

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 890 OF 2023

Bhagwat s/o Yeshwant Chavan
age 65 years, occ. Business
r/o Plot No. 4, Shivdatta Housing Society
N-8, CIDCO, Aurangabad

Petitioner

Versus

1. The State of Maharashtra
2. Dilip s/o Madhavrao Agraharkar
age 58 years, occ. Business
r/o Plot No. D-7/15,
Mukund Cooperative Society
N-2, CIDCO, Aurangabad

Respondents

Mr. P. P. Giri, Advocate for the petitioner.
Mr. G. O. Wattamwar, APP for the State.
Mr. M. S. Bansode, Advocate for respondent No. 2.

CORAM : R. M. JOSHI, J.
DATE : 8th AUGUST, 2023.

JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. By consent, heard finally at admission stage.
3. This petition takes exception to the order dated 9th March, 2023 passed by learned Additional Sessions Judge,

Aurangabad, below Exhibit 13 in Sessions Case no. 531/2022 whereby the interim custody of the seized vehicle bearing registration No. MH 20 FP 8108 is given to the accused on furnishing bank guarantee of Rs. 27,00,000/-, till disposal of the case.

4. Accused has taken exception to the condition of furnishing bank guarantee of Rs. 27,00,000/- whereas the informant raised objection to the impugned order itself.

5. Perusal of the record indicates that there is allegation against accused that he had received money from deceased and did not repay the same which drove the deceased to commit suicide. Thus, offence punishable under Section 306 of the Indian Penal Code is charged against the accused.

6. The application for custody of the vehicle is made before the learned Trial Court with averments that accused is lawful owner of the said vehicle and registration of the vehicle stands in his name. The application came to be opposed by the informant with the contention that the said vehicle has been purchased from the money involved in the crime.

7. Perusal of the impugned order shows that the said submissions were specifically made before the learned Trial Court wherein it was alleged that the seized vehicle was purchased by accused out of the amount taken by the deceased. The learned Trial Court however, has held that it does not wish to express any opinion about the use of money by the accused for purchase of the vehicle. Learned counsel for the accused also submitted that expression of any such opinion by the Trial Court while deciding this application will be detrimental to the trial and will cause prejudice to the accused.

8. There is no dispute about the fact that the accused is the registered owner of the vehicle in question. It is the submission of learned counsel for the accused that merely because he is the registered owner of the vehicle, he is entitled for custody thereof, in that case, wherever there is evidence to show that the vehicle has been purchased out of the money received from the deceased, in that case also, the vehicle would have to be given into the custody of the registered owner. This Court does not agree with such submissions because if the particular vehicle is purchased out of the money which

is involved in the crime, merely because the vehicle stands in the name of the accused will not entitle him to receive the same.

9. When there is opposition to the application on the ground that the vehicle in question has been purchased out of the amount involved in the crime, it was incumbent on the part of the learned Trial Court to atleast record prima facie finding in this regard. In the instant case, no such findings are recorded.

10. There is no substance in the contention of learned counsel for the accused that recording of such finding will prejudice the accused during trial. Needless to say that at various stages of criminal proceedings such as pre-arrest bail, regular bail or even at the stage of framing of charge, the Courts are required to record prima facie finding in respect of the crime in question. That does not mean that any prejudice will cause to the accused during trial, as such findings would be prima facie consideration of material on record. Since the order sans any finding with regard to the use of money involved in the crime for purchase of the vehicle, impugned order cannot sustain. Hence, the impugned order is set aside. Trial Court is called upon to decide application Exhibit 13 afresh in

accordance with law. Petition stands disposed of in aforesaid terms.

Rule made absolute.

(R. M. JOSHI)
Judge

dwb