

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3943 OF 2019

Mosin Munna Shaikh : Petitioner.
Versus
State of Maharashtra and anr. : Respondents.

Mr. Sagar Kasar a/w Mr. Rajendra Pande and Mr. Amol Wagh for the Petitioner.
Mrs. G P Mulekar, APP for the Respondent/State.
Mr. Sanjay Kulkarni i/by Mrs. M M Murudkar for Respondent No.2.

CORAM : S. S. SHINDE, J
DATE : 11th September 2019

P.C.

1 Heard the learned counsel for the parties. This Petition has been
filed for the following substantive relief :-

(b) This Hon'ble Court be pleased to quash and set aside the impugned Judgment and order dated 18th July 2019 passed by the Ld. Court of Assistant Session Judge 2, Niphad, District Nashik and, the impugned order dated 11th March 2019 passed by the learned JMFC, Chandwad below Exhibit-I in Cri. Misc. Application No.55 of 2019, and further be pleased to allow Exhibit-I in Crim. Misc. Application No.55 of 2019 in the Court of Ld. J.M.F.C., Chandwad, District Nashik on such terms and conditions this Hon'ble Court be deems fit and proper."

2 The learned counsel appearing for the Petitioner submits that the Respondents have no objection to release the vehicle in favour of the Petitioner. It is submitted by the learned counsel appearing for the Petitioner that when an application was filed by the Petitioner before the Trial Court, the said

application was rejected on the ground that investigation is in progress. Being aggrieved by the said order, the Petitioner preferred a Revision. However, in spite of completion of investigation and the fact that charge sheet has been filed, the Sessions Court dismissed the said Revision. It is also submitted that it is nobody's interest to keep the said tanker idle, and therefore, the said tanker may be released in favour of the Petitioner on executive indemnity bond.

3 In support of the aforesaid contentions, the learned counsel for the Petitioner sought to place reliance on the judgment of the Apex Court in the case of *Sunderbhai Ambalal Desai v/s. State of Gujarat*¹ and the judgment of this Court in the case of *Vitthal s/o Pandurang Navle v/s. State of Maharashtra*²

4 The learned APP appearing for the Respondent/State on instructions state that the concerned Investigating Officer had given no objection before the Trial Court when the prayer for release of the tanker in favour of the Petitioner was made.

5 The learned counsel appearing for the second Respondent submits that the second Respondent has no objection to release the said tanker in favour of the Petitioner.

1 AIR 2003 SC 638

2 2003(4) Mh.LJ 831

6 The learned APP and the learned counsel appearing for the second Respondent invite attention of this Court to the orders passed by the Courts below and submit that the stand of the Respondents was made clear before the said Courts.

7 Upon appreciation of the rival contentions and keeping in view the fact that the charge sheet has already been filed, and also keeping in view the judgment of the Apex Court in *Sunderbhai Ambalal Desai's* case (supra) and the judgment of this Court in *Vitthal Pandurang Navle's* case, and the fact that in case the said tanker is kept idle till conclusion of trial, the same is of nobody's use and it may cause damage to the said tanker, it would be appropriate to release the said tanker in favour of the Petitioner. It is informed by the learned APP for the Respondent/State that there are 17 witnesses who needs to be examined by the prosecution and that the charge is not yet framed by the Trial Court. In that view of the matter the trial may take considerable time for its conclusion.

8 In the facts and circumstances of the present case and keeping in view the no objections given by the Respondents for the release of said tanker in favcour of the Petitioner, the ends of justice would be met, in case the following order is passed :-

- i] The impugned Judgment and order dated 18th July 2019 passed by the Ld. Court of Assistant Session Judge 2, Niphad, District Nashik and, the impugned order dated 11th March 2019 passed by the learned JMFC, Chandwad below Exhibit-I in Cri. Misc. Application No.55 of 2019 are quashed and set aside to the extent of not allowing the prayer of the Petitioner to release the said tanker.
- ii] The said tanker to be released in favour of the Petitioner on executing Superatnama and/or Indemnity Bond or any additional condition which the Trial Court may deem it fit appropriate in the facts of the present case.
- iii] The Writ Petition is allowed to the aforesaid extent and disposed of accordingly.

[S. S. SHINDE , J]