



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

CRIMINAL WRIT PETITION NO.166 OF 2024

Jameer S/o Isaq Shaikh,
Age-53 years, Occu:Agriculture/business,
R/o-Zalta, Post-Chikalthana,
District-Chh. Sambhajinagar

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Phulambri Police Station,
Taluka-Phulambri, Dist-Chh. Sambhajinagar,
(Crime No.394/2023)
- 2) Shree Guru Ganesh Sthanakvasi
Shikshan Samiti Mahavir Jain Goshala,
Begampura, Chh. Sambhajinagar.

...RESPONDENTS

AND

CRIMINAL WRIT PETITION NO.167 OF 2024

Baliram S/o Fakirchand Kavhale,
Age-55 years, Occu:Agriculture/business,
R/o-Kolghar, Post-Ektuni,
District-Chh. Sambhajinagar

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Phulambri Police Station,
Taluka-Phulambri,
Dist-Chh. Sambhajinagar,
(Crime No.394/2023)
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Shikshan Samiti Mahavir Jain Goshala,
Begampura, Chh. Sambhajinagar.

...RESPONDENTS

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Mr. Ashok A. More Advocate for Petitioner in both Writ Petitions.

Mr. S.B. Narwade, A.P.P. for Respondent No.1 in both Writ Petitions.

Mr. V.D. Khivesara Advocate a/w. Mr. D.S. Khivsera Advocate for Respondent No.2 in both Writ Petitions.

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CORAM : S.G. MEHARE, J.

DATE : 25th JUNE, 2024

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the appearing parties finally, by consent.
2. Both Petitions have been filed against the common order. Hence, they are taken up for disposal together at the stage of admission by consent.
3. The orders passed by the learned Judicial Magistrate First Class, Phulambri dated 24th November 2023, and the learned Additional Sessions Judge, Aurangabad, in Criminal Revision Application Nos.311 of 2023 and 312 of 2023, dated 22nd December 2023, dismissing the Revisions have been impugned.
4. The petitioners have claimed that they are the owners of

the cattle that were seized by the Police under the First Information Report. Thirty-seven bulls were seized, and Crime No.394 of 2023 was registered with Phulambri Police Station for the offence punishable under Sections 11(1) (g) and 11(1)(d) of the Prevention of Cruelty against Animals Act, 1960 along with Section 5(a), 5(b) of the Maharashtra Preservation of Animals Act, 1976 (for short, "the Maharashtra Act 1976").

5. The animals were seized after sunset as they were being transported on foot. The petitioners have claimed that they were the owners of the bulls seized by the Police. The prosecution has a case in which the bulls/animals were carried for slaughtering. The animals were beaten. After the seizure of the bulls, Police have kept seized cattle at Shri Guru Ganesh Gaushala, Begampura, Aurangabad. The said Gaushala receives grants. It was the contention that there was no proper arrangement for cattle, which would badly affect the health of seized cattle or the animals may die. Since the petitioners are the owners of the cattle, they are entitled to get interim custody. If the interim custody is granted to persons other than the owners, the petitioners will have to bear heavy costs which may be more than the price of the animals. It is the further contention of the petitioners that only on surmises the allegations have been

levelled that the animals were transported for slaughter. The petitioners are businessmen, and they are engaged in the business of selling and purchasing cattle from the market and having valid licenses for the same. At this juncture, there was nothing with the prosecution to prove that cruelty was caused to the animals.

6. Learned counsel for the petitioners referred to certain case laws and provisions of law. His arguments were mainly about interim custody because the cost of keeping the animals in Gaushala would be more than the price of the animals. It would be unjustifiable to pay the cost of the animals, which they never treated with cruelty and were not transported for slaughter. Learned counsel submitted that temporary custody should not have been granted to the Gaushala.

