

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

CRIMINAL WRIT PETITION NO.902 OF 2023

**SAYYED SHAFI AHMAD S/O SAYYED RAFI AHMAD
VERSUS
THE STATE OF MAHARASHTRA**

Mr. T. S. Shaikh, Advocate for the petitioner
Mr. S. P. Sonpawale, APP for the respondent/State

CORAM : R. M. JOSHI, J.

DATE : 10th AUGUST, 2023

P.C. :-

1. This petition takes exception in order dated 24/04/2023 passed on Exhibit 9 in Sessions Case No. 27/2023 whereby the application filed by the petitioner for the custody of auto rickshaw seized in connection with Crime No. 485/2022 registered with Chalisgaon Rural Police Station.

2. Learned counsel for the petitioner submits that the Trial Court has committed error in not considering the agreement between him and accused in proper perspective. It is his submission that the vehicle in question was purchased after obtaining loan from Bajaj Finance and that the said agreement clearly indicates that the accused has agreed to repay the said loan. It is his further contention that without obtaining say of the accused the order came to be passed

rejecting application.

3. There is no dispute about the fact that the auto rickshaw in question was seized at the instance of the accused in connection with Crime for the offence punishable under Section 302 and 301 r/w 34 of IPC. Prima facie perusal of the agreement between petitioner and accused indicates that the sum of Rs.55,000/- was not the entire consideration which was to be paid against the transfer of the said vehicle as the accused had agreed to repay the loan. The said agreement further indicates that in case the installments of the loan are not paid it was open for the finance company to take the custody of the said vehicle. All these aspects are not considered by the learned Trial Court. Apart from this having regard to the fact that there is agreement between the petitioner and accused, it was incumbent on the part of the learned Trial Court to seek say of the accused on this application. Hence the impugned order dated 24/04/2023 is set aside. The application Exhibit 9 filed in Sessions Case No. 27/2023 is relegated back to the Trial Court for its decision afresh after obtaining say of the accused. Petition is disposed of in aforesaid terms.

(R. M. JOSHI, J.)

ssp