



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.865/2023

Balraj Adkuji Jumnaake Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M. Deo, Advocate for applicant.
Mr. A. R. Chutke, A.P.P. for non applicant – State.

CORAM : ANIL L. PANSARE, J.
DATE : 31.08.2023

Heard.

The challenge is to the order dated 17.05.2023 passed by learned Additional Sessions Judge, Gadchiroli in Criminal Revision No.24/2022 as also to the order dated 13.10.2022 passed by learned Chief Judicial Magistrate, Gadchiroli. The applicant had filed application before the learned Magistrate for grant of custody of four wheeler. His application came to be allowed in the following terms:

“1) The application Exh 402 is allowed in terms of following conditions.

i) The Police Station Officer Gadchiroli is directed to deliver the vehicle Mahindra XUV 300 car bearing no. MH-33/V-4422 to applicant Balraj Adkuji Jumnaake after furnishing bank guarantee of Nationalized Bank of Rs.10,00,000/- (Rs. Ten Lacs Only) as well as indemnity bond of Rs.10,00,000/-

ii) While delivering the custody of vehicle Investigating Officer shall take four or more photographs from four sides of the vehicle and internal side of vehicle. He shall also draw the panchanama about the delivery of vehicle and the condition of vehicle at the time of handing over the vehicle.

iii) Applicant shall not change or alter the vehicle by any manner whatsoever.

iv) Applicant shall not sale or dispose of the vehicle till the disposal of this case.

v) The bank guarantee and Supratnama shall be furnished in the court for further transmission of the same to the Police Station Officer.

vi) The bank guarantee so furnished shall be renewed by the applicant from time to time till final disposed of the trial and any failure on his part to do so shall result in revival of order.”

The applicant, being aggrieved by the condition incorporated in operative clause (2) directing him to furnish the bank guarantee of Rs.10,00,000/- as well as indemnity bond of Rs.10,00,000/-, has challenged the order before the revisional Court, which came to be dismissed. Learned counsel for the applicant submits that the applicant is being tried for the offence punishable under Sections 406, 420, 465, 468, 471 and 409 of the Indian Penal Code, 1860. The applicant has not purchased the vehicle out of the alleged money involved in the crime. The prosecution against the applicant is mainly based on his statement under Section 27 of the Indian Evidence Act, 1872. The condition of furnishing the bank guarantee is onerous.

The learned A.P.P. on the other hand, submits that the Magistrate is fully justified in imposing condition, the application filed by the applicant before the Magistrate having been filed under Section 451 of the Criminal Procedure Code, 1973. Thus it is suggested that the Magistrate may release the property upon certain conditions in terms of Section 451 of the Code. He submits that the amount involved in the present case is about Rs.3,00,00,000/-.

In my view, the condition for furnishing the bank guarantee is indeed onerous. The applicant has shown willingness to furnish the indemnity bond, which should serve the purpose. In fact, the counsel for the applicant submits that the indemnity bond has already been furnished. The vehicle under question is not used for commission of crime and is said to have been acquired out of the proceeds of the crime, which fact is yet to be proved. Both the courts below have not considered these aspects. That resulted into passing of the perverse order, which requires correction. Hence, following order is passed.

ORDER

- (i) The application is allowed.
- (ii) Clause 1 (i) of operative order of passed by learned Magistrate in R.C.C.No.116/2020 on 13.10.2022 stands modified as under:

i) The Police Station Officer Gadchiroli is directed to deliver the vehicle Mahindra XUV 300 car bearing no. MH-33/V-4422 to applicant Balraj Adkuji Jumnake upon furnishing indemnity bond of Rs.10,00,000/-, if not given till today.

Rest of the conditions stand intact.

The application is disposed of in the above terms.

(Anil L. Pansare, J.)

Kahale