7. Learned APP and learned counsel for respondent No.2 have vehemently argued that it was a clear violation of the law. Transporting the animals after sunset is cruelty. The persons transporting the cattle did not possess the certificate as required under Rule 8 of the Prevention of Cruelty to Animals (Transportation of Animals on Foot) Rules, 2001 (for short, hereinafter, referred to as "Rules of 2001"). The injury certificate obtained from the veterinary doctor clearly indicates that the

seized animals appeared to be depressed and dehydrated under transportation and overcrowding stress, due to which depraved appetite and reduced water intake. They have vehemently argued that in view of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules of 2017 (for short, hereinafter referred to as "Rules of 2017"), Rule 3(b) specifically provides that the Magistrate may direct the animal to be housed at an Infirmary, Pinjrapole, SPCA, Animal Welfare Organization or Gaushala during the pendency of the litigation. They have vehemently argued that prima facie evidence of cruelty caused to the seized animals was available. The necessary certificate, as required under Rule 8 of the Rules of 2001, was not carried with by the person transporting the animals. Arrangements for feed and fodder were also not made. The petitioners have no explanation for the breach of Rules 8 and 9 of the Rules of 2001. If the custody of the animals is granted to the petitioners, again, the animals will be treated cruelly and most probably for slaughtering purposes. The object of the law is not bearing in mind the cost of care and keeping of the animals pending litigation with the third party. The whole object of the Act is to prevent cruelty to the animals and protect them from unnecessary slaughtering. They have also relied on certain case laws and supported the impugned orders.

8. The primary argument of the learned counsel for the petitioners is that interim custody of the animals pending litigation should be handed over to its owners. To support his argument, he has relied on the case of ***Manager, Pinjrapore Deopur and another vs. Chakram Moraji Nat and others, AIR 1998 Supreme Court 2769***. The issue before the Hon'ble Supreme Court was, whether the order of the High Court declining to grant interim custody of the animals to the appellants is contrary to Section 35 of the Prevention of Cruelty to Animals Act. The Hon'ble Supreme Court reproduced Section 35 of the said Act and observed that:-

"Sub-section (6) says that if the owner refuses or neglects to remove the animal within the time specified by the Magistrate, then he can order the sale of the animal and appropriation of the sale proceeds for the cost thereof and in the event of there being surplus proceeds of such sale, payment of the same to the owner on his application within two months of the sale. This is postulated by sub-section (7)."

9. In the event of the animal not being sent to the infirmary as provided under Section 35(2) of the Prevention of Cruelty to Animals Act, the Hon'ble Supreme Court has observed thus:-

"In the event of animal not being sent to infirmary as provided under Section 35(2) of the Act, the Hon'ble Supreme Court observed that, in the event of the animal not being sent to infirmary, the Magistrate is bound to give the interim custody to Pinjrapole, we find it difficult to accede to. We have noted above

the options available to the Magistrate under Section 35(2). That sub-section vests in the Magistrate the discretion to give interim custody of the animal to Pinjrapole. The material part of sub-section (shorn of other details) will read, the Magistrate may direct that the animal concerned shall be sent to a Pinjrapole. Sub-section (2) does not say that the Magistrate shall send the animals to Pinjrapole. It is thus evident that the expression "shall be sent" is part of the direction he decides to give interim custody to Pinjrapole. It follows that under Section 35(2) of the Act, the Magistrate has discretion to hand over interim custody of the animal to Pinjrapole but he is not count to hand over custody of the animal to Pinjrapole in the event of not sending it to an infirmary. In a case where the owner is claiming the custody of the animal, Pinjrapole has no preferential right. In deciding whether the interim custody of the animal be given to the owner who is facing prosecution, or to the Pinjrapole, the following factors will be relevant: (1) the nature and gravity of the offence alleged against the owner; (2) whether it is the first offence alleged or he has been found guilty of offences under the Act earlier; (3) if the owner is facing the first prosecution under the Act, the animal is not liable to be seized, so the owner will have a better claim for the custody of the animal during the prosecution; (4) the condition in which the animal was found at the time of inspection and seizure; (5) the possibility of the animal being again subjected to cruelty. There cannot be any doubt that establishment of Pinjrapole is with the laudable object of preventing unnecessary pain or suffering to animals and providing protection to them and birds. But it should also be seen, (a) whether the Pinjrapole is functioning as an independent organization or under the scheme of the Board and is answerable to the Board; and (b) whether the Pinjrapole has good record of taking care of the animals given under its custody. A perusal of the order of the High Court shows that the High Court has taken relevant factors into consideration in coming to the conclusion that it is not a fit case to interfere in the order of the learned Additional Sessions Judge directing the State to hand over the custody of animals to the owner."

