

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

CRIMINAL WRIT PETITION NO. 661 OF 2022

PETITIONER: Prakash s/o Vitthal Morliya,
Aged 45 years, Occu: Business,
R/o Sawargaon Road, Kunbipura,
Tahsil & Police Station Katol,
District Nagpur-441302.
Mobile No.9579175943.

..V E R S U S..

RESPONDENT : The State of Maharashtra,
through P.S.O. Katol, District Nagpur.

Shri P.A. Paripawar, Advocate for the Petitioner.
Mrs Shamshi Haider, APP for the Respondent/State.

CORAM : ANIL S. KILOR, J.
DATE : 19th OCTOBER, 2022

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.
3. In the present Writ Petition filed under Article 227 of the Constitution of India, a challenge is raised to the order dated

27/06/2022 passed by the Additional Sessions Judge, Nagpur in Criminal Revision Application No. 58/2022 to the extent, rejecting the application of the applicant to grant interim custody of the eight video games machines namely :- (i) Dolphin, (ii) Holiday, (iii) Mega Free-play(I), (iv) Mega Free Play(II), (v) Cray Wheel, (vi) High Five, (vii) Magic and (viii) Master.

4. I have heard the learned counsel for the petitioner and the learned APP for the respondent/State.

5. The learned counsel for the petitioner submits that the petitioner undertakes not to use the said machines for any commercial purpose, unless and until valid license is obtained from the competent authority.

6. He submits that this undertaking is in the backdrop that his earlier application was rejected only on the ground that the petitioner does not possess the license for the said machines.

7. He submits that the Co-ordinate Bench at Principal Seat of this Court has allowed the interim custody of such machines for which the license was not there.

8. He, accordingly, relied upon the order dated 29/10/2021 passed by this Court in *Writ Petition No. 3031/2019 (Divakar*

Shankar Sheety vs The State of Maharashtra and others).

Accordingly, he prays for grant of interim custody of the above referred eight video games machines.

9. On the other hand, learned APP opposed the present writ petition.

10. The Co-ordinate Bench at Principal Seat of this Court in the case of ***Divakar Shankar Sheety vs The State of Maharashtra and others***¹, has observed thus:

5. Here, the machines were seized and lying idle since January, 2019. Petitioner, on affidavit, has undertaken that, he will not dispose off the machines until the conclusion of the trial. Learned Counsel, on instructions, has agreed to file a Affidavit to state that, petitioner shall not use the said machines for the business of video game parlour. In consideration of these facts and keeping in mind the judgment of the Supreme Court in the case of Sunderbhai Ambalal Desai Versus State of Gujarat, (2002) 10 Supreme Court Cases 283, I am inclined to direct the respondent to release the property seized, more particularly, described in the application dated 5th January, 2019 which at page-22 of the petition. The petition is allowed subject to an Undertaking, as stated above, which shall be filed, within three weeks from today in the concerned Court and against executing a bond in the sum of Rs. 1,00,000/-. The petition is allowed and disposed off in the aforesaid terms.”

11. In the present matter, the petitioner has filed an affidavit and thereby he undertook not to use the said eight video games

1 Criminal W.P. No. 3031/2019, date 29/10/2021.

machines for commercial purpose unless and until a valid license is obtained from the competent authority.

12. Thus, in view of the undertaking and the observations recorded by the Co-ordinate Bench at Principal Seat of this Court in the case of *Divakar Shankar Shetty (supra)*, I am of the opinion that, the present writ petition needs to be allowed. Accordingly, I pass the following order:

- a] Criminal Writ Petition is **allowed**.
- b] The order dated 27/06/2022 passed below Exhibit No.1 in Criminal Revision Application No. 58/2022 is set aside to the extent the interim custody of Eight Video Games machines (i) Dolphin (ii) Holiday (iii) Mega Free-play(I), (iv) Mega Free Play(II), (v) Cray Wheel, (vi) High Five, (vii) Magic and (viii) Master, was denied.
- c] It is directed that the interim custody of (i) Dolphin (ii) Holiday (iii) Mega Free-play(I), (iv) Mega Free Play(II), (v) Cray Wheel, (vi) High Five, (vii) Magic and (viii) Master, be handed over to the petitioner on

executing indemnity bond of Rs. 2,50,000/-.

- d] The condition Nos. (iv) to (vii) of the order dated 27/06/2022 will equally apply to the present case.

The writ petition is **disposed of** accordingly.

[ANIL S. KILOR, J.]

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