

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

910 CRIMINAL WRIT PETITION NO.869 OF 2021

Satish Lalchand Mutha,
Prop. of Satish Cargo Movers,
310/A/4, Somtane Fata,
Mumbai-Pune Road, Talegaon Dabadhi
District Pune
Through its GPA holder
Shri Raju Anandrao Shinde,
Age; 50 years, Occ; Service,
R/o; Near Marathi School, Dehugaon
Tal. Haveli, District; Pune.

...Petitioner

VERSUS

State of Maharashtra
Through Shillegaon Police Station,
Taluka Gangapur, Distirct Aurangabad.

...Respondent.

...
Advocate for Petitioner : Mr. Pratik P. Kothari
APP for Respondent-State : Mr.R.B.Bagul
...

CORAM : SURENDRA P.TAVADE , J.

DATE : 2nd September, 2021.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of learned counsel for both the parties, heard finally at the admission stage.

2. The petitioner is challenging the order passed by the learned Judicial Magistrate First Class, Gangapur, District

Aurangabad dated 02.12.2020. The order passed by the Magistrate, Gangapur is confirmed by the Additional Sessions Judge, Vaijapur, District Aurangabad on 01.03.2021.

3. Facts gives rise to the present petition can be summarized as under :

Police Station Shillegaon, Tq. Vaijapur, District Aurangabad registered a crime No. 268 of 2020 for the offences punishable under Sections 279, 304-A, 337 and 338 of Indian Penal Code (for short 'IPC'), wherein, a truck-container bearing No. NL-1-AC-8532 was seized. The said truck-container was owned by the petitioner. During the pendency of the said truck-container, the petitioner filed an application for return of the said truck-container. Said application was allowed as under :

*"Interim custody of Truck Container bearing registration No. NL-01-AC-8532, Chassis No. MAT503020H5H10099 seized in crime No. 268/2020 registered with Shillegaon Police Station for the offence punishable under Sections 279, 304-A, 337, 338 of Indian Penal Code be given to the applicant namely **Satish Kargo Movers, Proprietor Satish Lalchand Mutha GPA holder Omkar Vinayak Suryawanshi** on his executing indemnity bond of Rs. 1,50,000/- (Rs. One Lakh and Fifty Thousand Only) subject to following conditions.*

a) Applicant is hereby directed to deposit security or cash deposit of Rs. 10,00,000/- (Ten Lakh Only) to the objector as a Bank Guarantee by nationalized bank.

b) He shall not alienate seized vehicle in any way till conclusion of the trial.

c) I.O. to take two photographs of seized vehicle at the time of handing over the interim custody of the same to applicant and obtain signatures of him thereon as on endorsement.

d) I.O. to produce photographs and indemnity bond either along with charge sheet or final report.”

4. The petitioner was directed to execute a bank guarantee of Rs. 10,00,000/-. The said condition was challenged by the petitioner by filing a Criminal Revision Application No. 01 of 2021 before the Additional Sessions Judge, Vijapur. The said application came to be rejected and the order of the learned Magistrate was confirmed.

5. Learned counsel for the petitioner submits that the said truck-container is not new vehicle and due to the pandemic situation his business was stand still, therefore, he was unable to execute the said bank guarantee and to deposit Rs.10,00,000/- for returning of the truck-container in question. He submits that the condition imposed by the Magistrate is stringent. Therefore, the petitioner is unable to comply with the same. It is also contended that if the truck-container is remained in the custody of police, then it would be rusted. It is also contended that the condition may be modified. It is contended that the petitioner is ready to execute cash security and

bank guarantee of Rs. 3,00,000/-, in addition to this, he is ready to execute a surety bond. Accordingly, he prayed for modification of the impugned order.

6. On the other hand, the learned APP for the respondent-State submits that one person has lost his life in the said accident and two others are injured. The truck-container was not insured with the Insurance Company, therefore, the petitioner is liable to pay compensation. He submits that the trial Court has considered the guidelines of the Apex Court in the case of **Jayprakash Vs. National Insurance Company Ltd., reported in 2010 (2) SCC 607.**

7. He has also submitted that if the condition is not complied with by the petitioner the truck-container may be auctioned and the compensation can be realized from the sale proceeds of the truck-container. The decision of the trial Court is proper and it will not be just and proper to interfere with the order of the trial Court.

8. Heard learned counsel for the petitioners and the learned APP for the respondent-State.

9. The crux of the petition is that the petitioner is not in position to execute the bank guarantee of Rs. 10,00,000/-, due to his poor financial condition. The truck-container met with an accident, wherein, one person has lost his life and two were injured, therefore

the question of compensation is required to be considered because, the truck-container in question was not insured with any Insurance Company. So the petitioner is liable to pay compensation. As per the guidelines of the Hon'ble Supreme Court in the case of **Jayprakash** (supra), if the vehicle is not insured, then the owner of the vehicle is to be directed to offer security or to deposit an adequate amount to satisfy the award. In the present case, the claim has not yet filed but there is possibility of filing of the claim on behalf of the deceased and injured persons. Therefore, it is necessary to direct the owner of the vehicle to offer security or deposit any sum. Accordingly, the trial Court has directed the owner-petitioner of the truck-container to execute cash security of Rs. 10,00,000/-. According to the petitioner, the said condition is stringent one. It is true that the condition is stringent but at the same time, the interest of the heirs of the deceased is also required to be seen. If the truck-container is returned to its owner, he may not comply with the decree/award that would be passed against him. So it is required to be imposed conditions to secure the interest of the deceased and the injured. On perusal of the orders of the trial Court, as well as the Revisional Court, it appears that both the Courts have taken into account the decision given by the Apex Court in the case of **Jayprakash** (supra). Therefore, there is no need to interfere with the orders of the trial Court. Hence I do not find any merit in the petition. Hence the

petition is dismissed.

10. Rule is discharged.

(SURENDRA P.TAVADE)
JUDGE

mahajansb/