10. Learned counsel for the petitioners further relied on the case of *Shaikh Bilal Shaikh Ayyub vs. the State of Maharashtra and another (Criminal Writ Petition No.1183 of 2018, decided by this Court on 8th April 2019)*. In that case, also the Case of *Manager, Pinjrapole, Deudar and another vs. Chakram Moraj Nat and others*, cited supra, has been referred to. The Petition was allowed bearing in mind the ratio laid down in the case of *Manager, Pinjrapole Deudar and another*, supra. Learned counsel for the petitioners further relied on the case of *Shri Chatrapati Shivaji Gaushala vs. State of Maharashtra and others (Criminal Appeal No.1719 of 2022 (Arising out of SLP (Cri) No.412 of 2020, before the Hon'ble Supreme Court)*. In this case, the Rules of 2017 were referred. The learned Magistrate has refused to hand over the interim custody to the owners. However, the learned Additional Sessions Judge has reversed the Judgment and the Judgment of the learned Additional Sessions Judge was confirmed by the High Court. Discussing the proviso to Section 8(3) of the Maharashtra Act and Rules 3, 4 and 5 of the Rules of 2017, the Hon'ble Supreme Court turned down the orders of the Sessions Court as well as High Court and restored the order of the learned Magistrate. The Hon'ble Supreme Court, in Para No.14, observed that, "the proviso to Section 8(3) of the

Maharashtra Act was inserted by the Amending Act of 1995. The proviso stipulates that pending trial, the seized cow, bull or bullock shall be handed over to the nearest gosadan, Goshala, pinjrapole, Hinsa Nivaran sangh or such other animal welfare organizations willing to accept such custody, and the accused would be liable to pay for their maintenance for the period when they remain in custody. The appellants have invoked the proviso to Section 8(3) for claiming custody of the cattle." The Hon'ble Supreme Court observed that "in the present case, the appellant was willing and ready to accept custody of the seized cattle. Further, it has been observed that in the light of the *prima facie* observation that the private respondents were in violation of the Transport of Animal Rules 1978, it was incumbent upon the High Court to ensure that the seized cattle would be properly preserved and maintained until the conclusion of the trial proceedings." Discussing the various provisions, the Hon'ble Supreme Court directed to handover the custody of the animals to Gaushala.

11. Further Judgment relied upon by the petitioners was ***Bilal Shakeel Kureshi vs. the State of Maharashtra (Writ Petition No.632 of 2023, decided by this Bench on 21st September 2023)***. In the said case, the facts were that there were no injuries to the animals. They were just purchased from the market and

transmitted to another place. Learned Advocate for the petitioners further relied on *Govansh Raksha Samiti Goshala, Malegaon and another vs. the State of Maharashtra and others (Criminal Writ Petition No.1588 of 2022, decided by this Bench on 4th May 2023)*. In this case, the case of *Shri Chatrapati Shivaji Gaushala*, cited supra, was also placed before the Court. Referring to various judicial pronouncements on the issue, this Court has observed in Paragraph No.24 that, "from all these judgments it is seen that when it is found that the cattle are being taken for the purpose of slaughter then in such case custody cannot be given to the owners. Second contingency that if the cattles are kept in condition which could be dangerous to the life of the cattles or likely to cause harm to the cattles, in such cases the custody should be given to Goshala or the institutions like Goshala. For that, it is necessary to be seen as to whether the Goshala is in a position to maintain animals in proper condition. There are also cases where animals were carried without a valid licence. In some cases, there was material to show that the animals were being taken for slaughtering." In the said case, the owners had a license for animal trading. In these premises, the Petition was dismissed.

12. Learned APP and learned counsel for respondent No.2 would point out that there is a clear-cut violation of the Act and

Rules. Sufficient material was placed before the Court, stating that cruelty was caused to the animals. The animals were transported after the sunset, which is in violation of Rule 12 of the Rules of 2001. Sufficient material was placed before the Court, indicating that Gaushala is in a position to maintain the animals with care and in proper condition. Since the date of custody of the animals, due care has been taken as per the conditions imposed by the learned Magistrate. The health of the seized animals is observed by the Police as well as the veterinary doctor, and they are submitting reports, intermittently, to the learned Magistrate. They have supported the impugned Judgments and orders. They relied on the case of ***Shaikh Sadam S/o Shaikh Samad vs. the State of Maharashtra and another (Criminal Writ Petition No.1775 of 2023 of this Bench, decided on 10th May 2024)***. It was the case of transporting the cattle in the vehicle. They have prayed to dismiss the Petitions.

