

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

CRIMINAL APPLICATION NO. 5857 OF 2015

VILAS S/O MARUTI MUTADAK
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr S T Shelke
APP for Respondents: Mr P. N. Kutti

...
CORAM : V.K. JADHAV, J.
Dated: January 11, 2016

...
PER COURT :-

1. By consent, heard finally, at admission stage.

2. In connection with Crime bearing No.352/2015 registered under section 65(A)(E) of the Bombay Prohibition Act, 1949, the vehicle bearing No.MH-17/AZ-3482 of Ford Figo company came to be seized by the Sub-Inspector, State Excise Department, Flying Squad No.2. The Jt. Judicial Magistrate First Class, Akole by its impugned order dated 14.10.2015, released the vehicle in the custody of the present petitioner, on condition of furnishing bank guarantee of Rs.3,75,000/- i.e. 50% of the value of the vehicle and subject to compliance of certain other conditions. Petitioner has challenged the said order only to the extent of furnishing bank guarantee of Rs.3,75,000/-.

3. Learned counsel for the petitioner submits that, the trial court has not considered the depreciated value of the vehicle. The cost of the vehicle is now 4,97,000/- and same is also considered

while issuing the General Insurance Policy. Learned counsel further submits that, the petitioner is ready to furnish the bank guarantee to the extent of Rs.2.00 lacs or ready to furnish the solvent surety to the satisfaction of the Court in the sum equal to the value of the vehicle seized.

4. Learned APP submits that the vehicle was seized alongwith contraband liquor kept in it. The learned APP further submits that, even though, liquor ban was there in the particular area, more than 8-9 crimes came to be registered against the various persons including son of the petitioner. The learned APP placed his reliance in a case of **R. Ram Babu Krishmurti Vs. State of Maharashtra**, wherein the Apex Court has directed the appellants therein to furnish a bank guarantee for 50% of the value of the vehicle. The learned APP also relies upon the judgment of this Court in Cri Appln No.670/2002, wherein a similar order is passed.

5. So far as vehicle seized alongwith the contraband liquor stock is concerned, crime is registered against certain persons, however, investigation is yet to be completed. Furthermore, this application for release of the vehicle came to be filed under Section 457 of the Criminal Procedure Code. Conditions are imposed for production of the property before the Court, if required. As a matter of punishment, a harsh condition cannot be imposed while releasing the vehicle. It would suffice the purpose, if the petitioner

is directed to furnish a solvent surety to the satisfaction of the Court in the sum equal to the value of the vehicle seized.

6. In view of this, following order is passed.

O R D E R

1. Criminal Application is hereby partly allowed.
2. The condition directing the applicant to furnish the bank guarantee of Rs.3,75,000/- which is of 50% of the value of the vehicle is hereby quashed and set aside. Instead of that, the applicant is directed to furnish a solvent surety to the satisfaction of the Court in the sum equal to the value of the vehicle. Except this modification, the impugned order passed by the Jt. Judicial Magistrate, First Class, Akole dated 14.10.2015 in Criminal M.A.No.279/2015 stands confirmed.
3. Criminal Application is disposed of.

(V.K. JADHAV, J.)

...

aaa/-