattles.

The petitioners further prayed for directions to the respondents to pay a sum of Rs.200/- per cattle per day as per circular dated 03.05.2018 issued by the Maharashtra Animal Welfare Board and for such other reliefs.

06. The learned JMFC by way of common order rejected Cri.M.A. No.249 of 2022 and allowed all other applications directing possession of the respective cattles to be handed over to the owners on furnishing supurtnama. It was further directed to the owners of the respective cattles to pay Rs.200/- per day for each cattle to respondent No.2 – Guru Ganesh Mishri Gopalan Seva Sangh. The learned JMFC mainly considered that all the owners have filed on record the Shop Act Licences, purchase receipts of the animals, Udayan Registration certificate of their business and photos of Gaushala at Ghaygaon. The learned Court also observed that all the owners have proved that they are owners of the respective cattles. There is no material to show that the cattles were kept for slaughtering purpose. In the panchanama, there is no reference to any of the implements used for slaughtering of the cattles. The photographs showing pathetic condition of the Goshala are also considered.

07. The order passed by the learned JMFC was carried in the revision by filing common revision bearing Criminal Revision Application No.10 of 2022 on various grounds. The learned Additional Sessions Judge by way of the impugned judgment and order confirmed the findings recorded and reasoning given by the learned JMFC and confirmed the impugned order by dismissing the Criminal Revision Application. Both the Courts below have considered various judgments cited while passing the order. After the impugned judgment was passed, the petitioners filed application seeking stay to the impugned order till 15.11.2022, expressing intention to approach this Court. The stay was, therefore, granted till 15.11.2022. Thereafter, this Court had also granted interim relief by order dated 17.11.2022 directing status-quo in respect of the cattles.

08. Before this Court, the petitions are heard extensively. The petitioners relied upon various judgments which were pressed before the Trial Court and the Revisional Court. The contention of the petitioners is that the learned Revisional Court has not taken care of animals and thereby the main object of the Act is frustrated. It is submitted that the provisions of the Maharashtra Animals Preservation Act, 1976 are not considered by the Court.

From the panchanama, the learned Advocate for the petitioners submits that it was clear that the cattles were kept for the purpose of slaughtering. The letter issued by Police Station to Goshala, Malegaon shows that out of 50 cattles, five cattles were found dead. Out of them 45 were in Guru Ganesh Mishri Gopalan Seva Sangh. There was likelihood of law and order situation and request was made to keep 45 cattles in the Goshala maintained by Govansh Raksha Samiti Goshala, Malegaon. He submits that by communication dated 09.08.2022 issued by Guru Ganesh Mishri Gopalan Seva Sangh to P.I. Vaijapur it was informed that out of 45 cattles only 38 cattles can be taken to Malegaon. Seven cattles could not be taken as they were in critical condition and were not fit to be shifted. On check up the Assistant Commissioner of Animal Husbandry issued health certificate wherein remark was given that 8 to 9 animals were seen with minor abrasion and wounds. Some animals were weak and were treated accordingly. It was also informed that the animals need further treatment. With this, the learned Advocate for the petitioners submits that it is clear that no proper care was taken of the cattles by the owners.

09. The learned Advocate for the petitioners further submits that both

the Courts below have failed to consider this aspect. He invited attention to section 5A of the Maharashtra Animal Preservation Act, 1976 whereby transportation of animals within the State or to any place outside the State for the purpose of its slaughter is banned. In view of section 5B of the Act, no person shall purchase, sell or otherwise dispose of or offer to purchase, sell or otherwise dispose of any cow, bull or bullock for slaughter. He further invited attention to the proviso providing that pending trial, seized cow, bull or bullock shall be handed over to the nearest Gosadan, Goshala, Panjrapole, Hinsa Nivaran Sangh and the accused shall be liable to pay for their maintenance for the period they remain in custody with any of the said institutions or organizations. He submits that therefore, the application was made by the petitioners praying to allow to retain cattles. He submits that the order to return the cattles to the owners is clearly in contravention of the law. He further invited attention to section 11 of the Act, which provides for ingredients of the offence of treating the animal with cruelty. He further submits that the Central Government enacted rules, namely, Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 (for short "Rules of 2017"). Rule 3(b) of the Rules of 2017 provides that the Magistrate may direct the animal to be housed at an infirmary, pinjrapole,

