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

56 CRIMINAL WRIT PETITION NO. 774 OF 2025

ATIK SHAFIK KHURESHI

....Petitioner

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

.....Respondents

Mr. Satish S. Manale, Advocate for the petitioner

Mr. Shrimant Mundhe, Advocate for the respondent No. 2

Mr. R. B. Dhaware, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 28th JULY, 2025

P. C.

1. Heard.

2. The petitioner claiming to be owner of 11 buffalo those were seized and handed over in the custody of respondent No. 2 has approached this court challenging the order dated 08-05-2025 passed by the learned Additional Sessions Court, Latur dismissing the Criminal Revision Petition No. 19/2025 whereby order dated 27-03-2025 passed by the learned JMFC, Latur

refusing to hand over the animals to the petitioner is confirmed.

3. It is the case of the petitioner that he purchased eleven buffaloes from the Market Committee, Nilanga. The vehicle transporting animals was intercepted near AUSA to Rajiv Gandhi Chowk Latur. On intercepting the truck, it was found that there were eleven buffaloes kept in small place in tightly roped condition. It was thus found that the animals were being carried in cruel manner. The police therefore registered crime No. 0196 /2025 with Vivekanand Police Station on 20-03-2025 for the offences punishable under sections 192, 66 of the Motor Vehicle Act and sections 11(1)(d), (e) of the Prevention of Cruelty to Animals Act, 1960 under Rule 47 of Transport of Animal Rules, Section 66/192 of the Motor Vehicles Act and Rule 125 of Central Motor Vehicles Rules. After seizure the buffaloes came to be handed over to respondent No. 2 and presently those are in the custody of respondent No.2. In the meantime, it is also submitted at the bar that three buffaloes were stolen from the custody of respondent No. 2. Respondent

No. 2 therefore was required to file FIR against the unknown persons. All the buffaloes are again re-possessed. Out all eleven buffaloes, one buffalo died because of poor health condition. Presently, there are only ten buffalo. The petitioner filed an application seeking interim custody of the buffaloes pending trial.

4. It is the case of the petitioner that he purchased those animals on 20-03-2025 for his dairy business. The animals were loaded in the Eisher truck. Since the petitioner was not traveling in the said truck his name does not appear in the FIR. The offence therefore registered only against driver and cleaner of the vehicle and they are treated as owners of the buffaloes. The court rejected the application on three grounds first; the petitioner is not owner, second; the receipt showing purchase of the animals is not believed as the said was not signed by the Secretary of the Market Committee. There are no signature of vendor and independent person and thirdly; the animals were being transported in violation of Government Resolution dated

27-02-2024. As the animals were being transported without ear tagging. Before the court it is the case of the respondent No. 2 that the petitioner cannot be said to be owner.

5. The learned advocate for the petitioner submits that since at the time of seizure of the animals the petitioner was not present, driver and cleaner are shown to be owner, when the petitioner in fact is the owner of the animals. He has produced the receipt of the Market Committee showing that the petitioner has purchased the buffaloes. He further submits that GR dated 27-02-2024 cannot be made applicable as there was no power with State government to impose a condition of non-transporting of animals without ear tagging. Notification is issued under the Prevention and Control of Infectious and Contagious Diseases in Animals Act, 2009. He thus submits that the Act does not give power to the State Government. He further submits that though he is true owner of the animals it is deprived of the custody.

6. The learned advocate for the respondent Mr. Mundhe, vehemently opposed the petition. He submits that in the present case the petitioner is not in picture at all. The FIR itself shows that it is the driver and cleaner who have stated that they are the owners of the animals and those are purchased on 18-03-2025. He, thus, submits that the case of the petitioner is totally against the contents of the FIR. He further submits, on the basis of judgment by Nagpur Bench in Criminal Writ Petition No. 589/2024 no custody can be handed over. This court at Nagpur had refused to hand over custody as the receipts showing purchase of animals was not believed. He further relied on the judgment of Madras High Court in Criminal RC Nos. 1421, 1461 and 1433 of 2024. It is observed that many a times it is found that the cattles are killed within twenty four hours on giving such custody to a person seeking custody. He thus, submits in the present case also if the custody is given there is danger to the life of the animals.

7. Mr. Manale, learned advocate relies on the judgment

in the case of Guru Ganesh Guru Mishri Gaurakshan Charitable Trust Prajrapol, Jalna Vs State of Maharashtra¹.

8. Instead of going to the details and ratio, this court finds that the learned Sessions Court has mainly refused the relief holding that the petitioner has failed to prove the ownership prima facie. Looking at the say filed by the police in the trial Court that proper order be passed in respect of the custody on verification of the ownership.

9. Considering all above, this court finds that interest of justice would be met by following order:

ORDER

a] The criminal writ petition stands partly allowed.

b] The police to verify the ownership of the animals. If the petitioner is prima facie found to be owner, custody be handed over to the

¹ AIR Online 2023 BOM 1199

petitioner subject to petitioner depositing the cost of maintenance as per schedule rates to respondent No. 2 as on today. On such deposit, the animals be handed over to the petitioner on proper verification.

c] The petitioner shall give indemnity bond for Rs. 8,00,000/- and undertaking that in case trial is decided against him he shall re-deliver the animals to respondent No. 2 or as the court directs at the conclusion of the trial. In case the petitioner fails to re-deliver the animals to respondent No. 2 as per direction. The said exercise be done within three weeks from today.

d] The trial be completed as early as possible and preferably within six months from today.

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e] With this, petition stands disposed off.

[KISHORE C. SANT, J.]

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