

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

Criminal Application No. 5292 of 2016

District : Aurangabad

Pankaj s/o. Dilip Kunde,
Age : 28 years,
Occupation : Business,
R/o. Vinayak Colony, Vaijapur,
Taluka Vaijapur,
District Aurangabad.

.. Petitioner.

versus

1. The State of Maharashtra,
Through Vaijapur Police Station,
Vaijapur, Taluka Vaijapur,
District Aurangabad.

2. Superintendent,
State Excise, Aurangabad,
Excise Office, Aurangabad.

.. Non-applicants.

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Mr. A.H. Kasliwal, Advocate, for the applicant.

*Mr. K.N. Lokhande, Addl. Public Prosecutor, for
non-applicant nos.1 and 2.*

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CORAM : Z.A. HAQ, J.

DATE : 25TH NOVEMBER 2016

ORAL JUDGMENT :

Heard Mr. A.H. Kasliwal, learned Advocate
for the applicant, and Mr. K.N. Lokhande, learned

Addl. Public Prosecutor for non-applicant nos.01 and 02.

02. Rule. Rule made returnable forthwith.

03. The applicant has challenged the order passed by the learned Magistrate rejecting the application filed by him under Section 457 of the Code of Criminal Procedure, 1973, seeking release of 125 boxes of country liquor seized by the non-applicant no.1.

04. It is undisputed that the applicant is having valid CL-III license for sale of country liquor. It is undisputed that the 125 boxes of country liquor were being transported after obtaining valid transit pass. The allegations against the applicant are that the applicant transferred some boxes from the tempo in which they were to be transported as per transit pass to an Indica car owned by the applicant.

05. Considering the facts of the case, in my view, the learned Magistrate should have allowed the application. Hence, the following order :-

(a) The impugned order is set aside.

(b) Misc. Application No. 131/2016 filed by the

applicant before the learned Magistrate under Section 457 of the Code of Criminal Procedure, is allowed and the non-applicant no.1 is directed to release forthwith 125 boxes of country liquor seized by it.

(c) Rule made absolute in the above terms. In the circumstances, parties to bear their own costs.

(Z.A. HAQ)
JUDGE

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