

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 5856 OF 2019**

Vijaykumar Periya Swami
Versus
The State of Maharashtra

...Petitioner

...Respondent

Mr. Anand S. Patil for the Petitioner

Mr. A. R. Patil, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 4th DECEMBER 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this petition, the petitioner has impugned the order dated 6th July 2019 passed by the learned Chief Judicial Magistrate, Kolhapur, below Exhibit 1 passed in Criminal Misc. Application no. 446/2019, rejecting the petitioner's application for return of the vehicle as well as the order dated 16th September 2019 passed by the learned Additional Sessions Judge, Kolhapur in Criminal Revision Application No.119/2019, by which the learned Sessions Judge was pleased to confirm the order dated 6th July 2019.

3 Perused the papers. The petitioner's son was arrested in connection with C.R. No. 251/2019 registered with the Shahpuri Police Station, Kolhapur for the alleged offences punishable under Sections 366, 376, 452, 376D, 511, 323, 504, 506 of the Indian Penal Code and Sections 39 and 45 of the Maharashtra Money Lending Act. Admittedly, the petitioner is not an accused in the said case. It is the prosecution case that the petitioner's son had used the car in the commission of the offence, inasmuch as, the petitioner had taken the prosecutrix in the said car and had committed the offence of rape in the said car. The police, during the course of investigation, seized the said car i.e. vehicle bearing No. TN-37-CK-3202 (VOLVO XC90 D5). The said car was seized on 20th April 2019. The petitioner filed an application being Criminal Misc. Application No. 446/2019, under Section 451 of the Criminal Procedure Code in the Court of the learned Chief Judicial Magistrate, Kolhapur and sought release of his car. The learned Judge was pleased to reject the said application vide order dated 6th July 2019. Being aggrieved by the said order dated 6th July 2019, the petitioner approached the Court of the learned Additional Sessions Judge, Kolhapur by filing Criminal Revision Application No. 119/2019. The learned Sessions Judge, after hearing the parties, was pleased to confirm the order passed by the learned Chief Judicial Magistrate. Hence, this petition.

4 The learned Sessions Judge, Kolhapur has rejected the said Revision Application on the premise that the offence of rape was committed on the prosecutrix by using the said car and that the said vehicle was used in the commission of a serious offence under Section 376 of the IPC. It is further observed that the possibility of tampering with the vehicle cannot be ruled out.

5 Admittedly, the vehicle belongs to the petitioner. Learned counsel for the petitioner submits, on instructions, that the petitioner will not sell the said vehicle or create any third party interest till the final disposal of the case. He further submits that the petitioner is ready to produce the said vehicle, if required before the trial Court. Statement accepted. The condition of the vehicle will deteriorate if the said vehicle is not returned.

6 Considering the aforesaid, the petition is allowed on the following terms and conditions :

- (i) The impugned order dated 6th July 2019 passed by the learned Chief Judicial Magistrate, Kolhapur, below Exhibit 1 in Criminal

Misc. Application no. 446/2019, as well as the order dated 16th September 2019 passed by the learned Additional Sessions Judge, Kolhapur in Criminal Revision Application No.119/2019, are quashed and set-aside;

(ii) The vehicle bearing No. TN-37-CK-3202 (VOLVO XC90 D5) be handed over by the trial Court to the petitioner, on the petitioner executing a *supratnama* to the satisfaction of the trial Court;

(iii) Petitioner shall not create any third party interest in the said vehicle nor will sell the vehicle till the trial is finally disposed of.

7 Petition is allowed and disposed of on the aforesaid terms.

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

REVATI MOHITE DERE, J.