13. The petitioners claim that they are the owners of the animals. They have produced their title document. However, personally, they were not transporting the animals. They have also placed on record a copy of purchase receipts, a photo copy of the application of intimation of their business of purchasing and selling of animals and its receipt. It is not disputed that the cattle/bulls were transported after the sunset, which is in

violation of the provisions of the Rules of 2001. These facts have not been denied. Section 11 of the Prevention of Cruelty to Animals Act, 1960, has defined the 'cruelty to the animals'. Sub-clause (d) of the said Section provides that if any person conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering, is treating animals cruelly. Sub-clause (h) provides that failing to provide such animals with sufficient food, drink, or shelter is treating animals cruelly. Rules of 2001 specifically provide for the prevention of cruelty to animals. Rule 8 of the Rules of 2001 provides for carrying a certificate during transportation. The exception is that such a certificate is not essential when the owner himself is transporting the animals on foot. However, any person other than the owner transporting the animals on foot must carry the certificate as specified in the Second Schedule of the Act of 1960, during such transportation. Admittedly, in the present case, such a certificate was not issued to the persons who were transporting the animals. They also do not have authority from the owners of the bulls. Rule 10 of the Rules of 2001 further provides for feed and fodder arrangements during transportation of animals. This arrangement was also not made during the transportation.

14. The Legislation has enacted the Act and made the Rules in 2017. Rule 3 of the said Rules of 2017 provides for custody of animals pending litigation. It provides a duty on the authority seizing the animal to ensure health inspection, identification and marking of such animal, through the jurisdictional veterinary officer deployed at the Government Veterinary Hospital of the area. Sub-rule (b) of Rule 3 is relevant as it is regarding the interim custody pending litigation. It has been provided therein that the Magistrate may direct the animal to be housed at an Infirmary, Pinjrapole, SPCA, Animal Welfare Organization or Gaushala during the pendency of the litigation. The word "may" has been used in this clause. That gives the discretion to the Magistrate or the Court to hand over the interim custody of the animals seized under this Act. Various case-laws, as discussed above, particularly the case of *Manager, Pinjrapole, Deudar and another vs. Chakram Moraj Nat and others*, cited supra, have laid down certain guidelines while deciding the interim custody of the animals. The condition in which the animal was found at the time of inspection and seizure is one of the factors to be considered while granting interim custody. In this case, the prosecution obtained a medical examination report of the seized animals. The opinion was that the seized animals appeared to be depressed and dehydrated under transportation and

overcrowding stress due to which depraved appetite and reduced water intake. It shows that due to the non-arrangement of fodder and food, the health of the seized animals deteriorated. That is the cruelty. Further, it is the case of the petitioners that the Pinjrapole or Gaushala has a bad record of not taking care of the animals; therefore, they would not be able to take care of the seized animals. No objection as such was raised before the Court. On the contrary, the submissions have been made by the learned counsel for respondent No.2 that the health of the seized animals is being checked by the competent doctor intermittently, and the report is being submitted to the learned Magistrate. The Hon'ble Supreme Court, in the case of ***Shri Chatrapati Shivaji Gaushala vs. State of Maharashtra and others***, supra, as discussed above, has considered the Rules of 2001, Rules of 2017 and Section 8(3) of the Maharashtra Act. The same Rule and Section have been applied here. There is a prima facie violation of the Rules of 2001 and Rules of 2017.

15. *Prima facie* material was available before the Court to believe that it is not safe to handover the interim custody to the petitioners pending litigation, wherein the possibility of causing cruelty to the animals cannot be ruled out. In view of the submissions of bearing with the high cost of the care and keeping of the animals in Gaushala pending the trial, the

Hon'ble Supreme Court in *Shri Chatrapati Shivaji Gaushala vs. State of Maharashtra and others*, cited supra, has directed to expedite the trial. The same view is to be taken in this case also.

16. Discussing the facts and legal provisions of law, this Court believes there are no grounds to interfere with the impugned orders. The Petitions deserve to be dismissed.

17. Accordingly, both the Writ Petitions are dismissed. However, the trial is expedited to save the cost of care and keep the animals pending litigation with respondent No.2

18. The learned Judicial Magistrate First Class, Phulambri shall decide the matters within three months from the date of receipt of this order, subject to the cooperation of the prosecution and defence.

19. No order as to costs.

20. Rule stands discharged.

[S.G. MEHARE, J.]