

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 304/2022
WITH
CRIMINAL WRIT PETITION NO. 356/2022

CRIMINAL WRIT PETITION NO. 304/2022

Mohammad Razique Mohammad Sabir,
aged about 41 years, Occ. Business,
R/o. Nalsahab Puraj Juni Basti,
Hatgaon, Murtizapur, Tah. Murtizapur,
Dist. Akola.

... **PETITIONER**

VERSUS

State of Maharashtra through
Police Station Officer, Lahandur,
Tah. Lakhandur, Dist. Bhandara.

... **RESPONDENT**

Mr. U. K. Bisen, Advocate for petitioner.
Mr. H. D. Dubey, APP for respondent/State.
B. K. Uke, Advocate & M. V. Joshi, Advocate for Intervenor.

WITHCRIMINAL WRIT PETITION NO. 356/2022

Shri Vijaykumar Mukundilal,
 aged about 33 years, Occ. Transport,
 R/o. Maniyari Mohalla, Adegaon,
 Tah. Lakhanadaon, Dist. Shiwani (M.P.)

... PETITIONER

VERSUS

State of Maharashtra through
 Police Station Officer, Dighori,
 Tah. Lakhandur, Dist. Bhandara.

... RESPONDENTS

Mr. U. K. Bisen, Advocate for petitioner.
 Mr. H. D. Dubey, APP for respondent/State.
 Mr. Raju Gupta, Advocate & Mr. Akshay Joshi, Advocate for
 Inverternor.

<u>CORAM</u>	: <u>VINAY JOSHI, J.</u>
<u>RESERVED ON</u>	: <u>28.07.2022</u>
<u>DATE OF JUDGMENT</u>	: <u>24.08.2022.</u>

JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of respective parties.

3. The common question relating to release of vehicle arose in both petitions. Hence, for the sake of convenience, they are heard together and taken for final disposal. In Criminal Writ Petition No. 304/2022, the petitioner claims to be registered owner of vehicle namely truck bearing registration No. MH-40-N-5792, whilst the petitioner of Criminal Writ Petition No. 356/2022 claims to be the registered owner of truck bearing registration No. MP-22-H-1080. Both vehicles were seized in connection with the offence registered under the Prevention of Cruelty to Animals Act, 1960 ('the Act of 1960').

4. Crime No. 29/2022 was registered with Lakhandur Police Station, District Bhandara for the offence punishable under Section 11(1)(d)(e) of the Act of 1960, Section 9 of the Maharashtra Animal Preservation Act, 1976 ('the Act of 1976') and Section 119 of the Maharashtra Police Act, 1951. The said crime was registered at the instance of report dated 16.02.2022 filed by the Police Inspector alleging that the petitioner's truck bearing registration No. MH-40-N-5792 was found carrying total 24 cattle in cruel manner. Accordingly, the truck along with cattle was seized. The seized cattles were kept in Gaushala. The petitioner being registered owner of said truck bearing registration No. MH-40-N-5792 has applied to the Magistrate for release of truck on Supratnama, however it was rejected vide order

dated 09.03.2022. Being aggrieved, the petitioner has filed revision, however it was also rejected vide order dated 08.04.2022 and therefore, the petition bearing Criminal Writ Petition No. 304/2022.

5. Likewise, a Crime No. 117/2021 was registered with Digori Police Station, Tahsil Lakhandur, District Bhandara for the offence punishable under Sections 11(1)(D)(j)(z)(1) of the Act of 1960 and Section 5, 5(a)(b), 9(a) of the Act of 1976. The said crime was registered at the instance of report lodged by the Police Officer stating that on 10.12.2021, a truck bearing registration No. MP-22-H-1080 when intercepted, was found carrying total 35 cattle in cruel manner. The owner of truck has applied to the Magistrate for releasing vehicle on Supratnama, however it was rejected and the revision against said order was also dismissed.

6. Both petitions were resisted by the State as well as by the interveners namely Dhyan Foundation, a registered Trust indulging into animals welfare activities. Resistance is on the ground that in view of the Rule 5(1) of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 ('the Rules of 2017'), the vehicle owner is jointly and severally liable for the cost of transport, treatment and care of animals. Moreover, as per Rules 5(4) of the Rules of 2017, the vehicle found to be transporting the animals is

to be held as a security. It is argued that the offence is anti-social and if the vehicle is released, there is every likelihood of use of vehicle in similar nature of crime. The learned counsel appearing for the intervener has placed reliance on several decisions to contend that they have locus to intervene in the proceeding.

