

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

CRIMINAL APPLICATION NO. 236 OF 2022

Nilesh Bhaskar Jadhav ...Applicant
Versus
The State Of Maharashtra ...Respondent

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Ms. Tanvi G. Tapkire, Advocate for the Applicant.

Mr. Arfan Sait, APP for the Respondent – State.

Mr. Sachin Subrao H. (Police Naik), Jat Police Station, Present.

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CORAM : **PRAKASH D. NAIK, J.**
DATE : **24th AUGUST, 2022.**

PER COURT:

1. The applicant is seeking modification of order dated 25th April, 2022 passed by learned Additional Sessions Judge, Sangli in Criminal Revision Application No.61 of 2021. The modification is sought to the extent of dispensing with furnishing bank guarantee in the sum of Rs. 8,00,000/- and to renew the same from time to time as per the bank rules and regulations.

2. C.R. No.216 of 2021 was registered with Jath Police Station, Dist. Sangli for offences punishable under Sections 188, 269, 270 of Indian penal Code and Sections 65(d) & 65(e) of the Maharashtra Prohibition Act, 1949 and Section 51(b) of the Disaster Management Act, 2005. During the course of investigation,

liquor bottles were seized from the hotel premises of the applicant. It is the case of the prosecution that the accused was involved in selling liquor to the customers during lock-down. On receipt of the information, the police raided the premises and seized the liquor bottles.

3. The applicant preferred an application for return of property before the Court of learned J.M.F.C. Jath, which was rejected by order dated 28th October, 2021. The said order was challenged before the Court of Sessions by preferring revision application which was allowed, on condition that the applicant shall execute bond of Rs.8,00,000/- and shall furnish bank guarantee of the like amount and renew the same time to time as per the bank rules and regulations.

4. The applicant has taken exception to the condition of furnishing bank guarantee. Learned Advocate for the applicant submitted that the applicant is willing to execute the bond of Rs.8,00,000/- in terms of order dated 25th April, 2022 passed by the Sessions Court. However, the execution of bank guarantee would be arbitrary. The applicant is holding license for conducting the hotel business and providing the liquor to his customers. The applicant would face the prosecution. There was no necessity of

providing the guarantee. It is not the case of the prosecution that the applicant was selling the liquor without license. The Sessions Court has allowed the application and directed that the property be handed over to the applicant. Hence, the condition of execution of bank guarantee may be dispensed with.

5. Learned APP submitted that the condition imposed by the Sessions Court is reasonable. The Sessions Court has directed that the property be handed over to the applicant. The property is not perishable. The applicant was involved in providing liquor to his customers during lock-down. Hence, this application may be rejected.

6. The documents on record indicate that, during investigation, the Police seized the boxes of Indian Made Foreign Liquor. The applicant preferred an application before the Court of learned J.M.F.C. under Section 457 of Cr.P.C. praying for custody of the liquor bottles. On completing investigation, charge-sheet was filed. The first application was withdrawn. Thereafter, another application was preferred after filing of charge-sheet, which was rejected on 28th October, 2021. The applicant preferred Criminal Revision Application No.61 of 2021 before the Court of Sessions which has been allowed on the condition referred to herein above.

7. On perusal of order dated 25th April, 2022 it appears that, the learned Sessions Judge has considered the provisions of law relating to return of property under the Code of Criminal Procedure as well as adverted to the provisions of Sections 99, 100 & 101 of the Maharashtra Prohibition Act. The Court also relied upon the judicial precedents and allowed the application on the conditions stipulated therein. In Paragraph – 10 of the order it was observed that there is no bar for releasing the liquor under the Maharashtra Prohibition Act or under the provisions of Code of Criminal Procedure, if it is validly purchased and the person holding the bottles is license holder. The Court also observed that the liquor was seized from the possession of the applicant and there is no necessity of producing the articles before the trial Court. The Court perused the license and invoice of the liquor and called for the report from the Police. The Court verified the invoice and the batch numbers of the liquor and found that they are matching with each other. It was opined that, prima facie the applicant is license holder and he has validly purchased the liquor. The Court also perused charge-sheet and observed that prima facie the Court do not find any allegations of actual selling activity. Hence, only the question of illegal possession would arise that could be a breach of license condition and the concerned competent authority may look

into the said issue. The applicant had admitted that the seizure of liquor was from his possession and in the event, the offence is proved, he can be convicted and the Excise Department can impose the fine. Considering the aforesaid facts, learned Sessions Judge has held that the liquor can be handed over to the applicant on certain conditions. The order passed by the learned J.M.F.C. was set aside and liquor bottles which were seized during the investigation were directed to be handed over to the applicant.

8. The only question now which arise for consideration is whether it was necessary to direct the applicant to furnish the bank guarantee of the like amount and renew to the same from time to time.

9. In usual course, the property can be released on execution of Supurdnama. The applicant has no objection for executing of bond in the sum of Rs.8,00,000/- as stipulated in the order passed by the Sessions Court. The objection is only to furnishing bank guarantee.

10. In the light of the observations made by the Sessions Court, considering the factual matrix of the case and also considering the fact that the applicant is willing to execute the bond of Rs.8,00,000/-, it is not necessary to execute bank guarantee in the sum of Rs.8,00,000/- as stipulated in order dated 25th April, 2022.

11. Hence, the order dated 25th April, 2022 passed by the learned Additional Sessions Judge, Sangli in Criminal Revision Application No.61 of 2021 is modified and the condition of execution of bank guarantee of the like amount is set aside.
12. The property be returned to the applicant in consonance with the other conditions stipulated in order dated 25th April, 2022.
13. Application stand disposed of accordingly.

(PRAKASH D. NAIK, J.)