

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

**926 CRIMINAL WRIT PETITION NO. 972 OF 2021**

Kailas S/o. Jagdevrao Suryawanshi,      **...PETITIONER**  
Age-38 years, Occu-Labour,  
R/o. Mokhadi, Tq. Kalmanuri,  
Dist. Hingoli

**VERSUS**

The State of Maharashtra      **...RESPONDENT**  
Through Police Inspector,  
Police Station, Kalamnuri,  
Dist. Hingoli

Mr. Rajendra N. Chavan, Advocate h/f Mr. V. A. Bagdiya, Advocate  
for the petitioner  
Mrs. R. P. Gaur, APP for the respondent/State

**CORAM : SURENDRA P. TAVADE, J.**

**DATE : 05-10-2021**

**ORAL JUDGMENT:**

.            Learned counsel for the petitioner seeks leave to amend the prayer clause of the petition. Leave is granted. Amendment be carried out forthwith.

2.            Rule. Rule made returnable forthwith. With the consent of both the parties the petition is taken up for final hearing.

3.            The petitioner is challenging the order dated 22-12-

2020 passed by the learned Additional Sessions Judge, Hingoli on Exh. 10 in Sessions Trial No. 49 of 2020. The petitioner had submitted an application for return of seized jeep bearing registration No. MH-29-AD-1651, Chasis No. MC1D4DJA8DPO29193, Engine No. D27065639. Same application came to be rejected. Hence, the said order is impugned in this petition.

4. The petitioner was arrested in Crime 406 of 2016 for the offences punishable under Sections 363, 498(A), 302, 201 of the Indian Penal Code registered with Kalamnuri Police Station, Dist. Hingoli alongwith his brother Taterao Jagdeorao Suryawanshi. It was alleged that the petitioner and his brother had used the seized jeep in the crime for carrying the victim to the scene of offence. At the time of incident seized jeep was registered in the name of accused Taterao Suryawanshi. It is contended that the said Taterao had sold the seized jeep to the petitioner prior to the alleged incident, but the jeep was not transferred in the name of petitioner. It is contended that on investigation the petitioner is discharged under Section 169 of the Code of Criminal Procedure. It is contended that the seized jeep is transferred in the name of the petitioner which is lying in the premises of Kalamnuri Police Station. It is contended that the petitioner was using the said jeep as his source of income. It is contended that no purpose would be served by keeping the vehicle in the premises of Kalamnuri Police Station. It is contended that the petitioner will not change the nature of jeep

and will not transfer the same to anybody without prior permission of the court. It is contended that the trial court has observed that there is possibility of change of colour and nature of jeep at the instance of the petitioner. Similarly, the vehicle was used in the crime. Therefore, the prayer of the petitioner was rejected. Notice of this petition issued to the respondent/State.

5. Learned APP for the respondent/State submits that the petitioner got transferred the jeep in his name after the alleged offence. It is contended that say of accused Taterao is required to be taken. It is contended that there is possibility of tampering of vehicle at the hands of the petitioner. The trial court has rightly appreciated the contents of the application and came to a correct conclusion. Therefore, there is no need to interfere with the said order passed by the learned Additional Sessions Judge.

6. Heard learned counsel for the petitioner and learned APP for the respondent/State.

7. Admittedly, the incident had taken place on 02-12-2019. Said jeep was seized at the instance of accused Taterao Suryawanshi. It is contended that the identity card and other papers of deceased were found in the jeep. Said documents have been seized by the police. The investigation is completed. Charge-sheet is filed against the original accused Taterao. The petitioner is discharged from the case. From the original application as well as

police papers, it appears that the seized vehicle was owned and possessed by the accused Taterao, but, during pendency of investigation seized jeep came to be transferred in the name of petitioner. The petitioner has produced on record the Registration Certificate book of seized vehicle which shows that the seized jeep is transferred in the name of petitioner. Therefore, it cannot be said that the petitioner has got transferred the seized jeep in his name unscrupulously. The jeep was seized on 02-01-2020. It appears that more than one and half years it is lying in the premises of Kalamnuri Police Station.

8. The learned counsel for the petitioner has relied on the ratio laid down in the case of Sundarabai Ambalal Desai Vs State of Gujrat reported in (2002) 10 SCC 283, wherein the Apex Court has held that;

“the powers under Section 451 of CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely;

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;
2. Court or the police would not be required to keep the article in safe custody;
3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded

describing the nature of the property in detail; and

4. This jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

9. The prosecution has objected the petition on the ground that the petitioner may change the nature and colour of the vehicle. He may sale the vehicle and would destroy the evidence. On the other hand, it appears from the petition that the petitioner has given undertaking that he will not change the nature and colour of the vehicle and will not sale the vehicle without prior permission of the court. I have already observed that the petitioner is no more accused in the crime. It appears that vehicle was used in the crime and necessary documents were seized from the vehicle. Therefore, no purpose would be served by keeping the vehicle in the premises of police station. The apprehension of prosecution can be taken care by imposing the stringent conditions on the petitioner while releasing the vehicle. With this, I hold that the petition is required to be allowed. Hence, the following order.

### **ORDER**

- i. The petition is allowed.
- ii. The seized vehicle bearing registration No. Mh-29-AD-1651, Chasis No. MC1D4DJA8DP029193, Engine No.

(6)

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D27065639 be released and returned to the petitioner on executing the bond of Rs. 15,00,000/- on following conditions:

- a] The petitioner shall not change the nature of the said vehicle.
  - b] The petitioner shall not change the colour of the said vehicle.
  - c] The petitioner shall not sell the said vehicle without prior permission of the court.
  - d] The petitioner is directed to produce the said vehicle as and when directed to that effect.
- iii. Rule made absolute.

**[ SURENDRA P. TAVADE, J. ]**

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