

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 584 OF 2016

Hanya Vaharya Vasave

Age : 46 years, Occu.: Agricultural,

R/o : Chandsaili, Taluka – Dhadgaon,

District - Nandurbar

Petitioner

VERSUS

The State of Maharashtra

Through the Police Inspector,

Dhadgaon Police Station,

District – Nandurbar.

Respondent

Mr. G. D. Jain, Advocate for the Petitioner.

Mr. N. T. Bhagat, APP for Respondent No.1/State.

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(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 14/06/2016

PER COURT :

1. The petitioner seeks leave to delete respondent No.2. Deletion permitted at the risk of the petitioner. Deletion be carried out forthwith.

2. The petitioner is aggrieved by the order dated 16.01.2016 passed by the learned Judicial Magistrate First Class Dhadgaon, in

Criminal M.A. No.48 of 2015 and the judgment and order dated 16.04.2016 delivered by the learned Additional Sessions Judge Shahada in Criminal Revision No.01 of 2016.

3. The petitioner submits that vehicle Mahindra Jeep owned by him which is hypotheticated to Manager, Ad- Manom Finance Ltd, has been seized in Crime No. 59 of 2015. The petitioner had moved the learned Magistrate in Criminal M.A. No.48 of 2015 seeking custody of the vehicle under such conditions as may be imposed upon the petitioner by the Court. By the impugned order dated 16.01.2016, the said application has been rejected. By the impugned order dated 16.04.2016, the Revision Petition has also been rejected.

4. Grievance of the petitioner is that the vehicle presently in the custody of the Police would suffer deterioration. The said vehicle will remain idle with the authorities only because it has been seized in a crime. The petitioner has not committed any offence and as such, is not an accused in any of the crimes that have been registered involving the said vehicle.

5. It is, therefore, submitted that the vehicle could be handed over to the petitioner by imposing stringent conditions. The petitioner be directed to execute bond for the said purpose and will abide by the condition as may be imposed upon him. Keeping the vehicle idle with the Police authorities will serve no purpose. The vehicle would get deteriorated and if the trial in those crimes takes a longer time, the vehicle will be reduced to junk material.

6. The learned Advocate for the petitioner has relied upon the judgment of this Court in the Matter of **Pralhad s/o Babanrao Thombre Vs. The State of Maharashtra**, reported in **2012 (0) BCI 265** to support his contention that though a vehicle is involved in a crime, the said vehicle could be released upon certain conditions. He therefore, prays that the impugned orders be quashed and set aside and the possession of the vehicle be handed over to the petitioner by allowing this petition.

7. The learned APP appearing on behalf of the State has supported the impugned orders. Contention is that since the vehicle has been used in crimes, it would be a part of the Muddemal evidence and hence there is every possibility that the evidence would be destroyed if the vehicle is handed over to the petitioner.

8. I have considered the submissions of the learned Advocates for the petitioner and the learned APP.

9. The vehicle at issue was first involved in Crime No.61 of 2006. An application was made by the petitioner in the said matter seeking custody of the vehicle. Same was handed over to him under the orders of the Court after the petitioner executed 'Supurthnama'. The Mahindra Jeep MH-28-C-2410 was thus handed over to him. It has been noted by both the Courts below that the conditions set out in the bond have not been followed.

10. It can not be ignored that the said vehicle which was first involved in Crime No.61 of 2006 was used by the Driver of the

petitioner. The Driver of the petitioner having used the vehicle in the alleged Crime, cannot be said to be without the knowledge of the petitioner. It also can not be ignored that the said vehicle was then used in Crime No.59 of 2015 which was allegedly committed by the son of the petitioner. Record reveals that the said vehicle was once again used in Crime No.62 of 2015 which is connected to Crime No. 59 of 2015 which has resulted in the murder of a person. An offence under Section 376 r/w other provisions of the IPC are involved in the first crime.

11. In the above backdrop, both the Court below concluded that the vehicle has been repeatedly used in different offences. Learned Advocate for the petitioner has strenuously canvassed that the first offence involves his Driver and the second offence involves his son and using of the said vehicle is beyond his control. I am not impressed by the said submissions for the reason that if the petitioner was given the custody of the said vehicle released in Crime No.61 of 2016, it was expected that the petitioner should have been more diligent and careful in ensuring that the said vehicle is not used

by anybody else.

12. I have gone through the facts recorded by this Court in the matter of Pralahad Babanrao Thombre (supra). The petitioner has specifically relied upon paragraph No.11 and 12. Paragraph No.11 is in fact the re-production of paragraph No.4 of the **Basavva Kom Dnyamangouda Patil Vs. State of Mysore**, reported in **(1977) 4 SCC 358**, and which was referred to by the Hon'ble Apex Court in the matter of **Sunderbhai Ambalal Desai Vs. State of Gujarat**, reported in **(2012) 10 SCC 283**. In the said matter, the vehicle was used only once in an offence. In the instant case, after the vehicle was released in the backdrop of Crime No.61 of 2006, the petitioner has violated the conditions set out in the bond. The said vehicle was then again used for committing serious offences i.e. Crime No.59 of 2015 and 62 of 2015

13. It also can not be ignored that the Driver as well as the son of the petitioner are involved in the Crimes using the said vehicle. It

can not be ruled out that the petitioner is likely to destroy the evidence since his son himself is an accused in Crime No.59 of 2015.

14. Considering the above, I do not find that the learned Courts below have committed any error in rejecting the application of the petitioner. This petition, being devoid of merit is, therefore, dismissed.

15. Learned Advocate for the petitioner prays that the trial in the Crimes, in which the said vehicle is utilized as 'Muddemal', be expedited.

15. It is, therefore, observed that, considering that the vehicle is seized in relation to the crimes, the concerned Courts, dealing with the said cases are expected to decide them as expeditiously as possible.

(RAVINDRA V. GHUGE, J.)