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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.758 OF 2017

Indrabhan Laxman Jagtap	...Petitioner
Versus	
The State of Maharashtra	...Respondent

Mr.M.M.Goswami, for the Petitioner.

Mr.Vinod Chate, A.P.P for the Respondent-State.

PSI – S.J.Naik, Wadivarhe Police Station, Nashik.

CORAM : REVATI MOHITE DERE, J.

DATE : 31st JANUARY, 2018

P.C. :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned APP waives service on behalf of Respondent - State.
3. By this petition, the petitioner has impugned the order dated 17th January, 2017, passed by the learned Special Judge and Additional

Sessions Judge-1, Nashik, below Exhibit – 133 in Special Case No.1 of 2016, by which the petitioner's application for return of his vehicles i.e. 6 Trucks bearing Registration No. (1) MH-15 BJ-6151 (2) MH-19 BJ-4139 (3) MH-16 G-1891 (4) MH-15 G-6100 (5) MH-15 CK-4100 (6) MH-15 AK-5100, came to be rejected.

4. Learned Counsel for the petitioner submitted that admittedly, the petitioner has not been prosecuted in the said case and as such not an accused in Case No.1 of 2016. He submitted that the said vehicles were seized in connection with C.R.No.19 of 2015, registered with the Wadivarhe Police Station, Nashik and are lying in the police station since 2015. He submitted that no useful purpose would be served by keeping the said vehicles in the police station and as such the said vehicles be returned to the petitioner. He further submitted that the petitioner is suffering huge financial loss and that the said trucks are the source of his livelihood. He further submitted that the petitioner is ready to give an undertaking that he will not sell the said trucks or create any third party interests in the said trucks and that he will produce the trucks, if so required before the concerned Court. Learned Counsel relied on the Judgment of the Apex

Court in the case of *Sunderbhai Ambalal Desai v/s State of Gujarat*¹ in support of his submission.

5. Learned APP opposed the petition. He submitted that no interference is warranted in the impugned order. He submitted that the seized vehicles i.e. 6 Trucks bearing Registration No. (1) MH-15 BJ-6151 (2) MH-19 BJ-4139 (3) MH-16 G-1891 (4) MH-15 G-6100 (5) MH-15 CK-4100 (6) MH-15 AK-5100, were used in the transportation of food-grains by illegal means by the accused. Learned APP, however, does not dispute the fact, that the petitioner is not arraigned as an accused in the said case, arising out of i.e. C.R.No.19 of 2015. Learned APP, on instructions, also states that the petitioner has no antecedents.

6. Perused the papers as well as the impugned order. It is the prosecution case that the accused persons (not the petitioner) were transporting food-grains, which were reserved for the poor persons in the Society and that the accused were illegally transporting the said food-grains to their private go-downs and thereafter, selling the same in the open market. According to the prosecution, the said 6 vehicles belonging to the

¹ (2002) 10 SCC 283

petitioner were used, by the accused for transporting the food-grains. Admittedly, the petitioner is not an accused in C.R.No.19 of 2015 registered with the Wadivarhe Police Station, Nashik. It is also not disputed that the petitioner is the owner of the 6 Trucks bearing Registration No. (1) MH-15 BJ-6151 (2) MH-19 BJ-4139 (3) MH-16 G-1891 (4) MH-15 G-6100 (5) MH-15 CK-4100 (6) MH-15 AK-5100. The trucks have been seized in the year 2015 and are lying in the police station. Panchanama of the said vehicles has also been done by the police. No purpose will be served by keeping the said vehicles in the custody of the police, as it would lead to further deterioration of the said vehicles.

7. In the facts of the present case, the petition is allowed on the following terms and conditions:-

ORDER

- (i) The impugned order dated 17th January, 2017, passed by the learned Special Judge and Additional Sessions Judge-1, Nashik, below Exhibit – 133 in Special Case No.1 of 2016, is quashed and set aside,
- (ii) The police of the Wadivarhe Police Station, Nashik, shall hand over the 6 trucks bearing Registration nos. (1) MH-15 BJ-6151 (2) MH-19 BJ-4139 (3) MH-16 G-1891 (4) MH-15 G-6100 (5) MH-15 CK-

4100 (6) MH-15 AK-5100, to the petitioner, after carrying out a panchanama. The panchanama shall be done within one week from the date of receipt of this order;

- (iii) The petitioner shall execute Supratnama before the Trial Court, before the aforesaid vehicles are released;
- (iv) The petitioner shall file an undertaking in the Trial Court that he will not sell the vehicles or will not create any third party interests and shall produce the aforesaid vehicles, as and when, required by the Trial Court, before the vehicles are released.

8. The Petition is allowed in the aforesaid terms and is accordingly disposed of. Rule is made absolute in the aforesaid terms.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.