

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1513 OF 2021

FEROZ KHAN BABU KHAN

VERSUS

THE STATE OF MAHARASHTRA AND ANR.

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Advocate for Petitioner : Mr. Suryawanshi Sanket N.

APP for Respondent No.1/State : Mr. P. N. Kutti

Advocate for Respondent No.2 : Mr. Ghanekar Nilesh S.

...

CORAM : KISHORE C. SANT, J.

DATE : 9th FEBRUARY 2023.

Per Court :

Heard.

1. This Writ Petition is filed challenging orders dated 14.10.2021 and 13.11.2021 passed by the learned Judicial Magistrate First Class, Navapur in Criminal Miscellaneous Application No.133/2021, by which the learned Court had directed release of the vehicle of the petitioner with following conditions.

- (i) Petitioner to deposit the amount of Rs.5,10,600/- towards maintenance of the animals.

- (ii) to pay the amount towards per day maintenance till decision of proceeding.
- (iii) The petitioner is also directed to execute Supurdnama in the amount of Rs.10,00,000/-.

2. The petitioner's submission is that he is not made an accused in an offence. Only because the animals seized were being carried in his vehicle i.e. truck bearing no. MH-48-J1264 manufactured by TATA Company and the same is seized. He submits that in view of Rule-5 of the Rules namely Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2016 and the Notification dated 23.05.2017 published by the Central Government, when the owner or concerned person voluntarily relinquishes the right over the animals, the said animals would be owned by the Gaushala or Animal Welfare Organisation etc. as given in Rule-7. He submits that as a matter of fact he is not the owner of the cattle, however assuming to be so he is relinquishing the right in view of Rule-7 of the said Rules. Further he relies on the judgment of this Court in Criminal Writ Petition No.395/2021, wherein in similar facts, this Court by order dated

19.06.2021 was pleased to allow the petition. The vehicle in question was released on certain terms of conditions. The similar view was taken in Writ Petition No.1489/2021 by this Court. He relies on the order dated 22.02.2022, where the Court has considered Rule 7 of the Rules and ordered release of vehicle on execution of a bond with an undertaking to pay Rs.200/- per day per cattle . He therefore prays that the petition be allowed.

3. The learned Advocate for the respondent opposed the petition by placing reliance on the judgment delivered by the Nagpur Bench of this Court in Criminal Writ Petition No.685/2022, wherein the Criminal Writ Petition was rejected. However, that was a case where the petitioner was the owner of the cattle. It is pointed out by the learned Advocate for the petitioner that in the said petition, Rule 7 was not for consideration before the Court and in that view, the petition was disposed off.

4. The learned Advocate for respondent no.2 further relied on the order passed by the Nagpur Bench in Criminal Writ Petition

No.886/2021, where the interim custody of the cattle i.e. 16 bullocks and 3 calves was sought and vehicle i.e. TATA Truck. In that view of the matter, the order was passed and the petition was dismissed. In this order also Rule-7 was not for consideration. The third judgment relied upon by the learned Advocate for the respondent no.2 is in the Writ Petition No.2466/2022 delivered by this Court at the Principal Seat at Bombay. The petition was rejected however even before that Court, Rule-7 was not pointed out as appears from the order.

5. Now the question before this Court is in view of Rule-7, whether the vehicle can be released? It is no doubt that in view of Section 2A of the Act, the owner of the vehicle is also covered in the definition of owner. Therefore, he is held to be liable and when the cattle are seized, the animals were in the vehicle of the present petitioner. Rule 5 & 7 are as follows :

Rule-5 : Execution of bond : The magistrate when handling over the custody of animal to an infirmary, pinjrapole SPCA, Animal Welfare Organisation or Gaushala shall determine an amount which is sufficient to cover all reasonable cost incurred and anticipated to be incurred for transport, maintenance and treatment of the

animal based on the input provided by the jurisdictional veterinary officer and shall direct the accused and the owner to execute a bond of the determined value with sureties within three days and if the accused and owner do not execute the bond, the animal shall be forfeited to infirmary, pinjrapole, SPCA, Animal Welfare Organisation or Gaushala.

Rule-7 : Voluntary relinquishment : Nothing in these rules shall be construed to prevent the voluntary and permanent relinquishment of any animal by the owner who is the accused, to infirmary, pinjarapole, SPCA, Animal Welfare Organisation or Gaushala in lieu of executing a bond but the voluntary and permanent relinquishment shall have no effect on any criminal charges against the accused or owner.

6. By considering the effect of Rule-5 & 7, which are produced as above, it can be said that when the petitioner is not claiming any ownership of the cattle, then it shall not have any effect of any criminal charges against the accused as owner. By considering this and also by considering the fact that in vehicle in question is seized on 07.07.2021 and further it needs to be seen that the petitioner is not made an accused in the trial.

7. The learned APP opposes the petition by relying upon the

judgment in Criminal Writ Petition No.2466/2022. He points out from paragraph no.7 and 8 of the said judgment. And in view of Rule 3, 4 and 5 of the Rules. Wherein the Court had considered that the owner of the vehicle also cannot be absolved of his responsibility to pay the amount towards maintenance and health inspection of animals in accordance with the Rules. In that case, the petitioner was directed to pay the amount towards maintenance as per the Rules.

8. Considering the effect of Rule-5 & 7, it can be safely said that while by this Rule sufficient care is taken of the interest of the animals that in case there is relinquishment to Gaushala institution. At the same time, it is necessary to impose certain condition, hence the Writ Petition is allowed. The petitioner shall beyond undertaking within period of two weeks, as follows.

- (i) Petitioner shall not transfer the ownership of the vehicle i.e. truck bearing no. MH-48-J-1264.
- (ii) Petitioner shall not use the vehicle for any offence in future.
- (iii) Petitioner shall produce the vehicle as and when required either by the Investigating Machinery or by the Court.

(iv) Petitioner shall not create any third party interest in respect of the vehicle.

9. In view of the fact that the trial is pending since one and half year, the trial Court is requested to complete the trial as early as possible and preferably within six months from today.

10. With this, the Criminal Writ Petition is disposed off.

[KISHORE C. SANT, J.]

Najeeb.