7. The learned Additional Public Prosecutor has placed on record a communication issued by the Maharashtra Animal Welfare Board indicating the maintenance charges for each animal is to the tune of Rs. 200/- per day. The intervener has also placed reliance on several decisions of the Supreme Court as well as the different High Courts to contend that the custody of vehicle shall not be handed over to the petitioner.

8. I have minutely perused the provisions of act and cited judgments. Most of the decisions are relating to the handing over the custody of cattle which is not relevant for our purpose. Few decisions indicate that while passing order of interim release of vehicle, the Court shall take into consideration the provisions enshrined in the Act of 1960 and the Rules of 2017. The emphasis in various decisions is to consider the relevant provisions while passing orders to that effect.

9. Neither the learned Additional Public Prosecutor nor the intervener is able to point out any provision which could authorise confiscation of vehicle found transporting animals against the Rules and Regulations. The submission advanced by both sides are centering around Rule 5 of the Rules of 2017. The Rules are exhaustive to contend about the custody of animals pending litigation, cost of care and maintenance of animals pending litigation, execution of bond etc. Rule 5(1) of the Rules of 2017 mandates that, the Magistrate while handing over the custody of animals to the Gaushala, shall determine the reasonable amount and cost incurred and anticipated to be incurred for transport, maintenance and treatment of the animals and shall direct the accused and the owner to execute a bond of determined value with surety within three days and on its failure, the animal shall stand forfeited to Gaushala. The said Rule never cast any obligation upon the vehicle owner, but it speaks about the obligation of the owner of animals. Much emphasis is laid on Sub-rules (4) and (5) of the Rules of 2017 which says that the vehicle involved in the offence shall direct to be held as a security and the vehicle owner shall be jointly and severally liable for cost of transport, treatment and care of animals. Since Sub-clause (5) of said Rules casts joint and several liability, the vehicle owner cannot shade his responsibility of paying cost as directed.

10. Though vehicle is to be held as a security the aspect is about handing over temporary custody of vehicle during the pendency of the Trial. Rule 5(1) of the Rules of 2017 is specific having consequence of default that, if within three days from the order of the Magistrate, the owner fails to execute a requisite bond, animal shall stand forfeited to the Gaushala. Thus, there would be automatic forfeiture of animal on failure of owner. It is not made clear that whether the Magistrate has made any order under Rule 5(1) of the Rules of 2017 while handing over custody of animals to the Gaushala. It is informed that the owner has not approached to the Magistrate for release of cattle. The question is how far the vehicle owner shall be directed to pay cost of maintenance of animals, if there is no forfeiture. Certainly, his liability may not extend after forfeiture of animals to the Gaushala as contemplated under Rule 5(1) of the Rules of 2017. Therefore, till the mean period, the owner of the vehicle shall be held responsibility to pay the maintenance charges.

11. It is not disputed that the petitioners are owners of respective vehicles. Undisputedly, for considerable period, the vehicles are lying in the Police Station. In reported case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat (2002) 10 SCC 283***, the Supreme Court held that:-

“In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time.”

Though the vehicle is seized for the offence under the special statute, no specific provision is brought to the notice about confiscation of vehicle. In absence of such provision under the Rules of 2017, the general provisions contained under Chapter XXXIV of the Code of Criminal Procedure would apply. The Trial Court will take considerable time for disposal of case. Certainly, if the vehicle is kept lying at the Police Station, during passage of time it would become worthless. Therefore, though the vehicle can be held as security, the interim custody can be given to the petitioners on certain terms and conditions.

12. In view of above, both impugned orders passed by the learned Magistrate and the Revisional Court are quashed and set aside. Both vehicles are held as a security, however interim custody of both the vehicles shall be handed over to the respective petitioners on their executing indemnity bond of Rs. 15 lakhs each on the following conditions:-

(i) Petitioners shall deposit the respective amount at the rate of Rs. 200/- per cattle per day for the period of 10 days, during which the Magistrate if not already passed order, shall pass appropriate orders in terms of Rule 5(1) of the Rules of 2017.

(ii) The temporary release of vehicle is subject to the petitioners' tendering the photocopy of document of ownership of vehicle to the satisfaction of the Magistrate.

(iii) The temporary custody is handed over on condition that the vehicle shall not be used in any crime.

(iv) The petitioner shall provide photograph of vehicle from all sides to the Investigating Officer. The detail pahchanama of the vehicle shall be made by the Investigating Officer and place it along with photographs.

(v) The petitioners shall not hand over possession of vehicle to third party, nor alienate or change the outer appearance of vehicle till conclusion of trial.

(vi) The petitioners shall produce the vehicle in the Court as and when required.

13. Both petitions are disposed of in above terms.

(VINAY JOSHI, J.)

Gohane

Digitally
signed by
JITENDRA
BHARAT
GOHANE
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