

Prasad Rajput
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 643 OF 2024

Rahul Devanand Kumbhar

.. Applicant

Versus

State of Maharashtra

.. Respondent

-
- Mr. Sachin Ramrao Pawar, Advocate for Applicant.
 - Ms. Manisha R. Tidke, APP for the State.
-

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 18, 2024

P.C.:

- 1.** Not on Board. Mentioned. Taken on Board.
- 2.** Heard Mr. Pawar, learned Advocate appearing for the Applicant and Ms. Tidke, learned APP for the State. Mr. Pawar expresses urgency and intervention of this Court in view of the Applicant's only source of livelihood i.e. temp vehicle being in detention & under seizure since March, 2024. Hence Application is taken up for hearing.
- 3.** This is an Application filed by Applicant who is arrayed as Accused No.1 in the crime registered on 29.03.2024 under Section 328 and 34 of Indian Penal Code (for short "IPC") read with Section 65 (c) of the Maharashtra Prohibition Act, 1949. These provisions viz., Section 328 and Section 65(c) read thus:-

"328. Causing hurt by means of poison, etc. with intent to commit an offence.- Whoever administers to or causes to be taken by any person

any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

65: Whoever, in contravention of the provisions of this Act, or of any rule, regulation or order made or of any licence, pass, permit or authorization granted thereunder-

(a)

(b)

(c) constructs or works any distillery or brewery.

(d) to (g)

shall, on conviction, be punished for each such offence with imprisonment for a term which shall not be less than three years but which may extend to five years or with fine which shall not be less than twenty five thousand rupees but which may extend to fifty thousand rupees or with both .”

4. The Applicant is admittedly, the owner of the Mahindra Tempo four wheeler vehicle which has been confiscated and seized for transport of country-liquor for which offence has been registered. Applicant's vehicle was seized by the prosecution in the jurisdiction of Yavat Police Station whereas Applicant is a resident of Dhankawadi, Dist. Pune. Considering the aforesaid offence registered under Section 328 read with 65(c) it is tried by the Sessions Court. Applicant has been enlarged on bail by the said Court. Applicant preferred Application below Exhibit-6 under Section 451 of the Cr.PC seeking release of his tempo vehicle. Contention of Applicant is that the seized vehicle is the only source of his livelihood and its detention and seizure during the period of trial would be of no consequence. Applicant has

denied having nexus with the seizure of the alleged country-liquor which is seized from the Tempo and it is contended by him that in fact Accused No.2 who is also arrested by the Law Enforcement Agency is the real person and source of the said contraband. He therefore prayed for his tempo vehicle to be released on terms deemed fit by the Court. The Investigating officer objected to the Application by filing his say on the sole ground that if the said vehicle is returned back to him, he will use it in commission of a similar offence. This sole ground is accepted by the learned Trial Court for rejection of the Application. That apart there is no reason whatsoever stated in the impugned order. The vehicle is under seizure since 29th March, 2024 and almost 9 months have passed and it is lying unused. Mechanical vehicles, if they lie unused will deteriorate and its mechanical parts get affected and corroded as also its performance. It is lying unused in the premises of Yavat Police Station and it has started deteriorating and damaged. Keeping the said vehicle detained would not serve any purpose whatsoever for the prosecution. The ground stated in the Application ought to have been considered in its proper perspective. Merely because the I.O. stated that there is likelihood that Applicant will commit a similar offence, it cannot be the ground to deny release of the vehicle. The Applicant may have invested a sizable amount in the purchase of the vehicle. He may also be required to pay loan if any has been availed by him to buy the same. In the Application dated 20th

August, 2024 filed by him he has stated that he is ready and willing to furnish the Indemnity Bond (सुप्रतनामा) and also abide by any terms and conditions imposed by the Court and he is also ready and willing to bring the said vehicle or produce the vehicle if so required by the Court in future. In paragraph No. 3 of the Application he has given specific reasons as to how the said vehicle has deteriorated in the last few months which would be detrimental to his prospect as the owner of the vehicle. The vehicle has been lying unused having already weathered one monsoon. It is the only means of livelihood of Applicant as stated by him. Aforesaid issues have been completely disregarded and not considered by the learned Trial Court in passing the impugned order below Exhibit-6. The impugned order is cryptic, insufficient, vague and passed without application of mind. It does not deserve to be countenanced, more specifically so in the facts of the present case. That apart it is noticed by the Court that the indictment of Applicant along with the Accused No.2 is under Section 328 of the IPC. Insofar as the role of the Accused is concerned whether the provisions of Section 328 are applicable to him or otherwise is also a question to be answered. *Prima facie* reading of the provisions of Section 328, I am doubtful whether the said provisions would be applicable to Applicant's role. Be that as it may, provisions of Section 65(c) of the Maharashtra Prohibition Act, 1949 as stated in the FIR are *prima facie* clearly not applicable at all. There appears to be some mistake in the

FIR as the applicable provision is stated incorrectly. The provision attracted would be under Section 65 (a). Hence, the Application filed below Exhibit-6 on its merits deserves to be considered. The arbitrary and high ended order passed by the learned Trial Court is not only detrimental to the prospects of the Applicant but also the concerned vehicle which is wasted and lying unused and it would be of inconsequential value if it is allowed to remain unused. The Applicant could have been put to appropriate terms and conditions. That having not been done, I am not inclined to agree with the reason, rather the sole reason given in the impugned order dated 12th September, 2024 and hence it calls for immediate intervention of this Court.

5. The impugned order is therefore quashed and set aside. Application below Exhibit-6 stands allowed. The Applicant is permitted to file Indemnity Bond (सुप्रतनामा) with the Trial Court as required under the law. Once Indemnity Bond (सुप्रतनामा) is filed by the Applicant before the Trial Court, the Trial Court is directed to take it on record. Once it is taken on record by the Trial Court, the Police Inspector/whosoever is in charge of the Yavat Police Station where the seized vehicle i.e. Mahindra Supra Deo bearing No. MH 12/ VT 2694 is lying in C.R. No. 326 of 2024 shall immediately release and hand over the said vehicle to the Applicant within 24 hrs. of him producing a server copy of this order before the concerned in charge of the Police Station and a xerox copy of the Indemnity Bond (सुप्रतनामा) filed before the Trial Court. No

further order of the Trial Court is required for release of the vehicle and above directions shall be followed by all concerned.

6. Needless to state any observations made in this order shall not impinge upon the Trial before the Trial Court.

7. With the above directions, Application stands allowed and disposed.

P.R. Rajput

[MILIND N. JADHAV, J.]