

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

CRIMINAL WRIT PETITION NO. 2832 OF 2021

Mahesh Yadu Khandzode

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Sanjeev P. Kadam a/w Ms. Vilasini B. i/b Mr. Prashant Prabhakar Raul
for the Petitioner

Mr. A. R. Patil, A.P.P for the Respondents–State

Ms. Asha Holkar, Tahasildar, Satara, is present in Court

***CORAM : REVATI MOHITE DERE, J.
(THROUGH VIDEO CONFERENCING)
THURSDAY, 26th AUGUST 2021***

P.C. :

1 Heard learned counsel for the parties.

2 Rule. Rule is made returnable forthwith with the consent of
the parties and is taken up for final disposal. Learned APP waives service
on behalf of respondents–State.

3 By this petition, the petitioner has impugned the order dated 27th June 2019 passed by the learned Judicial Magistrate First Class, Satara, by which petitioner's application (Exhibit 1) in Misc. Application No. 280/2019, seeking custody of the property i.e. i.e. Tempo bearing registration No. MH-11-CH-3694, came to be rejected as well as the order dated 16th March 2021 passed by the learned Additional Session Judge, Satara, in Criminal Revision Application No. 93/2019, rejecting the said application and thereby confirming the order dated 27th June 2019.

4 Learned counsel for the petitioner submits that there was no impediment for the trial Court to release the vehicle, as the petitioner was also facing prosecution under Section 379 of the Indian Penal Code along with the provisions under the Maharashtra Land Revenue Code. Learned counsel relied on the judgment of this Court in the case of ***Amol s/o Ramhari Ram Waje vs. The State of Maharashtra***¹.

5 Learned A.P.P does not dispute the fact that the aforesaid judgment squarely applies to the facts in the present case.

1 2019 All MR (Cri.) 719

6 Perused the papers. On 9th April 2019, the Flying Squad of Election Commission apprehended a vehicle i.e. a Tata Company 709 Tempo bearing Registration No. MH-11-CH-3694 transporting sand without permission with a sticker, “On Election Duty”. The said tempo was seized by the Tahsildar, Satara and fine was imposed for transporting the said sand without permission under Section 48 of the Maharashtra Land Revenue Code. Accordingly, the FIR was lodged by the Flying Squad of the Election Commission with the Satara Taluka Police Station, Satara, i.e. C.R. No. 134/2019 alleging offences punishable under Sections 379, 465, 468, 471 r/w 34 of the Indian Penal Code, and panchanama was drawn by the Tahsildar.

7 Pursuant thereto, after investigation, charge-sheet was filed as against the petitioner. Thereafter, the petitioner filed an application being Criminal Misc. Application No. 280/2019 in the Court of the learned Judicial Magistrate First Class, Satara and sought interim custody of the said tempo under Section 457 of the Code of Criminal Procedure. The learned Magistrate rejected the said application on the premise that the investigating police machinery had not seized the vehicle and therefore, the question of delivering its custody under Section 457 will not arise. The

said order was confirmed by the learned Additional Session Judge, Satara, in Criminal Revision Application No. 93/2019 vide order dated 16th March 2021. This Court in the case of **Amol Waje (supra)** has, in paras 10 and 11 observed as under :

“10. True it is that the Executive Magistrate does have powers under Section 48 of the Maharashtra Land Revenue Code as well as Section 21 of the Mines and Minerals Act inter alia to proceed against the vehicle. However, simultaneously the vehicle is also a property involved in the present crime which is for the offence punishable under Section 379 of the IPC simpliciter. Consequently, by virtue of Section 457 of the Cr.P.C. it is only the Magistrate who could have passed the order regarding interim custody of the vehicle. By no stretch of imagination can such jurisdiction be said to have been ousted, albeit simultaneously, the Executive Magistrate may have his own rights and powers to proceed under the provisions of those two enactments.

11. Being a vehicle it cannot be allowed to remain idle. Therefore, taking into consideration the complexity of the matter, when the Executive Magistrate is simultaneously exercising his rights in respect of the self same vehicle, subject to his such rights a suitable order can be passed in the present crime under Section 457 of the Cr.P.C. directing release of the vehicle in favour of the petitioner subject to suitable conditions.

8 Admittedly, the present crime has been registered as against the petitioner even for the offence punishable under Section 379 of the Indian Penal Code. Separate proceedings have also been initiated under Section 48 of the Maharashtra Land Revenue Code. The facts in question are similar to the facts in the case of **Amol Waje (supra)**.

9 Considering the aforesaid, the petition is allowed on the following terms and conditions :

ORDER

(i) The impugned orders dated 27th June 2019 passed by the learned Judicial Magistrate First Class, Satara in Misc. Application No. 280/2019 and dated 16th March 2021 passed by the learned Additional Session Judge, Satara, in Criminal Revision Application No. 93/2019, are quashed and set-aside;

(ii) The vehicle i.e. Tempo bearing registration No. MH-11-CH-3694 be released in favour of the petitioner, as an interim measure, pending the final disposal of the case by the trial Court, subject to the petitioner furnishing personal bond of Rs. 5,00,000/- and on furnishing one or more solvent sureties in the like amount;

(iii) The petitioner, before the release of the vehicle, shall file an undertaking in the trial Court, stating therein that he will not sell or create any third party rights with respect to the vehicle, pending the disposal of the trial or without the permission of the trial Court;

(iv) The petitioner will also undertake to produce the vehicle, as and when directed by the Magistrate, during the course of the trial;

(v) The petitioner shall also file an Indemnity Bond in the trial Court, to the satisfaction of the trial Court, before the release of the vehicle.

(vi) The Investigating Officer, before handing over the vehicle to the petitioner, is directed to take photographs of the seized vehicle at the cost of the petitioner, for placing the same on the record of the trial Court;

(vii) The present order is passed without prejudice to the powers of the Tahsildar to proceed as against the applicant under Section 48 of the Maharashtra Land Revenue Code and that the vehicle shall not be returned until the applicant exhausts the powers in that regard.

10 Rule is made absolute in the above terms. Petition is disposed of accordingly.

11 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.