

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.139 OF 2022

ANIRUDHA HARIHAR JOSHI
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. Ameya N. Sabnis, Advocate for petitioner.
Mr. R. B. Bagul, APP for the respondent – State.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 07.06.2022

ORDER :-

. Present petition has been filed challenging the rejection of order below Exhibit-18 in Special Case No.429 of 2020 passed by the learned Special Judge (NDPS Act)/Additional Sessions Judge, Court No.11, Aurangabad dated 04.06.2021 wherein the application under Section 451 of the Code of Criminal Procedure for allowing the applicant to sell Innova car bearing No. MH-03-BC-2713 came to be rejected.

2. Petitioner is the owner of the said vehicle which has been seized by Harsul Police Station in Crime No.314 of 2020. The petitioner is the witness in the case and other four persons are the accused in the same. The petitioner had filed Criminal Miscellaneous Application No.176 of 2020 for release of the said vehicle and it was allowed on 10.12.2020 by

imposing certain conditions. The conditions were that he should not change nature of the vehicle, its identity and colour etc. as well as he shall not create any third party interest in the said vehicle. The second condition was that he should produce the vehicle as and when required by the Court or the Investigating Officer or concerned Government Officer, if any, till the conclusion of the trial.

3. The petitioner wants to sell the said vehicle because of his illness as well as constrained circumstances and, therefore, he filed application at Exhibit-18 seeking permission from the learned Special Judge.

4. Prosecution strongly objected the said application and after hearing both sides, the learned Special Judge has rejected the said application stating that the offence in which the vehicle has been seized is under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the trial is not over.

5. Heard learned Advocate Mr. Ameya N. Sabnis for the petitioner and learned APP Mr. R. B. Bagul for the respondent – State.

6. The learned Advocate appearing for the petitioner after relying on the decision in *Sunderbhai Ambalal Desai Vs. State of Gujarat, [(2002) 10 SCC 283]* submits that by giving direction for the preparation of

panchanama and producing those photographs on record as well as nowadays videography can also be done, the car can be allowed to be sold as the petitioner is in need of money. The vehicle is remaining idle because of his illness and its value is being depreciated.

7. Per contra, the learned APP strongly opposed the application and submitted that the vehicle would be needed at the time of trial and it would be the accused if at all they want to object for the disposal of the property. There may be an objection later on regarding the non production of vehicle and when suitable conditions have been imposed, they need not be recalled before the conclusion of the trial.

8. At the outset, it is to be noted that when the order was passed in Criminal Miscellaneous Application No.176 of 2020, the accused persons appears to have not objected for handing over of the vehicle to the petitioner. Definitely, at that time, conditions were imposed and those conditions were necessary under the circumstance that the preservation of the property till the conclusion of the trial should be adhered to, however, when the same purpose can be achieved by other mode also which may be convenient for the prosecution also as well as the petitioner, then there is no hurdle in passing such order. In ***Sundarbhai Ambalal Desai*** (Supra), the Hon'ble Apex Court was of the view that

whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a longer period and then insisted that orders regarding disposal of the properties especially the movable properties like car were asked to be passed within a reasonable time. Entire procedure has been provided as to what should be done while returning such properties. It is observed that if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after preparing detailed proper panchanama of such articles, taking photographs of such articles and a bond that such articles would be produced if required at the time of trial, and after taking proper security. In case where the vehicle is not claimed by the accused, owner or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. Even at the time of handing over the vehicle, the identity of that vehicle will have to be got assured through photographs. As per *Sunderbhai Ambalal Desai (Supra)*, those photographs are admissible in evidence. Therefore, in this case, when the present petitioner is not the accused but a witness and the accused persons have not objected to the handing over of the vehicle to the petitioner, there was no hurdle for the learned Special Judge to allow the petitioner to sell the vehicle by issuing necessary

directions about the preservation of the evidence about use of that vehicle in the commission of the crime. When a proper discretion has not been utilized, then definitely interference is required by issuing appropriate writ. Hence, the impugned order deserves to be quashed and the application Exhibit-18 deserves to be allowed. Hence, the following order :-

ORDER

- I) Writ petition stands allowed.
- II) The order below Exhibit-18 in Special Case No.429 of 2020 passed by the learned Additional Sessions Judge on 04.06.2021 is hereby set aside.
- III) Application Exhibit-18 stands allowed. However, before the sale takes place, in order to preserve the evidence, following directions are given :-
 - (i) The Investigating Officer should visit the place where the vehicle has been parked or the petitioner to produce the said vehicle before the Investigating Officer on or before 04.07.2022 and thereupon, the Investigating Officer to prepare a detailed panchanama of the present situation/condition of the car and also should take the photographs as well as video of the vehicle at the cost of the petitioner and the Investigating Officer should produce the panchanama, videograph electronic evidence along with

certificate under Section 65-B of Indian Evidence Act and also the photographs of the vehicle before the learned Special Judge to be made part of the record in Special Case No.429 of 2020.

(ii) The petitioner shall not sell the car prior to execution of the panchanama and the other directions given in this order. The panchanama should be in compliance of paragraph No.12 of ***Sunderbhai Ambalal Desai (Supra)***.

[SMT. VIBHA KANKANWADI, J.]

scm