

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO. 852 OF 2020

Sayyad Rasul Rustam,
Age : 30 Years, Occu. Driver and
Owner of vehicle,
R/o. Halpativas, Hathoda
Tq. Mangrol, District Surat
Gujarat State.

..PETITIONER

VERSUS

The State of Maharashtra
Through The Range Forest Officer,
Forest Office, Navapur, Tq. Navapur,
Dist. Nandurbar

..RESPONDENT

Mrs. S.T. Kazi, Advocate for the petitioner.
Mr. S.R. Yadav, holding for Mr. S.P. Brahme Advocate
for the respondent.

CORAM : MANGESH S. PATIL, J.
DATE : 04.09.2020

JUDGMENT(PER MANGESH S, PATIL, J) :-

Heard. Rule is made returnable forthwith. The matter is heard finally at the stage of admission with the consent of both the sides.

2. A car and a mobile phone of the petitioner was seized in connection with the crime No.03/2020 registered against him under the provisions of The Wild Life Protection Act, 1992.
3. An order passed by the learned Judicial Magistrate First

Class Navapur, District Nandurbar, under Section 457 of the Code of Criminal Procedure for release of the vehicle and the mobile phone has been reversed by the learned Session Judge, Nandurbar in a Criminal Revision Application No. 4 of 2020 preferred by the Wild Life Department.

4. The learned Advocate Mrs. Kazi submits that the petitioner being the owner of the vehicle and the mobile phone is entitled to claim their custody. The trial is not likely to get over soon. The value and the utility of both these things would diminished by passage of time and the Magistrate had rightly directed the property to be return to him. She would further submits that even if the property stands vested in the State Government/ Central Government by virtue of Section 39(1)(d) of the Wild Life Protection Act, that would happen only at the end of the trial and that too if the offence stands proves. When the petitioner is yet to be charged and tried for crime, no such conclusion would be deducible. She would refer to the decision of the Supreme Court in the case of ***Principal Chief Conservator of Forest and Another Vs. J.K. Johnson and others*** (AIR 2012 SC 61) in support of her such submissions. She submits that the learned Sessions Judge has clearly over looked this decision, though one can find reference to it, in the

order passed by the learned Magistrate. The observations and the conclusions drawn by the learned Sessions Judge are clearly perverse, arbitrary and capricious and the impugned order be quash and set-aside and reversed.

5. The learned Advocate Mr. Brahme for the respondent strongly supports the reasoning given by the learned Sessions Judge. He submits that it is a matter of offence committed under Wild Life Protection Act, 1972 . The offence of this kind are on the rise. The petitioner was caught red handed while in the driving the vehicle in which endangered species of snake (Mandul) was being transported. Three of his colleagues fled away from the spot. His statement was also recorded wherein he admitted the facts. If the vehicle is returned to him in all probability, he would use it for repeating the crime. The learned Advocate therefore submits that no fault can be found with the impugned judgment and order passed by the Sessions Court.

6. I have carefully gone through the papers and particularly the order passed by the learned Judicial Magistrate First Class, Navapur allowing the application of the petitioner and directing return of the property to him subject to usual conditions. I have also perused the impugned judgment and

order passed by the learned Sessions Judge. Without indulging into the facts it would be sufficient to note that it is a matter of return of property during pendency of the trial. The nature of the property clearly shows that by passage of the time there is every possibility that it would become useless day by day. It is a vehicle and a mobile phone. The Supreme Court time and again has observed that there is no propriety in allowing detention of vehicles till the conclusion of the trial.

7. So far as the present case is concerned true is that there is presumption under Section 57 of the Wildlife Protection Act 1972, as has been pointed out by the learned counsel for the respondent, and the burden is on the accused to dislodge that presumption regarding commission of the crime.

8. However, following observations of the Supreme Court in the case of ***Principal Chief Conservator of Forest and Another Vs. J.K. Johnson and others***, (AIR 2012 SC 61) are relevant

" 28. One thing is clear that the statutory provisions noticed above do not in explicit terms provide for the forfeiture of the seized items by the departmental authorities from a person who is

suspected to have committed offence/s against the 1972 Act. Chapter VI-A which has been inserted in the 1972 Act by Act 16 of 2003 that provides for forfeiture of property derived from illegal hunting and trade is entirely different provision and has nothing to do with forfeiture of the property seized from a person accused of commission of offence against the 1972 Act. Insofar as Section 39(1) (d) of the 1972 Act is concerned, it provides that every vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of the Act shall be the property of the state government and in a certain situation, the property of the central government. The key words in Clause (d) of Section 39(1) are. " has been used for committing an offence" What is the meaning of these words ? The kind of absolute vesting of the seized property in the state government, on mere suspicion of an offence committed against the 1972 Act, could not have been intended by the Parliament. It is not even scarcely disputed that every enactment

in the country must be in conformity with our Constitution. In this view, it is not sufficient- nor the law-makers intended to make it- to deprive a person of the property seized under the 1972 Act on accusation that such property has been used for committing an offence against the Act. Section 39(1)(d) does not get attracted where the items, suspected to have been used for committing an offence, are seized under the provisions of the Act. It seems to us that it is implicit in Section 39(1)(d) that for this provision to come into play there has to be a categorical finding by the competent court of law about the use of seized items such as vehicle, weapon, etc. for commission of the offence. There is merit in the submission of the learned counsel for the respondent Nos. 1 to 3 that if the construction put upon Section 39(1)(d) by Mr. R. Sundervardhan is accepted, the expression 'has been used for committing an offence' occurring therein has to be read as, 'is suspected to have been used for committing an offence. In our view, this cannot be done '.

9. These observations make it abundantly clear that it is only when a Court of competent jurisdiction comes to a conclusion about commission of the crime that the property would stand vested in the State. When admittedly the petitioner is yet to under go the trial and is still to be convicted, it cannot be said simply on the basis of a *prima facie* material that he has committed the crime.

10. In spite of such decision having been referred to in the order of the Magistrate, the learned Sessions Judge does not seem to have taken precaution to go through the Judgment of the Supreme Court. I have no manner of doubt that had he gone through the observations reproduced here-in above he would not have reached the conclusion which he has.

11. To sum up, the impugned judgment and order passed by the learned Sessions Judge is not sustainable in law and needs to be reversed and order passed by the learned Magistrate deserves to be restored.

12. The writ Petition is allowed. The impugned order passed by the learned Sessions Judge, Nandurbar in Criminal Revision Application No. 4/2020 is quashed and set-aside and one

passed by the learned Magistrate in Criminal Misc. Application No. 60 of 2020 is restored.

The rule is made absolute.

(MANGESH S. PATIL, J.)

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