

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

25 CRIMINAL WRIT PETITION NO.1079 OF 2023

GAJANAN BRIJLAL JAISWAL
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Petitioner : Mr. Yogesh G. Birajdar a/w.
Mr. Suyash S. Jangada h/f. Mr. Sachin S. Deshmukh

APP for Respondent – State : Mr. V.S. Badakh

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CORAM : R. M. JOSHI, J.
DATE : AUGUST 28, 2023

PER COURT :

. This petition takes exception to the order dated 19.06.2023 passed by learned Additional Sessions Judge-I, Nanded in Criminal Revision No.130 of 2022 confirming the order dated 24.11.2022 passed by Judicial Magistrate First Class, (Court No.2), Ardhapur in Criminal Revision No.130 of 2022 refusing to return the mobile phone as well as vehicle bearing Registration No. MH-49-B-0171 to the petitioner / original accused.

2. On 02.11.2022 offence came to be registered vide Cr. No. 81 of 2022 under Sections 65 (A), (B), (D), (E), (F), 80, 81, 83, 90 and 108 of the Maharashtra Prohibition Act and Section 328 of the Indian Penal Code for carrying illicit liquor by the petitioner /

accused. In connection with the said crime, mobile phone as well as the aforestated vehicle were seized. The petitioner filed application under Section 457 of the Cr.P.C. seeking release of these articles.

3. There is no dispute about the fact that the petitioner is the owner of the vehicle as well as the mobile phone which were seized in connection with this crime. The application filed for the return of the property came to be rejected by the learned JMFC on the ground that there is offence registered against the petitioner and similar offences against the family members of the petitioner. The application for return of the property was also rejected on the ground that the investigation is not complete and the mobile phone is not yet received from the forensic department.

4. Learned counsel for the petitioner submits that at this stage petitioner is seeking only return of the vehicle as the mobile phone is still with the forensic laboratory. It is his contention that there is nothing on record to indicate that the vehicle in question was used for commission of crime anytime herein before. In order to support his submissions, he placed reliance on the judgment of this court in case of **Jeevan Pundlikrao Kendre vs. State of Maharashtra, 2004 ALL MR (Cri) 3380** to state that the vehicle if kept in the police

station would be useless after sometime and hence the petitioner being rightful owner thereof be given custody of the same.

5. Learned APP opposed the petition by contending that number of offences are registered against the petitioner and his family members in connection with the transportation of the illicit liquor. However, on instructions, he makes statement that the vehicle in question was not used in earlier crime.

6. The Hon'ble Apex Court in case of **Sunderbhai Ambalal Desai vs. State of Gujarat, (2002) 10 SCC 283** has laid down the principles underlining grant of custody to its owner at the earliest. It is needless to say that seized article like vehicle if is kept in the police station or with the Court, non user thereof would lead its going out of order and it will hardly of any use for anyone. Since the vehicle has not been found used in similar crime, this Court finds no impediment in returning the same to its rightful owner, i.e. petitioner.

7. In view of above following order is passed.

ORDER

. Vehicle bearing No.MH-49-B-0171 seized in connection with Crime No.81 of 2022, registered with Sub Inspector, State Excise Department, Kinwat be returned to the petitioner on following

conditions:

- (i) The Investigating Officer shall prepare a detailed panchanama in respect of the vehicle i.e. Renault Company Duster car bearing Registration No. MH-49-B-0171.
- (ii) The vehicle be released after taking photographs of vehicle and it be made part of panchanama.
- (iii) The petitioner to furnish bond for the amount of value of the vehicle, to be determined by learned Magistrate, with one surety.
- (iv) The petitioner shall file undertaking mentioning following points; that
 - (a) The vehicle will be produced as and when ordered by the Court for the purpose of trial;
 - (b) He shall not create any third party interest on the vehicle; and
 - (c) He shall not change nature of the vehicle.
- (v) If any of the above conditions breached by the petitioner, this order shall be liable to be cancelled.

[R. M. JOSHI]
JUDGE

GGP