

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.12 OF 2017

Mr.Vishal S. Nair and anr. ...Applicants.
vs.
The State of Maharashtra and anr. ...Respondents.

Mr. Pranav Bhadeka i/by Prashant Pawar for the Applicants.
Mr. N.B.Patil, APP. for the State.
Mr. Sahil Menon for Respondent No.2.

CORAM : A.S.GADKARI, J.
DATE : 13th September, 2017.

P.C.

1. The present application under Section 482 of the Cr.P.C. is filed against the order dated 6.10.2016 passed by the Lenard Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai on the application preferred by the applicant under Section 451 and 457 of the Cr.P.C.
2. The applicant No.1 is an accused in CR No.117/2014 dated 30.8.2014 originally registered with Colaba Police Station, Mumbai and subsequently transferred for further investigation to EOW, Unit -3, Mumbai having renumbered CR No.74/2014 under Section, 420, 406, 120B of the Indian Penal Code.
3. During the course of investigation, the Investigating agency has freezed the bank accounts of the applicant which are specifically mentioned in the present application under Section 102 of the Cr.P.C.

and also seized a four wheeler car during the course of investigation. As stated earlier the learned Magistrate has rejected the request of the applicant for defreezing the bank accounts and return of the four wheeler vehicle by the impugned order.

4. The Supreme Court in the case of Sunderbhai Ambalal Desai vs. State of Gujarat reported in (2002) 10 SCC 283 has held as under:

“17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police station for a long period,. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company

fails to take possession, the vehicle may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchanama should be prepared.”

5. As far as bank accounts which are frozen by the Investigating agency is concerned, certain amounts are lying in the same and it is the prosecution case that the said amounts are the proceeds of crime in question. In view thereof, I am not inclined to defreeze the accounts and permit the applicants to operate the same.

However, as far as Maruti Eritga car bearing registration No.- 3-BS-15484 is concerned, after taking into consideration the fact that if the car is kept lying in the police station it will get rusted and will be of no value in future. In view thereof, I am inclined to allow the present application to the extent of releasing the said vehicle from the custody of the Investigating agency.

Hence, the following order.

- a) The prayer for de-freezing the bank accounts is rejected.
- b) As far as Maruti Eritga Car bearing registration No.MH-03-BS-1584 is concerned, the Investigating agency is hereby directed to

release the said vehicle, on the applicant furnishing an affidavit cum Indemnity Bond stating therein that the applicants will not sale the said vehicle and will not change its appearance without further orders from the concerned Magistrate and the applicants shall produce the said vehicle at the time of trial as may be directed by the Trial Court.

c) The applicants shall also furnish Indemnity bond of Rs.50,000/- in that behalf.

d) Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)