SPCA, Animal Welfare Organisation or Gaushala during the pendency of the litigation. Rule 4 of the said Rules states about cost and care and keeping of animal pending litigation. Under Rule 4 circular is issued providing for cost of maintenance etc. Rule 5(1) provides for owner to execute bond of the determined value with sureties within three days and if no such bond is executed the animal shall be forfeited to informary, pinjarapole, SPCA, Animal Welfare Organization or Gaushala. In case of failure, the owner loses ownership. Thus, he submits that in no case, the owner of the cattle would get possession till the trial is over.

10. In support of the submissions, the learned Advocate for the petitioners relied upon following judgments :-

- (1) Viniyog Pariwar Trust Vs. The State of Maharashtra, PIL No.33 of 2017 of Bombay High Court.
- (2) Shri Chatrapati Shivaji Gaushala Vs. State of Maharashtra, Criminal Appeal No.1719 of 2022 of the Hon'ble Supreme Court.
- (3) Meher Banu Begum Vs. The State of Assam & Anr., Misc. Application No.1620 of 2022 in SLP (Cri) No.9997 of 2021.
- (4) Jagatguru Sant Tukaram Goshala Vs. The State of Maharashtra & Anr., Criminal Appeal No.132 of 2022 of the Hon'ble Supreme Court.
- (5) Tirth Kumar Sahu & Anr. Vs. Sayed Shamim Quadari & Anr., SLP (Cri) Diary No. 21489 of 2019 of the Hon'ble Supreme Court.
- (6) Raguramsharma & Anr. Vs. C.Thulsi & Anr., Criminal Appeal No.230 of 2929 of the Supreme Court.
- (7) Animal Welfare Board of India Vs.A. Nagaraja & Ors., (2014) 7 SCC 547.
- (8) Dhyani Foundation Vs. The State of Assam & Ors., Cri.Pet. 452 of 2020 of Gauhati High Court.

- (9) Krushi Goseva Sangh & Anr. Vs. State of Maharashtra & Ors., 1988 Mh.L.J.293.
- (10) Jivdaya Pashupakashi Saurakshan and Sanwardha Sanstha Vs. The State of Maharashtra, MANU/MH/1200/2009.
- (11) Yas Mohammad Vs. State of U.P. and Ors., MANU/UP/1251/2021.
- (12) Mohammad Rajik S/O. Mohammad Akil Vs. State of Maharashtra, Criminal W.P No.886 of 2021 of Bombay High Court (Nagpur Bench).
- (13) Arunachal Animal Sanctuary & Rescue Shelter Vs. Venkatesh & Anr., CriR.C. No.670 to 673 of 2015 of Madras High Court.
- (14) Sardar Khan s/o. Ahmad Khan Vs. State of Bihar, Cri. Misc. No.47517 of 2013 of Patna High Court.
- (15) Gorakshanath Aadiwasi Sevabhavi Sanstha Vs. The State of Maharashtra & Anr., Cri.W.P No.1026 of 2020 of this Court.

11. In response the learned Advocate for the respondents Mr. Satej Jadhav submits that merely because the raid was conducted and animals were found when the celebration of Bakari Eid was approaching fast, cannot be a relevant consideration to come to a conclusion that the animals were kept for the purpose of slaughtering. The Police Officer received secret information itself is not sufficient to come to a conclusion that the animals were kept only for the purpose of slaughtering. He submits that the owners have produced on record the Shop Act Licence, receipt of purchase of cattles etc. Nothing was shown in the panchanama indicating that the animals were kept for the purpose of slaughtering. He submits from the affidavit that in-fact the petitioner-Goshala is not having sufficient space to keep the animals and therefore the animals were required to be shifted to other institution at Malegaon. Since the animals were shifted to Malegaon without permission of

