IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.178 OF 2022

Madhukar s/o Bhaskar Mankar
Vs.
State of Maharashtra, Through Police Station Officer, Police Station, Balapur, District Akola

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Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Mr. Vikarant Vishwarupe, Advocate h/f Mr. Rajnish Vyas, Advocate for applicant.
Mr. A. R. Chutke, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.
DATE : 27/04/2022

Heard Mr. Vishwarupe, learned counsel for the applicant and Mr. Chutke, learned APP for non-applicant/State.

2. The applicant, who is the owner of the tractor trolley bearing registration No. MH-30-J-2893, was granted the custody of the said vehicle under Section 457 of the Code of Criminal Procedure (hereinafter referred as “the Cr.PC”) by an order dated 04.03.2021 (page 15) on several conditions, two of them being to insure the trolley within a period of seven days from the date of the order and submit a copy thereof with the concerned Police Station and second not to give the vehicle to any other person for its misuse, nor to use the same for committing an offence.

3. Pursuant to the aforesaid order dated

04.03.2021, the tractor trolley was found to be involved in another offence for transportation of sand on account of which, an offence under Section 379 under Crime No. 208 of 2021 came to be registered, by virtue of an order dated 11.05.2021 passed by the learned Judicial Magistrate, First Class, Balapur. The application under Section 457 of the Cr.P.C. for release of the said vehicle came to be rejected, on the ground that there was violation of the aforesaid two conditions by the applicant. Revision there against, also came to be dismissed, by the judgment dated 26.07.2021.

4. Mr. Vishwarupe, learned counsel for the applicant submits that after the filing of the revision, the said vehicle has been got insured with HDFC Ergo General Insurance Company Limited to substantiate which the insurance proposal form is tendered across the bar. The learned counsel does not dispute that in spite of the conditions contained in the order dated 04.03.2021, there has been a violation of the same. He however submits, that though belatedly the condition regarding insurance has been complied with and in so far as the condition regarding the vehicle not to be involved in any offence, since the vehicle is usually given on hire to third parties, use of the same, is not within the control of the applicant. He further submits that in case the said vehicle, is not released and permitted to put in use, as the decision of the trial would take a considerable period of

time, may be years together, the said vehicle would lie at a standstill in the custody of the police authorities and would ultimately become unusable. He submits, that henceforth, the applicant shall take utmost care that the said vehicle shall not be permitted to be used for any illegal activities and as an assurance for the same submits that the applicant is ready to furnish a Bank guarantee of Rs.2,00,000/- which may be encashed, in case it is found that the said vehicle is used for any criminal purpose or intent.

5. Mr. Chutke, learned APP for the non-applicant/State opposes the application, on the ground that in spite of the specific terms put in the order dated 04.03.2021, the applicant has permitted use of the vehicle, in violation of the said condition, nor has insured the said vehicle, as per the condition. He therefore submits, that the application needs to be rejected. He however does not dispute, that in case the vehicle is continued in custody of the police authorities, there is no mechanism by which regular maintenance and up-keep of the said vehicle would be assured, so as to ensure it to be in a running condition.

6. Though the action of the applicant in violating the terms, upon which, the said vehicle was released under the order dated 04.03.2021 cannot be countenanced, however, it is equally true that, if the

vehicle is left to stand in the custody of the police authorities, during the course of the trial, which no one can predict would take how much time, the vehicle by the time the trial is over, would become unusable, as a result of its standing still without any maintenance and up keep. In this situation, though there is violation, however, considering that the vehicle now stands insured and upon the condition of furnishing Bank guarantee to ensure that the vehicle will not be used for illegal purposes, at the pain of forfeiting the Bank guarantee, it can be released in the custody of the applicant, conditionally. Hence, the following order.

ORDER

(i) The application is allowed.

(ii) On the applicant furnishing a Bank guarantee in the sum of Rs.2,00,000/- (Rupees Two Lakhs) drawn on a Nationalized Bank and on the condition that in case the said vehicle is henceforth found to have been used in any criminal/illegal activity whatsoever, either by the applicant or by any one, to whom it is given on hire or otherwise, the Bank guarantee shall stand forfeited and the vehicle shall also stand confiscated, the said vehicle be released in the custody of the applicant.

(iii) The applicant shall renew the insurance policy of the said vehicle periodically and shall ensure that the vehicle will always remain insured at all times.

(iv) The applicant shall not transfer or part with the vehicle, so as to divest himself of the title and interest in the same.

(v) The applicant shall ensure that the vehicle shall be produced before the learned Court as and when required at his own costs.

(vi) The applicant shall also ensure that the said vehicle shall not be permitted to use for any illegal purposes directly or indirectly at any point of time.

(vii) The Investigating Officer shall prepare proper panchnama and videograph / photograph of the said vehicle before handing over the possession of the said vehicle, which can be used in evidence during the course of the trial (***Sunderbhai Ambalal Desai Vs. State of Gujarat, 2002 (10) SCC 283 (para 7***).

(viii) Any violation of any of the above conditions, shall result in forfeiture of the Bank guarantee as well as confiscation of the said vehicle.

JUDGE

Sarkate

Digitally signed byANANT R SARKATE
Signing Date:28.04.2022 14:38