

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

CRIMINAL WRIT PETITION NO.2572 OF 2021

Sureshkumar Shripal Gupta

...Petitioner

Versus

The State of Maharashtra

...Respondent

Mr. R. R. Mishra for the Petitioner

Mr. S. S. Hulke, A.P.P for the Respondent–State

***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 the respondent–State.

3 By this petition, the petitioner has impugned the order dated 5th
January 2021 below Exhibit 1 in Criminal Misc. Application No. 351/2020.

Learned counsel for the petitioner submits that admittedly, the petitioner is not arraigned as an accused in the said case. He submits that the petitioner has given his auto rickshaw on hire basis for plying to accused-Vijaybahadur Yadav, when the alleged incident took place i.e. Vijay was found in possession of 455 grams of charas. Learned counsel for the petitioner submits that the petitioner owns the auto-rickshaw and that is the only source of his livelihood. He submits that keeping the vehicle idle, would further deteriorate its condition and as such the said vehicle be returned to the petitioner on whatever terms and conditions. Learned counsel does not dispute the fact that the petitioner is not an accused in the said case.

4 Perused the papers. Admittedly, the petitioner is the owner of the vehicle i.e. auto-rickshaw and all documents i.e. RC Book, etc. stand in the name of the petitioner. It is the prosecution case that one Vijaybahadur was found in possession of 455 grams of charas, when he was apprehended from the rickshaw, which was given by the petitioner to Vijaybahadur on hire basis. Pursuant thereto, the accused-Vijaybahadur was arrested and the petitioner's vehicle was seized, as Vijaybahadur was plying the auto-rickshaw and was found in possession of 455 grams of charas.

5 Pursuant thereto, the petitioner filed an application under Section 457 Cr.P.C for return of the property i.e. auto-rickshaw bearing registration No. MH-03-DC-1263 seized in C.R. No. II-582/2020 registered with the Nayanagar Police Station, under Section 8(c), 20 of the Narcotic Drugs and Psychotropic Substances Act. It is not in dispute that the vehicle stands in the name of the petitioner and that he is the owner of the same. The application seeking return of property dated 5th January 2021 was rejected by the learned Additional Session Judge, Thane, as the investigation was at the preliminary stage. The vehicle is lying idle since 6th December 2020.

6 Considering the aforesaid, there is no impediment in releasing the vehicle i.e. auto-rickshaw to the petitioner. Accordingly, the petition is allowed on the following terms and conditions :

ORDER

- (i) The impugned order dated 5th January 2021 passed by the learned Additional Sessions Judge, Thane, below Exhibit 1 in Criminal M.A. No. 251/2020 is quashed and set-aside.;

(ii) The vehicle i.e. auto-rickshaw bearing registration No. MH-03-DC-1263 seized in C.R. No. II-582/2020 registered with the Nayanagar Police Station, be released in favour of the petitioner, as an interim measure, pending the final disposal of the case by the trial Court;

(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, if so necessary, during the trial; and

(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.

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

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

REVATI MOHITE DERE, J.