



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

19 CRIMINAL WRIT PETITION NO. 683 OF 2023

ASHOK RAMNARAYAN JAISWAL

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for the Petitioner : Mr. Undre Vikram S

APP for Respondent/State : Mr. S.B. Narwade

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CORAM : **SHIVKUMAR DIGE, J.**

DATE : 23rd September, 2024.

P.C.:

1. By this writ petition, the petitioner is seeking quashment of the order dated 1st March, 2023 passed by the Additional Sessions Judge, Basmathnagar, Dist.Hingoli in Criminal Revision Application No.02 of 2023 and the order dated 19th January, 2023 passed by the Judicial Magistrate, First Class, Aundha, Dist. Hingoli (For short, "JMFC, Aundha") in Criminal Misc. Application No.191 of 2022.

2. It is prosecutions case that accused Rushikesh and Radheshyam transported the seized intoxicated substance in violation of the term of permit. The petitioner holds CL-III licence and at the same time, vehicle was having transport pass of the said country liquor of 40 boxes. Therefore, by filing the application, the petitioner prayed for release of the property (Muddemal). The learned JMFC has rejected the said application. The petitioner filed Criminal Revision Application, which also came to be rejected. The said order is underchallenge.

3. It is contention of the learned counsel for the petitioner that on 17.09.2022, Crime No.171 of 2022 for the offences punishable under sections 65(a)(c), 80, 81, 82(2), 83, 90, 103 of the Maharashtra Prohibition Act came to be registered with Police Station, Aundha (Nagnath), Dist. Hingoli against the driver of the petitioner and petitioner on the complaint of Shri Adhe, the Excise Officer. It is alleged that accused no.1 was carrying the 40 boxes of country liquor in the truck by other transport route and not as per prescribed route. The learned counsel further submitted that the petitioner's vehicle was having valid licence. Offence is registered against the petitioner's driver on the ground that the truck which was driven by accused no.1 Rushikesh found on other route. The learned counsel further submitted that the petitioner is having valid licence of the said 40 boxes of liquor. After the registration of crime the 40 boxes of country liquor are lying in the police station for two years. The police has filed the charge-sheet against the petitioner and the driver of the petitioner. If boxes are remained in the possession of police, it would cause loss to the petitioner. The petitioner is ready to give indemnity bond. He relied on the order passed by this Court in **Goel Roadways Transport Company V/s The State of Maharashtra, in Criminal Writ Petition No.354 of 2024 dated 3rd May, 2024.**

4. It is contention of the learned APP that the petitioner has violated the conditions. As per the provisions of section 98(1)(c) read with

section 99 of the Maharashtra Prohibition Act, the liquor found in the truck of the petitioner's vehicle has to be confiscated. If the said liquor is returned back to the petitioner, the offence registered against the petitioner could be redundant as the said section specifically provides for confiscation of the liquor and requested to dismiss the petition.

5. I have heard both the learned counsel. Perused the impugned orders passed by the trial Courts.

6. It is prosecution's case that the petitioner's vehicle was carrying 40 boxes of liquor. The driver of the said truck had changed the transport route. It appears from the record that the petitioner possesses valid licence of transporting the said 40 liquor boxes. Only lapse committed by the driver of the petitioner which is caused in the present crime is that he changed the transport route. As per view of this Court taken in **Goel Roadways Transport Company (supra)**, the liquor stocks can be returned back to the petitioner by taking indemnity bond. The ratio laid down of the above case is squarely applicable to the present case. In view of the above, I pass the following order :-

ORDER

- (i) Writ petition is allowed.
- (ii) The order dated 1st March, 2023 passed by the Additional Sessions Judge, Basmathnagar, Dist.Hingoli in Criminal Revision Application No.02 of 2023 and the order dated 19th January, 2023 passed by the Judicial Magistrate, First Class, Aundha, Dist. Hingoli in

Criminal Misc. Application No.191 of 2022 are quashed and set aside.

(iii) The application filed for release of the country liquor to the custody of the petitioner on supratnama is allowed.

(iv) The seized articles be released to the custody of the petitioner till final disposal of the case, on executing a Bond in the sum of Rs.2,00,000/-, on the condition that the petitioner shall produce these articles before the trial Court, if required for the purpose of the trial.

[SHIVKUMAR DIGE, J.]

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