

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO. 3031 OF 2019**

Divakar Shankar Shetty

.....Petitioner

V/s.

The State of Maharashtra and

Ors.

.....Respondents

* * * *

Ms. Minal J. Chandnani, Advocate for the petitioner.

Mr. A.R. Patil, APP for State.

Investigating Officer, PSI Mr. N.V. Pawar from Khar Police
Station present.*Coram : Sandeep K. Shinde, J.**Friday, 29th October, 2021.***P.C. :**

1. Heard.

2. This petition under Article 227 of the Constitution of India challenges the order dated 11th March, 2019 by which the Additional Metropolitan Magistrate, 9th Court, Bandra, declined to, return the property allegedly

seized from the possession of the petitioner-accused, in the crime registered against him under Sections 4 and 5 of the Bombay Prevention of Gambling Act with the Khar Police Station, Mumbai.

3. Accused moved an application for return of the property i.e. 13 video game machines, worth Rs.15,000/-. Alongwith an application, petitioner had also filed an Affidavit and undertook that, he will not dispose off or sell the said property till the decision in the subject case and further undertook to execute the bond equivalent to the value of the property.

4. The learned Court, declined to release the property on the ground that, petitioner did not produce the license for running the video-game parlour and likelihood or chances of using the video game machines by the petitioners cannot be ruled out.

5. Here, the machines were seized and lying ideal since January, 2019. Petitioner, on affidavit, has undertaken that, he will not dispose off the machines until the conclusion

of the trial. Learned Counsel, on instructions, has agreed to file a Affidavit to state that, petitioner shall not use the said machines for the business of video game parlour. In consideration of these facts and keeping in mind the judgment of the Supreme court in the case of Sunderbhai Ambalal Desai Versus. State of Gujarat, (2002) 10 Supreme Court Cases 283, I am inclined to direct the respondent to release the property seized, more particularly, described in the application dated 5th January, 2019 which is at page-22 of the petition. The petition is allowed subject to an Undertaking, as stated above, which shall be filed, within three weeks from today in the concerned Court and against executing a bond in the sum of Rs.1,00,000/-. The petition is allowed and disposed off in the aforesaid terms.

Digitally
signed by
NEETA
SHAILESH
SAWANT
Date:
2021.10.29
18:00:48
+0530

(Sandeep K. Shinde, J.)