

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.818 OF 2023

BALUBHAI AALABHAI MORI
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Petitioner : Mr. S. A. Kulkarni
APP for Respondents: Mrs. G. L. Deshpande

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CORAM : R.M. JOSHI, J

DATE : AUGUST 23, 2023

PER COURT :

1. This Petition takes exception to the order dated 20.03.2023 passed by learned JMFC, Kannad in Criminal M.A. No. 41/2023 and order dated 12.05.2023 passed by learned Additional Sessions Judge, Aurangabad in Criminal Revision Application No. 104/2023 confirming the order passed by learned JMFC.

2. Learned Counsel for the Petitioner submits that the Petitioner is the owner of truck bearing no. GJ-25-U-9521 seized by Supply Inspector, Tehsil Office, Kannad in Crime No. 07/2023 registered with Police Station Kannad for the offences punishable under Sections 3 and 7 of the Essential Commodities Act, 1955 (for short '**the Act**'). It is his further contention

that he being owner of the said truck is entitled to get the same back from the investigating agency. Learned Counsel for the Petitioner submits that in order to support his claim he has placed on record RC Book indicating his ownership of the vehicle. According to him, the said fact has been referred by the learned Magistrate in paragraph 7 of the order. It is his further submission that learned Magistrate has committed error in refusing application by placing reliance on the judgment in case of Vasant Annarao Bhosle Vs. State of Maharashtra, (2016) ALL MR (Cri) 2788. It is his submission that till date no notice has been issued under Section 6(B) of the Act and hence, there is no confiscation of the evidence done by the District Collector in order to apply provisions of the Act.

3. Learned APP opposed the said contentions by submitting that about 310 quintals rice was carried in the said truck and some of the bags indicated that rice belonged to Public Distribution System of State of Madhya Pradesh. It is her contention that Petitioner hails from State of Gujarat and there is no likelihood

of the vehicle being brought before Court during the course of trial. Learned APP further submits that by communication dated 08.02.2023 the investigating officer has brought to the notice of District Collector for initiating appropriate action under the provisions of the Act.

4. There is no dispute about the fact that the Petitioner is the owner of the said truck. Admittedly, no notice has been issued to the Petitioner under Section 6(B) of the Act and hence, question of application of the judgment cited supra does not arise. There is further no denial of the fact that investigation into the crime is already over with filing of the charge-sheet. In absence of any notice being issued under Section 6(B) of the Act, it cannot be said that the District Collector has taken cognizance of or is seized with the matter, which would bar deciding interim custody by any Court. Thus, interim disposal of the property seized in connection with Crime No. 07/2023 being not food grain itself and since no action is initiated by Collector under Section 6A of the Act, there is no impediment for criminal

Court to exercise powers under Section 466/457 of Cr.P.C.

5. In the aforesaid circumstances, there is absolutely no justification for refusing the prayer for return of the said truck to the Petitioner. Hon'ble Apex Court in case of Sunderbhai Ambalal Desai Vs. State of Gujarat, 2002 10 SCC 283 has emphasized need of exercise of power under Section 451 of Cr.P.C expeditiously and judiciously. The reason behind in return of the property to the parties is that the owner of article would not suffer because of its remaining unused or by its misappropriation. Needless to say that muddemal like vehicle would go out of order by keeping it idle and this would lead such vehicle becoming useless. Apprehension of the prosecution about same being not likely to be brought during trial can be taken care by imposing appropriate conditions. Only because Petitioner hails from State of Gujarat, there is no justification to deny custody of vehicle to him.

6. In view of above, petition is allowed. Order dated 20.03.2023 passed by learned JMFC, Kannad in Criminal M.A. No. 41/2023 and order dated 12.05.2023

passed by learned Additional Sessions Judge, Aurangabad in Criminal Revision Application No. 104/2023 are quashed and set aside. Criminal M.A. No. 41/2023 stands allowed.

7. Petitioner be handed over custody of seized truck in C.R. No. 07/2023 after drawing panchnama recording all relevant particulars of vehicle therein. Petitioner is directed to submit an undertaking before the learned Magistrate with one surety of the amount involved in the truck, which would be determined by learned trial Court/JMFC, to produce the vehicle during the course of trial as and when directed by Court. Petitioner is further restrained from selling, transferring or disposing of truck till the disposal of the trial unless specific order is obtained to that effect from the concerned Court before whom the trial is pending.

8. Petition stands disposed of in above terms.

(R.M. JOSHI, J.)

Malani