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Date: 2021.09.24
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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.3291 OF 2021

Pappu Rajaram Marathe
(Through Power of Attorney
Ujwala T. Karande) ... Petitioner
Vs
The State of Maharashtra ... Respondents
...

Mr. Satyavrat Joshi i/by Nitesh J. Mohite for the
Petitioner.
Mr. Kamkhedkar , APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
DATE : SEPTEMBER 22, 2021.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith.

2 With consent of the learned counsel for the
parties, matter is taken up for final hearing forthwith.

3 This Petition under Article 227 of the
Constitution of India challenges the order dated 10th

August, 2021 vide which the learned Additional Sessions Judge, Sangli declined to deliver vehicle, to the petitioner in exercise of the powers under Section 357(2) of the Code of Criminal Procedure, 1973.

4 Facts necessary for the decision of this Petition are that, the petitioner is owner of, the car, Maruti Dezire, bearing registration no.MH-12-RF-9579. Since he is serving in the Indian Army, the car was given in possession of his relative so that it could be maintained regularly. This car, was allegedly used by the accused in the Crime No.142 of 2021 registered at Sangli City Police Station under Section 376(2)(n) of the Indian Penal Code, 1860. Petitioner, when applied for release of the car, trial and revisional Court, both declined to release the car and, thus, this Petition. According to the prosecution, accused took obscene photos of victim in the car and threatened to make the photos viral.

5 Under Section 457 of the Cr.P.C., a Magistrate has three alternatives namely,

- (I) he has discretion to pass any order as he thinks fit;
- (ii) to deliver it to the person entitled to subject to such conditions if any, that he may impose; or,
- (iii) if there is no such person, pass an order for its custody.

. Thus, discretion conferred upon the Magistrate under this Section is limited to selection of one of the alternatives namely; delivery of the property to the person entitled thereto or disposal of the same. The Section 357, therefore, empowers to the Magistrate to decide the question about the person “entitled to possess”. The expression “entitled to possess” would mean a rightful owner. In the case in hand, petitioner is owner of the card and therefore, is a person, entitled to possess. In the result, impugned order of the learned Sessions Judge as well as that of the learned Magistrate

cannot be sustained. Thus, impugned orders are set aside.

6 Writ Petition is allowed. The respondents are directed to deliver the car in question, to the power of attorney holder of the petitioner on an Undertaking that he shall produce the car, when required and shall not sell or transfer the car without permission of the Trial Court. Subject to Undertaking, car shall be released forthwith to power of attorney holder of the petitioner.

7 Petition is allowed and disposed off in aforesaid terms.

8 Rule is made absolute.

(SANDEEP K. SHINDE, J.)