

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

CRIMINAL APPLICATION NO. 4350 OF 2022

Mohammad Rashid Mohammad Akhtar

.. Applicant

Versus

The State of Maharashtra
Through Police Station Officer, Navapur,
Police Station Navapur,
Tq. Navapur, Dist. Nandurbar

.. Respondent

Mr. Vakil Afzal Husain M., Advocate for the Applicant.
Mr. P. N. Kutti, APP for Respondent.

CORAM : KISHORE C. SANT, J.

DATED : 23rd FEBRUARY, 2023.

P. C. :-

. This is an application filed challenging the order passed by the learned Additional Sessions Judge, Nandurbar dated 17.08.2022 in Criminal Revision Application No. 9/2022 whereby, the criminal revision application came to be dismissed. In the revision, order passed by the learned J.M.F.C., Navapur dated 12.01.2022 was challenged only to the extent of sub clause (d) of the impugned order. In fact, the application filed by the applicant for custody of his vehicle is allowed. The only grievance is in respect of the sub clause (d) whereby, a condition is imposed upon the applicant to execute bond under rule 5 of the Prevention to Cruelty to Animals (Care and Maintenance of Case

Property Animals) Rules, 2017 (for short “said Rules”) which reads as under :

“(d) The applicant should execute bond under Rule 5 of the Prevention to Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 for payment of the maintenance charges of these seized animals from the date of seizure till the present date and about holding the said vehicle as a security.”

2. The applicant has put forth prayer clause (B) as under :

“(B) By way of writ, order or directions in like nature, the impugned order dated 17.08.2022 passed by the Ld. Sessions Judge, Nandurbar in Criminal Revision Application No. 09/2022 arising out of impugned clause 2 (d) of order dated 12.01.2022 below Exhibit-01 in Cri. M. A. No. 293/2021 may kindly be quashed and set aside.”

3. The grievance is only that, in view of Rule 7 of the said Rules, the right over the animals which provides as under :

“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.”

4. Learned advocate for the applicant thus submits that, he will not claim ownership of the animal and still he is directed to comply with Rule 5 of the said Rules. He invites attention of this Court to the orders passed by this Court in similar circumstances in Criminal Writ Petition Nos. 1489/2021 and 395/2021 dated 22.02.2022 and 19.06.2021

respectively wherein, the judgment in a case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in **AIR 2003 SC 638** is considered.

Paragraph No. 17 of the said judgment is reproduced below :

“17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.”

5. Learned advocate for the applicant submits that, brother of the applicant was the driver who is an accused, however, applicant is not an accused.

6. Learned A.P.P. opposes the application saying that, it is a serious offence and the accused person is not co-operating the police persons. Though he is not an accused, but still he is not co-operating the police in investigation and prays for heavy condition be imposed.

7. Thus, this Court has already taken view that when the applicant is ready to relinquish the ownership, then he cannot be fastened with the condition of depositing the amount of maintenance charges of the seized animals.

8. In view of the same, this Court finds that, the application can be

allowed by deleting sub clause (d) from the order passed by the learned J.M.F.C., Navapur dated 12.01.2022 in Criminal M. A. No. 293/2021.

9. The applicant shall be liable for the action of cancellation of this order. The petitioner to file an undertaking within a period of two (02) weeks from today. He shall also file an affidavit relinquishing his right under Rule 7 of the said Rules.

10. The application is thus allowed in terms of prayer clause (B).

11. The criminal application stands disposed off.

(KISHORE C. SANT, J.)

PS.B.