

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

CRIMINAL WRIT PETITION NO. 741 OF 2014

Ashok Shivlal Jaiswal,
Age : 45 years, Occ : Agril,
R/o : Gevarai-Paiga, Tq. Phulambri,
Dist. Aurangabad.

...Petitioner

Versus

1. State of Maharashtra.
2. Mahadeo Chandrakant Kale,
Age : 40 years, Occ : Agril,
R/o: Asegaon, Tq. Daund, Dist. Pune.
3. Sanjay s/o Bhikalal Jaiswal,
Age : 35 years, Occ : Agril,
R/o: CIDCO Police Colony,
Aurangabad.

...Respondents

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Shri. Abhaysinh K. Bhosale, Advocate for the petitioner
Shri. S. G. Nandedkar, APP for respondent/State
Shri. Abhijeet Choudhari, Advocate h/f Mrs. S. R. Salunke,
Advocate for respondent No. 2
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**CORAM : SMT. SADHANA S. JADHAV, J.
DATED : MARCH 30TH, 2015.**

ORAL JUDGMENT:-

. Heard. Rule. Rule made returnable forthwith
with the consent of the parties.

2. The petitioner herein happens to be the

registered owner of the vehicle i.e. Jeep (Cruiser Classic) bearing registration No. MH-20-AG-5652. The petitioner had availed of loan facility from Indusind Bank to purchase the said vehicle. Since 27th October, 2007 till 19th September, 2009, he had paid the installments regularly to Indusind Bank. However, due to financial stringency, the petitioner had rented the said Jeep to Shri. Sanjay Jaiswal and was to receive rent of Rs. 12,000/- per month and agreement was executed to that effect. Subsequently, the present petitioner had learnt that, Shri. Sanjay Jaiswal had sold the said vehicle to one Mahadeo Kale, who happens to be respondent No. 2, in the present petition. The petitioner herein had filed a report at the Wadod Bazar Police Station, on the basis of which, Crime No. 50 of 2013 was registered against present respondents No. 2 and 3 for offence punishable under Sections 420, 406 and 471 of the Indian Penal Code. During the course of investigation, the Jeep was seized by the Police from respondent No. 2 and was taken to the Police Station. It is lying in the Wadod Bazar Police Station since December-2013. The petitioner had, thereafter, filed an application before learned Judicial

Magistrate First Class, Phulambri (in short “JMFC”), under Section 457 of Code of Criminal Procedure, seeking custody of the Jeep. The learned JMFC has dismissed the application filed by the present petitioner and had allowed the application in favour of present respondent No. 2, as the vehicle was seized from the custody of respondent No. 2. The petitioner herein being aggrieved by the said order, had filed Criminal Revision Application No. 123 of 2013, before the Sessions Court at Aurngabad. By an order dated 26th June, 2014, the learned Sessions Court has dismissed the said revision application. Hence, this Writ Petition.

3. The learned Sessions Court has held that, the parties can get their rights determined from the Civil Court. The Sessions Court has observed that, it is a normal rule that the property is to be given to the custody of the person from whom it is seized.

4. The learned Counsel for the petitioner submits that, in fact, no registration was executed in favour of respondent No. 2 and amount was passed on in favour of

Sanjay Jaiswal. The petitioner, who is registered owner of the vehicle, had not signed any documents in favour of respondent No. 2 and the petitioner continued to be the registered owner of the said vehicle. The Sessions Court has specifically observed that, undisputedly, the said jeep was purchased by the revision-petitioner by borrowing a loan from the bank and the said jeep is still standing in the name of the revision-petitioner in the record of the R.T.O.

5. The learned Counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai v. State of Gujarat** reported in AIR 2003 SC 638(1). The Hon'ble Apex Court has held that the vehicle seized in a criminal enquiry / trial ought to be given by way of interim custody in favour of the owner or the person from whom the vehicle was seized.

6. In the present case, the petitioner happens to be the owner and respondent No. 2, from whose custody the said Jeep was seized, has given no objection in handing

over the interim custody of the vehicle in favour of the present petitioner. In view of this, the following order is passed.

ORDER

- (i) The petition is allowed.
- (ii) The vehicle namely; Jeep (Cruiser Classic) bearing registration No. MH-20-AG-5652 be handed over to the present petitioner after the Supratnama is executed.
- (iii) The vehicle namely; Jeep (Cruiser Classic) bearing registration No. MH-20-AG-5652 be released after executing bond to the effect that the petitioner would not create 3rd party interest in respect of the said vehicle during the pendency of the enquiry / trial, pursuant to the registration of Crime No. 50 of 2013, filed at Wadod Bazar Police Station, Phulambri.

Rule made absolute in above terms with no order as to costs. Petition allowed accordingly and disposed of.

(SMT. SADHANA S. JADHAV, J.)