

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.525 OF 2022

Devendra S/o Jaydayal Sharma,
Age-48 years Occu:Business,
R/o-Bhavani Nagar, Galpadar,
Gandhidham Kach, Gujrat State

...PETITIONER

VERSUS

The State of Maharashtra,
Through Chikalthana Police Station,
Aurangabad.

...RESPONDENT

...
Mrs. Rashmi S. Kulkarni Advocate for Petitioner.
Mr.S.P. Deshmukh, A.P.P. for Respondent – State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 21st JUNE, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned Advocates appearing for both the parties finally, by consent.
2. Present Writ Petition challenges the order passed by the learned Sessions Judge, Aurangabad in Criminal Revision No.211

of 2021 dated 14th February 2022, thereby rejecting the said Criminal Revision application challenging the order passed by the learned Judicial Magistrate First Class, Aurangabad in Criminal M.A. No.3542 of 2021 dated 1st December 2021.

3. Heard Mrs. Kulkarni, learned Advocate for the petitioner and Mr. Deshmukh, learned A.P.P. for the respondent – State and perused the police papers.

4. The petitioner – Devendra Sharma is the registered owner of goods carrier bearing No. GJ-12-AT-8248. It is involved in Crime No.399 of 2021 for the offence punishable under Sections 304-A, 279, 337, 338, 427 of the Indian Penal Code registered with Chikalthana Police Station, Aurangabad. The petitioner had filed the said application i.e. Criminal M.A. No.3542 of 2021 under Section 457 of the Code of Criminal Procedure, for return of the said goods carrier. However, it was rejected by the Court concerned on the ground that one Yugal Yadav, who had filed affidavit stating that he has no objection for giving custody of the container to the applicant therein, was not the owner of the container.

5. It appears that unnecessary confusions have been created by the Courts below. Initially, Criminal M.A. No.2634 of 2021 was filed under Section 457 of the Code of Criminal Procedure by the present petitioner, seeking custody of goods carrier as well as the container. It appears that when it was found that there is difference between engine number and the record of RTO, the learned Magistrate has rejected the application on 4th October 2021. Thereafter again Criminal M.A. No.3542 of 2021 was filed by the present petitioner by giving documents of ownership in respect of goods carrier. In spite of the said documents, it was then found by the learned Magistrate that the applicant has filed affidavit Exhibit-11 stating that owner of the seized container is said Yugal Yadav and if the custody of the container is given to the applicant, he would give the said custody to Yugal Yadav. It is further observed by the learned Judicial Magistrate that said Yugal Yadav had also filed affidavit stating that he is proprietor of Shree Laxmin Roadways and he had given seized container to Truck bearing No. GJ-12-AT-8248 of the petitioner. It was unnecessarily found by the learned Judicial Magistrate that perusal of documents does not show the ownership of said Yugal Yadav in respect of the seized container. But, in the order in

respect of goods carrier, for which ownership documents were produced, there is absolutely no whisper.

6. It is also to be noted that it appears that as regards the container is concerned, another Criminal M.A. No.4277 of 2021 was filed by one MSC Agency Private Limited, which came to be allowed. Therefore, now we are concerned with the goods carrier only. However the learned Judicial Magistrate First Class rejected the application filed by the present petitioner for interim custody of the goods carrier. The present petitioner went in Revision, thereby filing Criminal Revision No.211 of 2021. However, the revisional Court has rejected the Revision on the ground that complete chassis number is not visible as it is spoiled by friction. This cannot be the ground to reject the application. It is to be noted that we cannot go only by chassis number but along with that engine number would also be important. There is no problem regarding the engine number. The particulars of the vehicle from State Transport Department, Kachchh, Gujarat Motor Vehicle Department have been sought by the learned APP and the said description matches with the record that has been produced by the petitioner. The engine number matches but merely because chassis number is completely not visible, that

cannot be the ground to reject the application. Further, to allow the vehicle to get damaged within the premises of the Police Station is not the object of the statute and is also against the ratio laid down in ***Sundarbhai Ambalal Desai vs. State of Gujarat, AIR 2003, SC 638***. The Writ Petition, therefore, deserves to be allowed. Hence the following order:-

ORDER

(I) The Writ Petition stands allowed.

(II) The order passed by the learned Judicial Magistrate First Class, (Court No.9), Aurangabad in Criminal M.A. No.3542 of 2021 dated 1st December 2021 and the order passed by the learned Additional Sessions Judge-5, Aurangabad in Criminal Revision No.211 of 2021 dated 14th February 2022, stands set aside.

(III) Criminal M.A. No.3542 of 2021 filed by the present petitioner under Section 457 of the Code of Criminal Procedure, stands allowed.

(IV) The seized Motor Goods Carrier bearing No.GJ-12-AT-8248 seized in Crime No.399 of 2021 registered with Chikalthana Police Station, Aurangabad be given in the interim custody of applicant / present petitioner - Devendra S/o Jaydayal Sharma,

after verifying documents of his identification and on executing an indemnity bond of Rs.10,00,000/- on the following conditions:-

(a) He shall not alienate the said Motor Goods Carrier by transfer, sale or by any other means.

(b) He shall produce the said Motor Goods Carrier as and when required by the Court during the trial.

(c) He shall not change the colour, nature of the said Motor Goods Carrier.

(d) Concerned Police Officer is directed to prepare the condition panchnama of said Motor Goods Carrier and take its photographs prior to release the same and counter signed by the applicant / petitioner at applicant's / petitioner's cost and submit it on record.

(V) Rule made absolute in above terms.

[SMT. VIBHA KANKANWADI, J.]