

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.632 OF 2023

Bilal Shakeel Kureshi
Age : 32 years, Occu : Business,
R/o. Vida, Tq. Kaij, Dist. Beed .. Petitioner

Versus

The State of Maharashtra .. Respondent

...
Mr. S.S. Thombre, Advocate for the Petitioner
Mrs. G.L. Deshpande, APP for the Respondent – State.
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CORAM : R. M. JOSHI, J.

Reserved on : 11.09.2023
Pronounced on : 21.09.2023

ORDER :

. This petition is filed taking exception to the order dated 23.03.2023 passed by learned Additional Sessions Judge, Beed in Criminal Revision Application No.19 of 2023 thereby upholding order dated 13.02.2023 passed by Judicial Magistrate First Class, Beed in Criminal Misc. Application No.128 of 2023 rejecting the application filed by the petitioner for custody of 13 oxes seized in connection with Crime No.20 of 2023 registered with Neknoor Police Station, Dist. Beed for the offences punishable under Section 5-a and 5-b of Maharashtra Animal Preservation Act, 1995, Sec. 119 of Maharashtra

Police Act, and Sections 11(1)(a)(f)(h)(D)(i) of the Prevention of Cruelty to Animals Act, 1960 and Sections 47, 48, 50 and 53 of Transportation of Animal Rules and Section 158, 177 of the Motor Vehicles Act.

2. It is the case of the petitioner that he is a trader and on 28.01.2023 he has purchased 13 bulls for business and for personal use. It is his further contention that the said animals were purchased from Market Committee at Jamkhed on 28.01.2023 and while the animals were being transported in a vehicle it was intercepted by police and 13 animals were seized and sent in Gaushala at Chousala. The petitioner filed application for interim custody of the seized bulls. Learned Magistrate rejected the application with direction to the petitioner to pay Rs.200/- per day per animal towards their maintenance during pendency of trial. He unsuccessfully challenged the said order in Criminal Revision Application No.19 of 2023.

3. Learned counsel for the petitioner submits that there is no dispute about the fact that the petitioner is the owner of the animals seized in connection with the crime in question. He submitted

that there is evidence to indicate that the animals were purchased on 28.01.2023 from Jamkhed and were to be taken to Kaij, Dist. Beed which is at a distance of only about 30 kms. to the place of the petitioner. He further submits that there is nothing on record to indicate that any injuries were caused to the animals. According to him rejection of the application has been done only on the ground that the animals are likely to be sent for slaughtering purpose. Thus, according to him, once the petitioner has proved the ownership of the animals and there is nothing on record to indicate that the animals were being taken for purpose of slaughtering or treated cruelly, the impugned orders cannot sustain.

4. The learned APP opposed the said contention by submitting that in all the thirteen animals were being carried in a truck which fact itself shows that animals were subjected to the cruel treatment. It is her submission that the relevant rules under the Prevention of Cruelty to Animals Act are violated as neither there was arrangement of water and food for the animals nor was the certificate of the veterinary doctor found while transporting them. She relied upon the judgment of the Hon'ble Apex Court in the case of

Shri Chatrapati Shivaji Gaushala vs. State of Maharashtra and others,
2022 SCC OnLine SC 1402.

5. There cannot be any dispute with regard to the preposition laid down by the Hon'ble Apex Court in the case of *Shri Chatrapati Shivaji Gaushala* (*supra*), if the applicant who seeks interim custody is found to have treated the animals with cruelty, he would not be entitled for the interim custody. In the said case, Gaushala had objected to handover the custody of the cattles to the owner.

6. In the instant case, *prima facie* material on record indicates that animals were purchased by the petitioner on 28.01.2023 from the market committee at Jamkhed. Record indicates that immediately after purchase of the animals they were being transported from Jamkhed to Vida, Tal. Kaij. There is nothing on record to indicate that any injuries were caused to the animals. Perusal of the impugned orders also do record such findings. It appears that applications are rejected essentially on the ground that the animals were being taken for the purpose of slaughtering. The learned Revisional Court has held that *prima facie* it appears that the

bullocks were not purchased for the purpose of agricultural work. The learned Magistrate has accepted the contention of the prosecution that the animals are likely to be taken for slaughtering and possibility of slaughtering cannot be ruled out. These observations *prima facie* do not get support from the material placed on record. In absence of any such material it is not open for the court on surmises and assumption to hold that the animals were transported for the purpose of slaughtering.

7. In the instant case, except for the allegation that 13 animals carried in one vehicle, there is no other material to show that any injuries were caused to the animals in question. In the case of Shri Chatrapati Shivaji Gaushala (*supra*) relied upon by the learned APP, Gaushala had objected for handing over custody to the owner. Pertinently Gaushala to whom the custody of the animals was handed over has not opposed the application for handing over interim custody of the cattles to the petitioner.

8. In absence of any injuries being caused to animals and in view of the fact that the cattles were being taken after their purchase from the market, it is not the case for rejecting interim custody to the petitioner. Appropriate care can be taken and that the cattles in

question can be preserved during the pendency of the trial and further it can be ensured that the cattles are kept in good condition and health.

9. In view of the above, following order is passed.

ORDER

- (i) Writ Petition is allowed.
- (ii) Impugned orders are set aside.
- (iii) Criminal M.A. No.128 of 2023 stands allowed.
- (iv) The seized cattles in connection with Crime No.20 of 2023 registered with Neknoor Police Station, Dist. Beed be handed over to the petitioner after drawing panchanama showing details of identification and by keeping the photographs of the cattles on record.
- (v) Petitioner is hereby restrained from selling / disposing of the cattles without prior permission of the Trial Court.
- (vi) He is further directed to place before the Trial Court certificate of Veterinary doctor every after six months showing health condition of cattels till conclusion of the trial.

[R. M. JOSHI]
JUDGE