

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

CRIMINAL WRIT PETITION NO. 324 OF 2020

Suryakant Nagnath Birajdar

...Petitioner

Versus

The State of Maharashtra

...Respondent

Mr. Rahul Vijaymane for the Petitioner

Mr. R. M. Pethe, A.P.P. for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 17th JULY 2020

P.C. :

1 Heard learned counsel for the parties.

2 By this petition, the petitioner has impugned the order dated 6th December 2019 passed by the learned Sessions Judge, Solapur below Exhibit 1 in Criminal Revision Application No. 66/2019, preferred by the respondent-State of Maharashtra. The petitioner is the owner of Eicher Pro 3014 HSD, which was seized by the State Excise Department on 28th June 2019, under Section 65-E, 70 and 80(1) of the Maharashtra Prohibition Act, as the petitioner's vehicle was found carrying sugarcane extract, without license. Accordingly, the State Excise Department registered C.R. No. 151/A-2/2019 as against the petitioner. It appears that the petitioner filed

an application under Section 457 of the Code of Criminal Procedure before the Joint Civil Judge, Junior Division and Judicial Magistrate First Class, Solapur, for return of his vehicle. The learned Magistrate, vide order dated 20th July 2019 allowed the said application and released the vehicle to the petitioner on certain conditions, in particular, on executing a bond of Rs. 20,00,000/-, in addition to other conditions.

3 Being aggrieved by the said order passed by the learned Judicial Magistrate First Class, the State of Maharashtra challenged the same before the learned Sessions Judge, Solapur by filing Criminal Revision Application No. 66/2019. According to the respondent-State, the learned Magistrate ought to have imposed a condition directing the petitioner to furnish bank guarantee, in addition to the conditions imposed by the trial Court. The learned Sessions Judge vide order dated 6th December 2019 allowed the said revision preferred by the State, partly, and as such modified the condition passed by the trial Court to the extent that the petitioner was directed to furnish bank guarantee to the tune of Rs. 6,00,000/-, in addition to the other conditions imposed by the trial Court.

4 Learned counsel for the petitioner submitted that the petitioner had purchased the said vehicle by executing a loan agreement and is

required to pay an EMI of Rs. 40,000/- per month. Learned counsel relied on the summary of the loan statement account of the petitioner. He further submitted that the vehicle which is seized by the State Excise Department, is in their custody for more than six months and the condition of the vehicle is deteriorating, as it is lying in an idle condition. He submitted that the petitioner's livelihood depends on the aforesaid vehicle, which is used for transportation and that the petitioner is suffering huge financial loss, due to the confiscation of the said vehicle. He submitted that infact, criminal action is likely to be initiated as against the petitioner for non-payment of instalments towards the loan agreement. He submitted that in the circumstances, the impugned order dated 6th December 2019 passed by the learned Sessions Judge, Solapur be quashed and set-aside and the vehicle be directed to be returned to the petitioner and that the trial Court order be upheld.

5 Learned A.P.P opposed the application.

6 Perused the papers. The trial Court, after considering the facts and circumstances of the case, had directed release of the vehicle vide order dated 20th July 2019 on certain terms and conditions, in particular, on executing a bond of Rs. 20,00,000/-, amongst other conditions.

7 The learned Sessions Judge partly allowed the revision filed by the State of Maharashtra and modified the condition of the order passed by the trial Court, to the extent that the petitioner was directed to furnish bank guarantee to the tune of Rs. 6,00,000/-, in addition to the other conditions imposed by the trial Court.

8 It appears that the vehicle was purchased by the petitioner, pursuant to a loan agreement and that the petitioner is required to pay an EMI of Rs. 40,000/- per month. The vehicle is in the custody of State Excise Department for almost a year. The livelihood of the petitioner depends on plying of the said vehicle, as the petitioner is in the transportation business. The Sessions Court ought to have considered the hardships that the petitioner would face, if he is required to furnish bank guarantee of Rs. 6,00,000/-, having regard to the facts and circumstances of the case. It is pertinent to note that the trial Court has imposed several conditions, whilst releasing the vehicle, balancing the interests of both the sides i.e. the petitioner and the prosecution.

9 Considering the aforesaid, the petition is allowed and the impugned order dated 6th December 2019 passed below Exhibit 1 in

Criminal Revision Application No. 66/2019 passed by the learned Sessions Judge, Solapur, is quashed and set-aside and the order passed by the trial Court dated 20th July 2019 is restored in its entirety. The petitioner to now comply with the order passed by the trial Court dated 20th July 2019.

10 Petition is disposed of accordingly.

11 All concerned to act on the copy of this order, digitally signed by the Senior Private Secretary of this Court.

REVATI MOHITE DERE, J.