

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

Criminal Application (APL) No. 761 of 2022

Jaykumar S/o Brijkishore Jaiswal

Versus

State of Maharashtra, through Officer Incharge of Police Station Akot,
Tah.Akot, Dist. Akola

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Ms. Mahrukh Haq, Advocate h/f Shri A.R.Deshpande,
Advocate for the applicant.

Shri N.R.Rode, APP for the State / Non-applicant

CORAM : ANIL S. KILOR, J.

DATED : 14th OCTOBER, 2022.

This application is filed under Section 482 of the Code of Criminal Procedure, 1973 by the applicant challenging the order dated 31st January, 2022 passed by the learned Judicial Magistrate First Class, Akot in MCC No. 669 of 2021, rejecting the application filed by the applicant to release the seized property in crime no.158 of 2020 under Section 65(e), 66(1)(b) and 83 of Maharashtra Prohibition Act, 1949.

2. Ms. Haq, learned counsel for the applicant argues that though while giving reply to the application to release the property seized in crime no. 158 of 2020,

it stated that police have no objections if the applicant comply Government orders and undertakes not to breach the Government orders and also follow the terms and conditions if any imposed by this Court. It is submitted that despite the fact that the application was rejected on the ground that the ownership of the seized property was not established by the applicant, vide order dated 30th March, 2021 in MCC No.35 of 2021. It is submitted that the said order was challenge in revision before the Sessions Court which came to be dismissed on 15th June, 2021 and after approaching to this Court, vide order 9th December, 2021, this Court permitted the applicant to place all relevant materials before the learned Magistrate and to revive the prayer for releasing the seized liquor on supratnama.

3. It is further submitted that all the relevant documents showing ownership of the applicant were produced before the learned Magistrate, however, learned Magistrate without considering the same rejected the application. She therefore submits that the order is contrary to the law laid down by the Hon'ble Supreme Court of India in the case of *Sunderbhai Ambalal Desai Vs. State of Gujarat*¹.

1 (2002) 10 SCC 283

4. In this case there is no finding recorded by the learned trial Court while rejecting the application of the applicant that he is not the owner of the seized property. There is also no dispute that the said property was seized from the applicant's liquor shop. In this backdrop, it is necessary to consider the observations of the Hon'ble Supreme Court of India in the case of *Sunderbhai Ambalal Desai Vs. State of Gujarat* (supra).

19. For articles such as seized liquor also, prompt action should be taken in disposing it of after preparing necessary panchnama. If sample is required to be taken, sample may kept properly after sending it to the chemical analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing.

20. Similarly for the Narcotic drugs also, for its identification, procedure under Section 451 Cr.P.C. should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same.

5. In the teeth of the above observations, if the say of the police is considered which was filed before the trial Court wherein no objection was given to release the seized property subject to compliance of the Government orders by the applicant and further on giving undertaking that the applicant will not breach

any Government orders or comply with the terms and conditions if any imposed by the Court while releasing the seized material.

6. In the circumstances, in absence of any dispute about the ownership of the seized material and the fact that the said property was seized from the shop of the applicant, I am of the opinion that there is no point in holding the seized property for uncertain period as the property in question was seized two and half years back and since then it is lying in the police station. Accordingly, I pass the following order.

- i. Criminal application is allowed.
- ii. The order dated 31st January, 2022 passed by the learned Judicial Magistrate First Class, Akot in MCC No. 669 of 2021 is hereby quashed and set aside.
- iii. The seized liquor as shown in the First Information Report and as mentioned in para 3 of the application before the trial Court, be released on supratnama in favour of the applicant, forthwith.
- iv. Criminal application is disposed of.

[ANIL S. KILOR, J.]

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