

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

CRIMINAL APPLICATION NO. 646 OF 2018

Sachin Hiranman Shinde	... Applicant
Vs.	
The State of Maharashtra	... Respondent

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Mr. Shaikh Ejaaz Noor Mohammad for the Applicant.
Mrs. M.R. Tidke, APP for the Respondent-State.

...
CORAM : PRAKASH D. NAIK, J.
DATE : 10th JULY, 2018.

P.C.

1. This is an application for return of property. The applicant is aggrieved by order dated 21st March, 2018 passed by the Judicial Magistrate First Class Shahapur below Exh.15 in Regular Criminal Case No. 9 of 2018.
2. The applicant alongwith two others are prosecuted for the offence punishable under Section 429, read with 34 of Indian Penal Code and under Section 5, 5(c), 6, 9, 9(A) of the Maharashtra Animal Preservation (Amendment) Act, 1995 and also under Section 11(1)(C) of the Prevention of Cruelty to Animals Act, 1960. The prosecution case is that the driver and cleaner of the vehicle in question were intercepted while carrying

flesh of prohibited cattle by the complainant. The complainant sought the help of the police and the vehicle was taken to Vashind Police Station. The police seized the vehicle alongwith flesh of prohibited cattle. On completing the investigation, the chargesheet was filed. The proceedings are pending before trial Court and registered as Regular Criminal Case No. 9 of 2018.

3. The applicant preferred an application before the trial Court for interim custody of the vehicle seized in the said case. The said application was rejected by the trial Court vide order dated 3rd April, 2017.

4. The applicant had preferred an application for anticipatory bail which was allowed by the Court of Sessions vide order dated 30th June, 2017. Subsequently, the applicant preferred revision application before the Sessions Court for releasing the vehicle to him. The said application was rejected by order dated 8th August, 2017. Thereafter, the applicant had preferred Writ Petition No. 4927 of 2017 before this Court, which was disposed of by order dated 19th December, 2017 with liberty to the applicant to prefer an application before the trial Court for return of property after the chargesheet is filed by keeping all contentions open. In view of that, the applicant had preferred an application before the

learned Magistrate, the same was also rejected by order dated 21st March, 2018. Hence, the applicant has preferred this application under Section 482 of Code of Criminal Procedure for releasing the vehicle in his favour.

5. The applicant contends that he is lawful owner of the vehicle in question. The vehicle is registered in his name in the office of the RTO which is fortified by the documents relied by him. It is further contended that the vehicle is lying in police station since last 15 months and no purpose would be served by keeping the vehicle in police station. It is submitted that by detaining the vehicle at the police station, the vehicle would lose its worthiness. He was granted anticipatory bail by the Sessions Court. It is further submitted that the Court has over-looked the provisions of Section 8(3)(a)(b) of the Maharashtra Animal Preservation (Amendment) Act 1995. It is also submitted that the complainant is not Animal Welfare Officer or a person authorised by the Government to stop the vehicle in view of mandate of Section 8 of the Maharashtra Animal Preservation (Amendment) Act, 1995. It is submitted that the applicant was using the vehicle for his own purpose of transportation and not for to transport the prohibited flesh of cattle as alleged in the present case.

6. Learned APP submitted that the applicant is involved in the crime as stated herein above. It is submitted that the police had filed the report before the trial Court opposing the return of vehicle. In the said report, it was pointed out that the vehicle was used in another crime. Thereafter vehicle was released to the applicant and again the same was used for commission of the present crime. It is thus submitted that the application be rejected.

7. Having heard both the parties and on perusal of the documents on record, it is apparent that the vehicle in question was seized in the CR No.1-17/2017. It is not disputed that the applicant is the owner of the said vehicle. The applicant had preferred an application for anticipatory bail, which was allowed by the Sessions Court. While allowing the said application, it was observed that the FIR do not refer to the involvement of the applicant. Investigation Officer did not file any say opposing application for anticipatory bail. Learned Magistrate while rejecting the application for return of the property had observed that in case the vehicle is returned to the applicant-accused he is likely to use the same for committing similar crime. Gravity of the offence is required to be considered while deciding the application. It was also observed, that although, the Court has power to return

the vehicle, taking into consideration the factual aspect of the present case, the vehicle cannot be returned to him. In the say filed by the police before the trial Court, it was stated that in the event of vehicle being returned to the applicant, he may sell or alter the vehicle. It was also stated that the vehicle was seized in another crime registered with Bhadrakali Police Station, Nashik. The applicant was not impleaded as accused in the earlier case. Learned Judge of the trial Court has rejected the application on the ground that the applicant is likely to use the said vehicle in similar offence. However, the report filed by the police before the trial Court and the order rejecting the application does not refer as to role played by the applicant in the said crime. The vehicle is lying with the police station since 5th March, 2017 and no purpose would be served by keeping the vehicle at police station. The apprehensions expressed by the investigating machinery could be taken care of by imposing certain conditions. In view of this, the application is allowed on certain conditions.

ORDER

- (i) Application is allowed;
- (ii) The interim custody of vehicle bearing No. MH-15 CK 4255 be given to the applicant on executing bond/supratnama in the

sum of Rs.2,00,000/-in Regular Criminal Case No. 9 of 2018 pending in the Court of Judicial Magistrate First Class, Shahapur;

(iii) The applicant shall not use the vehicle in commission of any crime and shall not sell the same or create any third party interest in the vehicle.

(iv) The applicant shall produce the vehicle as and when directed by the trial Court;

8. The application stands disposed of.

Sachidanand
Kuttan Nair

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by Sachidanand
Kuttan Nair
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(PRAKASH D. NAIK, J.)