

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

Criminal Writ Petition No. 01128 of 2017

District : Dhule

Bhanudas Pandit Dusane,
Age : 51 years,
Occupation : Business,
R/o. Malpur,
Taluka Shindkheda,
District Dhule.

.. Petitioner

versus

The State of Maharashtra,
Through Police Station Officer,
Shirpur Taluka Police Station,
Shirpur, Taluka Shirpur,
District Dhule.

.. Respondent.

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Mr. Pawan B. Pawar, Advocate, for the petitioner.

*Mr. S.Y. Mahajan, Addl. Public Prosecutor, for
the respondent.*

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CORAM : V.L. ACHLIYA, J.

DATE : 09TH AUGUST 2017

ORAL JUDGMENT :

01. Rule. Rule returnable forthwith. By
consent, heard finally.

02. By the present petition, the petitioner has raised challenge to order dated 04th July, 2017 passed by District Judge-2 & Addl. Sessions Judge, Dhule, below Exhibit 17 in Special Case [POCSO] No.52 of 2016.

03. In view of the limited challenge raised in the petition, it is not necessary to discuss the facts in detail.

04. The petitioner is charge-sheeted for committing offences under Section 363 of the Indian Penal Code, read with Sections 4 & 7 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(1)(xi) and (xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, with an allegation that he had kidnapped a minor girl aged about 10 years from the hostel with an intention to sexually abuse her. On the basis of complaint lodged by father of the victim girl, said offences came to be registered and the petitioner was arrested. During house search of the accused, cash amount of Rs. 4,75,000/- was recovered. Besides cash amount, Police have also seized motorcycle bearing no. MH-18/AB-4729 alleged to have been used in the commission of offence.

05. The petitioner moved an application under

Section 451 of the Code of Criminal Procedure, 1973, seeking release of the property i.e. cash amount of Rs. 4,75,000/- as well as motorcycle. By the impugned order, learned Addl. Sessions Judge partly allowed the application and directed to release cash amount of Rs. 4,75,000/- on execution of bank guarantee of Rs. 5,00,000/- and further rejected prayer in respect of interim custody of the motorcycle.

06. In nutshell, it is the contention of learned Counsel for the petitioner, that the cash amount recovered is no way connected with the offence registered. The condition imposed by the trial court to release the amount subject to furnishing bank guarantee is an onerous condition. In absence of nexus between the offence committed and the cash amount recovered, learned Addl. Sessions Judge should have released the cash amount on execution of bond. He further submits that although motorcycle is shown to be seized as used in commission of offence, no purpose would be served by keeping the motorcycle in Police Station till disposal of the case.

07. Learned Addl. Public Prosecutor appearing for the respondent, on instructions from office in-charge of the Police Station, fairly submitted that the amount of cash recovered has no nexus with the offence registered against the petitioner. He

further submits that there is no dispute as to the fact that the petitioner is registered owner of the motorcycle.

08. Having appreciated the submissions advanced, I am of the view that the condition imposed to furnish the bank guarantee is an onerous condition. In order to furnish the bank guarantee, the petitioner will be required to arrange for the security of more than Rs. 5,00,000/-. In absence of nexus between the commission of offence and recovery of cash amount, there is no justification to secure bank guarantee. I am, therefore, inclined to modify the condition to that effect.

09. Similarly, no purpose would be achieved by keeping the motorcycle at Police Station pending trial. There is no dispute as to the fact that the petitioner is registered owner of the motorcycle in question. Looking to the nature of offence, it is not necessary to produce the motorcycle in court as an evidence to prove guilt against the accused. I am, therefore, of the view that pending disposal of the trial, the motorcycle in question deserves to be returned to its registered owner.

10. In the result, I am inclined to pass the following order :-

(a) The impugned order passed by Additional Sessions Judge, Dhule, rejecting application seeking interim custody of the motorcycle, is set aside. Pending disposal of criminal proceedings, interim custody of the motorcycle be handed over to the petitioner on executing *Supurtnama* in the sum of Rs. 25,000/- (Rupees twenty five thousand) with undertaking that he shall produce the motorcycle as and when directed by the court and further he will not sell or create third party interest in the motorcycle till disposal of criminal proceedings. The *Supurtnama* along with the undertaking to be furnished in the trial court.

(b) The condition imposed by Sessions Court to furnish bank guarantee of Rs. 5,00,000/- stands relaxed. The cash amount recovered from the petitioner be returned on execution of a bond in the sum of Rs. 4,75,000/- by the petitioner, to produce the cash amount as and when directed by the court and failure to comply with the order, he shall deposit the amount to the extent of Rs. 4,75,000/-.

(c) Copy of this order be sent to Regional / District Transport Officer, Dhule, for taking note of the order and not to allow transfer of ownership of said motorcycle, during pendency of trial against the petitioner or without prior permission of the trial court.

11. Rule made absolute in the above terms.

(V.L. Achliya)
JUDGE

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