the Court, petitioner No.1 has no *locus standi* to file this petition. It has come on record that petitioner No.2 was not in a position to maintain the animals properly and for that reason the animals were required to be shifted. The petitioner-Goshala does not have proper medical care, food and shelter facility for care of the animals. In the Goshala itself four animals died due to lack of proper care. He has also annexed photographs of the animals in the Goshala where the animals are seen in pathetic condition. This fact is not denied by the Advocate for the petitioner. He submits that under such circumstances the animals are taken on 26.07.2022. He submits that thus everything goes to show that when the petitioners are not in a position to maintain animals properly, custody of the animals cannot be handed over to the petitioner. He further submits that the Courts below have rightly passed orders by inviting attention to the observations of the learned Revisional Court, wherein the Court has also considered the photographs of the animals in the Goshala. He submits that the learned Revisional Court has rightly appreciated the facts of the case.

12. The learned Advocate for the respondents further submits that the respondents are in the business of selling cattles to the farmers and they

have to keep the animals in safe custody. The police persons without satisfying about condition, have directly come to the conclusion that the cattles were kept for the purpose of slaughtering. He submits that under the law, the owner has to deposit Rs.200/- per day per animal. There is no maximum limit and the owner has to pay the amount if the trial is delayed. He submits that it is only discretion with the Court to give custody to the institutions like Goshala. It is the discretion of the Court as the word used in Rule 3(b) is “may” and not “shall”.

13. Now coming to the judgment cited by the parties, the first judgment relied upon by the petitioners is the judgment in the case of **Viniyog Pariwar (Supra)**, the Division Bench of this Court in the public interest litigation has considered the Cruelty Rules and the legislation, meaning of the cruelty to animals so also the Motor Vehicles Act and recorded that these are to be read together harmoniously. It is held that the provisions are enacted to subserve the larger public interest, public safety and public health. In that view the Division Bench had given certain directions to the authorities to take stringent measures and prevent any violation or breach of the Act and the Rules, by considering Rules 96, 97 and 98, which expects the authority to take

such measures.

14. In the judgment of the Supreme Court in the case of Shri Chatrapati Shivaji Gaushala (Supra), the Hon'ble Apex Court considered section 8 of the Maharashtra Act. In that case, the Sessions Judge had allowed the revision by the private respondents holding that they were entitled to the custody of the seized animals. A writ petition was therefore filed in this Court. This Court dismissed the petition. The Hon'ble Apex Court observed that the cattles were carried in cruel condition without valid permit and in that view of the matter the custody was given to the Gaushala. There was thus specific finding that the animals were treated with cruelty and they were being transported without valid permit.

15. In the case of Meher Banu Begum (Supra) the Hon'ble Apex Court allowed the private owner to take custody of animals on executing necessary bond in terms of Rule 5 of the Prevention of Cruelty to Animals (Care and Maintenance of case property animals) Rules.

16. So far as judgment in Jagatguru Sant Tukaram Goshala (Supra) is

concerned, said judgment has been considered by the Hon'ble Apex Court in the judgment of **Shri Chatrapati Shivaji Gaushala (Supra)**.

17. In the judgment of the Supreme Court in the case of Raguramsharma (Supra), considering the basic facts and the allegations against the accused in that case, the Court was prima facie satisfied that the accused were guilty of causing cruelty to the animals. In that case, it was found that 18 buffaloes and 19 bulls were being carried in a truck and the truck was closed air-tight so much so that the cattle could not breathe properly. Out of 37 animals, one died of suffocation soon after the vehicle was intercepted. In that case it was held that owners were not entitled to the custody.

18. In the judgment of the Supreme Court in the case of Animal Welfare Board of India (Supra), in para 54 it is observed as under :-

“54. Chapter 7.1.2 of the guidelines of OIE, recognizes five internationally recognized freedoms for animals such as :

- (i) freedom from hunger, thirst and malnutrition;
- (ii) freedom from fear and distress;
- (iii) freedom from physical and thermal discomfort;
- (iv) freedom from pain, injury and disease; and
- (v) freedom to express normal patterns of behaviour.”

. It was case in respect of Jallikattu and it was banned.

