

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

CRIMINAL WRIT PETITION NO.691 OF 2022

Ritesh S/o Prakash Mohurle,
Aged about 28 years, Occ: Service,
R/o Maharana Pratap Ward, Ballarpur, Tah.
Ballarpur, Dist. Chandrapur

... PETITIONER

---VERSUS---

State of Maharashtra,
through its Police Station Officer, Aashti,
Tah. Chamorshi, Dist. Gadchiroli.

...RESPONDENT

Shri A.R. Wagh, Advocate for petitioner.
Shri A.R. Chutke, APP for respondent.

CORAM : G.A. SANAP, J.
DATED : DECEMBER 14, 2022.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally at the admission stage with the consent of learned advocates for the parties.

2. The application made by the petitioner under Section 457 of the Code of Criminal Procedure for release of his vehicle bearing registration No.MH-34/BF-2123 seized in Crime No.363 of 2021 registered at Police Station, Aashti for offences punishable

under Sections 272, 273, 188 of the Indian Penal Code and under Sections 26(2)(iv), 36(2)(a), 3(1) and 23(iii) of the Food Safety and Standards Act, 2006 and under Sections 2, 3 and 4 of the FSS Act (Amended), 2021 came to be rejected by the learned Judicial Magistrate First Class, Chamorsi, District Gadchiroli.

3. It is the case of the petitioner that his friend had taken his vehicle for his personal use. The vehicle was seized by the police in the crime bearing No.363 of 2021 for the above offences. The petitioner applied before the learned Magistrate for the release of the vehicle. The police granted no objection to release the vehicle. However, the learned APP at the stage of hearing the application opposed the application by taking a stand contrary to the one taken by the police. The learned Magistrate rejected the application mainly on the ground that the vehicle was seized by the Food Officer, Toram, who is the complainant in the above crime. The learned Magistrate further observed that since the vehicle was seized by the Food Officer, Toram, he would have no jurisdiction under Section 457 of the Code of Criminal Procedure (Cr.P.C.) to release the vehicle.

4. The petitioner has raised several grounds in the petition.

The main contention is that the Police seized the vehicle by drawing seizure panchanama. It is submitted that learned Magistrate has not taken this fact into consideration and came to the wrong conclusion.

5. I have heard the learned advocate for the petitioner and learned Additional Public Prosecutor for the respondent/State. Perused the record and proceedings.

6. The learned Additional Public Prosecutor in all fairness on the basis of the case diary submitted that vehicle was seized by the Police Officer investigating the crime by drawing panchanama. He further conceded that the vehicle has been in custody of the police and at present kept at Ashti Police Station.

7. It is seen on perusal of the case diary that the vehicle was not seized by the Food Officer, Targaon as wrongly observed by the learned Magistrate. It is further pertinent to note that the applicant, who is the vehicle owner, is not an accused in the said crime. The learned Magistrate therefore was required to decide the application by invoking jurisdiction under Section 457 of the Cr.P.C.

8. The learned advocate for the petitioner submitted that the Hon'ble Supreme Court of India in the case of **Sunderbhai Ambalal**

Desai Vs. State of Gujarat reported in (2002) 10 SCC 283 has laid certain guidelines in the matter of release of the property seized in the crime during the investigation of the crime by the police. In this case, the Hon'ble Supreme Court has framed four broad guidelines.

The same are as follows:

“1. owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. court or the police would not be required to keep the article in safe custody;

3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

9. In my view, guidelines (1) and (2) would be applicable to the case of the petitioner. It is pertinent to mention that if the vehicle is not released then the petitioner would suffer financial loss. The vehicle would practically become useless if the same is kept in the police station till the termination of the trial. It is further pertinent to note that the rejection of the application would further fasten the liability on the police to keep the vehicle in safe custody.

In my view, therefore, the reasons recorded by the learned Magistrate are not according to the law. The application made by the petitioner deserves to be allowed subject to appropriate conditions. Accordingly, I pass the following order:

ORDER

- i. The order passed below Exhibit-1 in Criminal Miscellaneous Application No.10 of 2022 by the learned Judicial Magistrate First Class, Chamorshi, District Gadchiroli dated 19.04.2022 is set aside.
- ii. The application made by the petitioner at Exhibit-1 in Criminal Miscellaneous Application No.10 of 2022 is allowed.
- iii. The Incharge of the Ashti Police Station is directed to handover the custody of the vehicle to the petitioner on his executing solvent surety for ₹4 lakhs as well as his own undertaking to return the vehicle or cost of the vehicle as and when directed by the Court.
- iv. The Investigating Officer shall prepare the detailed panchanama of the vehicle at the time of handing over custody of the same to the petitioner.

- v. The Investigating Officer shall take the photographs of the vehicle from all angles and produce the same with the charge-sheet in the trial Court.

Rule made absolute in above terms.

JUDGE

Wagh