

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO.1064 OF 2022**

FAJJAL RAJJAK SHAIKH

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA

..RESPONDENT

...

Mr. Sohail S. Shaikh, Advocate for the Petitioner.

Mr. R. D. Sanap, APP for Respondents-State.

...

CORAM : SHRIKANT D. KULKARNI, J.

DATED : 14th SEPTEMBER, 2022.

PER COURT:-

1. Heard finally with the consent of both the sides.

2. The point for adjudication in the present petition is about release of vehicle seized in connection with Crime No.0037/2022 registered at Palam Police Station for the offence punishable under Section 379 r/w. Section 34 of the Indian Penal Code and under Section 48(7) and 48(8) of the Maharashtra Land Revenue Code, 1966.

3. Heard Mr. Sohail Shaikh, learned counsel for the petitioner and Mr. Sanap, learned APP for the State/respondent.

4. Mr. Shaikh, learned counsel submitted that the petitioner is registered owner of the vehicle seized in the case viz. Hywa/Tipper bearing registration no.MH-20-EG-9767. He has taken the

said vehicle on loan from ICICI Bank. He has sold the said vehicle to Mr. Manohar Sakharam Mahajan. The vehicle was in the occupation and possession of Mr. Manohar Mahajan when it was seized by the police in connection with illegal excavation of sand. Mr. Manohar Mahajan had applied for return of vehicle by moving an application before the Judicial Magistrate First Class, Palam and in the said proceeding, present applicant has given no objection. The custody of the vehicle was given to Mr. Manohar Mahajan. However, Mr. Manohar Mahajan did not pay installments of the loan amount and the vehicle was re-possessed by the present petitioner. Afterwords, the vehicle was allegedly seized by the police on the road in connection with illegal excavation of sand. The present petitioner applied for return of vehicle before the learned Magistrate by moving Miscellaneous Criminal Application No.81/2022, but his application came to be rejected. The revision was preferred by the present petitioner, but revision also came to be dismissed. He submitted that the vehicle came to be seized in connection with the above said crime on 15.02.2022 and since then, the vehicle is lying in the campus of the police station. He submitted that the bread and butter of the petitioner is depend upon the business of Hywa Trailer and prayed for release of vehicle. He submitted that as per RTO record and as per Bank statement, the present petitioner is registered owner of the vehicle.

5. Mr. Sanap, learned APP for the State strongly opposed to hand over the custody of the vehicle Hywa to the present petitioner. He submitted that the present petitioner and earlier one Mr. Manohar Mahajan are playing the game of hide and seek. Initially, Mr. Manohar Mahajan put forth his claim of ownership over the same vehicle Hywa when it was seized in the case of illegal excavation of sand and at that time the petitioner had given no objection to release the vehicle. After release of the said vehicle, the said vehicle is again used for illegal excavation of sand by causing breach of the earlier conditions imposed by the learned JMFC and again seized by the police. Now the present petitioner is seeking release of the said vehicle by putting forward his claim as registered owner of the vehicle. He submitted that petitioner is not entitled to get the custody of the vehicle in the above scenario. The condition imposed by the learned Magistrate while releasing the vehicle is breached by repeating the same offence. He submitted that it is not a fit case to release the vehicle. He further submitted that some cost should be imposed on the petitioner in order to prevent such act of disobedience of breach of condition.

6. Mr. Shaikh, learned counsel has placed his reliance on the decision of the Apex Court in case of **Sunderbhai Ambalal Desai Vs. State of Gujarat**, AIR 2003 Supreme Court 638.

7. I have considered the submissions of both the sides.

8. The factual scenario submitted by Mr. Shaikh, learned counsel for the petitioner and Mr. Sanap, learned APP for the State as well is practically undisputed. As per the record, present petitioner is the registered owner of the vehicle seized in the case, which is Hywa Truck. Mr. Shaik, learned counsel has also placed on record the extract of loan account issued by ICICI Bank. The same is taken on record and marked 'X' for identification. On going through the same, it seems that present petitioner has purchased the said vehicle Hywa by obtaining loan of Rs.28,16,257/- from the ICICI Bank, Branch Aurangabad. The question is centered around whether seized vehicle is liable to be returned to the petitioner in the background of earlier breach committed by the predecessor of the vehicle.

9. The Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** (supra) has laid down the guidelines in respect of release of property/vehicle. It is held by the Hon'ble Supreme Court that the application in respect of release of vehicle should be passed as expeditiously as possible and by applying judicial mind. The following are the parameters laid down by the Hon'ble Supreme Court:

"The powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.
2. Court or the police would not be required to keep the article in safe custody;
3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the properly in detail; and
4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

The procedure for disposal of seized articles and currency notes, vehicles, seized liquor and Narcotics drugs suggested. Further Magistrate directed to pass appropriate orders immediately and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. The said object can also be achieved if there is proper supervision by the Registry of the concerned

High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly."

10. As pointed out earlier, the vehicle seized in the case is lying in the police station campus since more than six months. It is not in the interest of either of the parties to retain the vehicle in the same condition. If the vehicle is not released, it may get damaged for various reasons like rain, sun etc. If the vehicle is in use it can be maintained properly. The question is about repetition of crime as observed earlier. As such, I am of the view that stringent condition can be imposed which may take care of repetition of such crime.

11. Having regard to the guidelines laid down by the Hon'ble Supreme Court referred above, it would be just and proper to release the vehicle, however, on certain conditions which may take care of apprehension raised by the prosecution agency.

12. Having regard to the above reasons and discussion, the petition needs to be allowed.

13. The Writ Petition stands allowed.

14. The impugned order passed by the learned Judicial Magistrate First Class, Palam in Miscellaneous Criminal Application No.81/2022 dated

25.05.2022 and confirmed by the Additional Session Judge, Gangakhed, Dist. Parbhani in Criminal Revision Application No.11/2022 dated 07.07.2022 are hereby quashed and set aside. The vehicle seized in the case Hywa/Tipper bearing registration no.MH-20-EG-9767 shall be released on furnishing indemnity bond in the sum of Rs.25,00,000/- (Rs.Twenty Five Lakhs Only) on following conditions:

- (i) The petitioner shall furnish all the documents relating to the vehicle bearing registration no. MH-20-EG-9767 with the concerned learned Magistrate Court as well as with the concerned police station.
- (ii) The panchanama of the vehicle, if not drawn earlier, it should be drawn immediately recording the present status of the vehicle alongwith Chassis and Engine number etc.
- (iii) The petitioner shall not use this vehicle for any illegal purpose and if he repeats same offence, the vehicle would be confiscated permanently.
- (iv) The petitioner shall give undertaking before the learned Magistrate that he shall not transfer the vehicle till the final decision of the case and shall not make any changes in the vehicle.

- (v) The petitioner shall deposit cost of Rs.5000/- (Rs.Five Thousand Only) with the learned JMFC, Palam for breach of condition and said amount be credited to the Government.
- (vi) The petitioner shall submit his undertaking and indemnity bond in view of the above directions given by this Court before the learned Judicial Magistrate First Class, Palam. On furnishing such indemnity bond in the sum of Rs.25,00,000/- (Rs.Twenty Five Lakhs Only) and after furnishing undertaking by the petitioner and payment of costs, the learned Magistrate shall issue release order of the vehicle.
- (vii) Writ Petition is accordingly disposed off.
No orders as to costs.

(SHRIKANT D. KULKARNI)
JUDGE