19. In the case of **Dhyan Foundation (Supra)**, the Gauhati High Court found that Rule 3(b) of Rules of 2017 do not provide that seized animals can be released in favour of the owner and owner can be treated as accused. It was found in that case that the cows were given to the owners on deposit of the costs of care and maintenance by the Trial Court. In that case it was found that passing subsequent order would amount to review and the orders were set aside.

20. In the case of **Krushni Goseva (Supra)**, Full Bench of this Court held that there is no provision in the Act about the custody and disposal of the property pending the trial. It was held that while passing the interim order, the Court should bear in mind the law laid down by the Division Bench in Cri.W.P. No.714 of 1986 Ejax Ahmed Kallu Alias Jhinka Vs. State of Maharashtra. It was held that even if the cattles are kept in the custody of somebody else, then also the guidelines laid down by the judgment of the Division Bench are applicable. It is mainly held that before handing over custody to any institution or person, the Court should ascertain whether such

person or institution will be able to make adequate arrangement for maintenance, protection and preservation of the cattles.

21. In the case of Yas Mohammad (Supra), the High Court of Allahabad considered that the provisions under section 451 to 457 of the Code are general in nature, whereas the provisions relating to seizure, confiscation and release as contained under Section 5-A of the Cruelty Act deal with these matters would be in the nature of special provisions contained under a Special Act and therefore must prevail over the general law and in that view decided the matter. There cannot be any dispute about this well settled principle.

22. In the case of Mohammad Rajik (Supra) this Court at Nagpur Bench held that the petitioner i.e. owner had not complied with the directions of the learned JMFC by which the cost of maintenance of the animal had been directed to be deposited and had prayed for reduction of the amount of the maintenance. In that view of the matter, the order was passed.

23. The judgments of other High Court are also cited. This Court finds that it is not necessary to discuss those judgments in detail.

24. From all these judgments it is seen that when it is found that the cattles are being taken for the purpose of slaughter then in such case custody cannot be given to the owners. Second contingency that if the cattles are kept in condition which could be dangerous to the life of the cattles or likely to cause harm to the cattles, in such cases the custody should be given to Goshala or the institutions like Goshala. For that it is necessary to be seen as to whether the Goshala is in a position to maintain animals in proper condition. There are also cases where animals were carried without valid licence. In some cases there was material to show that the animals were being taken for slaughtering.

25. In this case the photographs are produced on record by the respondent which shows pathetic condition of the animals in the custody of the petitioners. Secondly, there is no material to come to prima facie condition that the animals were kept for the purpose of slaughtering. From the panchanama, nothing is found that can be used to slaughter the animals. There is no denial of the fact that the owners in this case were having licence for dealing with the animals showing that they are traders engaged in the

business of cattles. Both the Courts below have categorically held that no clear case was made out that the animals were illegally detained. Both the Courts have properly applied mind. Therefore, from the submissions of the parties and the record it is seen that five cattles died while in custody of the petitioners herein. Both the Courts have discussed the conditions of the cattles and the sheds. Section 3(b) cannot be interpreted in the manner only to suit the petitioners. It has also come on record that initially the cattles were kept in petitioner No.2 Goshala. Since there were lack of facilities, the cattles were shifted to petitioner No.1-Goshala without seeking permission of the Court.

26. In the judgments relied upon by the petitioners it is held that possession needs to be handed over to Goshala in respect of cases where animals were either being transported for slaughter or there was material to show that the animals were to be slaughtered. In the present case, there is nothing to show that the animals were to be slaughtered or were being transported in cruel manner. It is clear case of all the owners that they are traders, having valid licences to trade. The animals were found in the sheds. From the panchanama it appears that they were not kept in the condition

harmful or dangerous to the life of the cattles. As already discussed from the photograph, it is clear that the Goshala is not in a position to maintain animals properly. Considering all these things, this Court finds no merit in the petition. Hence, the following order :-

ORDER

- (i) The Criminal Writ Petition is dismissed.
- (ii) Rule discharged.
- (iii) The question of amount to be paid to Goshala per day per animal shall be decided by the Trial Court at the time of conclusion of the Trial.

[KISHORE C. SANT, J.]