

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 395 OF 2021

Afzal Khan Sayyed Khan Qureshi ... Petitioner

Versus

The State of Maharashtra ... Respondent

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Mr. Sanket N. Suryawanshi, Advocate for the petitioner
Smt. Geeta L. Deshpande, APP for the respondent-State

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CORAM : R. G. AVACHAT, J.

DATED : 19th JUNE, 2021

PER COURT :-

. The challenge in this writ petition is to the order dated 05.12.2020, passed by the Court of Judicial Magistrate First Class, Sakri, rejecting the application (Criminal Miscellaneous Application No.370 of 2020) for release of the motor vehicle (Mahindra Bolero Pickup) being registration No.MH-41-G-3172 and affirmed by the learned Additional Sessions Judge, Dhule, vide his order dated 11.02.2021 in Criminal Revision Application No.50 of 2020.

2. Heard. Perused the First Information Report (FIR) and the related papers.

A crime has been registered at the instance of a Police Constable attached to Sakri Police Station. It is alleged in the FIR that on the night of 17.09.2020, the informant and some other police staff were on patrolling duty. They noticed the motor vehicle No.MH-41-G-3172 carrying live stock, two cows, two buffalos and the calf to abattoir. The vehicle was driven in high speed, rash and negligent manner. The vehicle turned turtle. The live stock/cattle in the vehicle were injured. The vehicle driver fled away leaving behind the vehicle and the cattle, as well.

3. During the investigation, it was found that aforesaid vehicle belonged to the petitioner. The petitioner did not disclose identity of the driver responsible for the impact.

4. The petitioner moved the application under Section 451 of the Code of Criminal Procedure for custody of the motor vehicle. The learned Magistrate rejected the application on the ground that the petitioner did not have a permit to transport animals in his vehicle. There was no fitness certificate of the cattle which were being transported to abattoir. The petitioner neglected the provisions of Prevention of Cruelty to Animals Rules. The vehicle

would be required for the trial. If the vehicle is released, the owner may change its nature and transfer the same. With these reasons, the application was rejected.

5. The learned Additional Sessions Judge confirmed the order passed by the learned Magistrate, refusing to release the vehicle to the petitioner.

6. Admittedly, the petitioner is the owner of the vehicle (No.MH-41-G-3172). No useful purpose would be served if the vehicle is kept unattended at the police station. In the case of ***Sunderbhai Ambalal Desai vs State of Gujarat – AIR 2003 SC 638***, it has been observed thus:

“17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.”

7. It would necessarily take time for investigation of the crime and the resultant trial. The petitioner is the registered owner of the vehicle. It would not be desirable to keep the vehicle unused at the police station. The petitioner being the registered owner of the

vehicle, is entitled to have its custody. The petition, therefore, deserves to be allowed in terms of the following order.

ORDER

- (i) The writ petition is allowed.
- (ii) The Court of Judicial Magistrate First Class, Sakri, shall release the vehicle (No.MH-41-G-3172) in favour of the petitioner on usual terms and conditions within a period of eight days from the date of receipt of the copy of this order.

[R. G. AVACHAT, J.]

SMS