



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

916 CRIMINAL WRIT PETITION NO. 835 OF 2023

**SHAIKH TAUFIQ SHAIKH DAUD
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Mr. Deepak S. Manorkar, Advocate for the Petitioner
Ms. Ashlesha S. Deshmukh, APP for the Respondents-State

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 28.01.2025

PER COURT :-

1. Heard both the parties for the considerable period.
2. By the present Petition, the Petitioner challenged the order dated 12.05.2023 passed by the learned Additional Sessions Judge, Aurangabad, in Criminal Revision Application No. 49 of 2023, whereby the order of release of vehicle passed by the Learned Judicial Magistrate First Class, Aurangabad, on 16.02.2023 in Criminal Misc. Application No.345 of 2022 has been quashed and set aside. Further, the present Petitioner is directed to reinstate possession of said vehicle.
3. The petitioner has claimed to be an owner of Hyva

Truck bearing Registration No. MH-46-F-4816. As per contents of the F.I.R., lodged on 02.11.2022 with the City Police Station Aurangabad the Hyva Truck was seized by the Revenue Officer while transporting illegal 4-5 brass Sand. Shri Deepak Bhivsan Salve was the driver of said Truck and Mr. Ansar Shaik is the owner of said Truck. After seizure of the Truck, the Seizure Panchnama was drawn and said Truck parked in the premises of Tehsil office, Aurangabad.

4. According to the informant, the driver of the Truck gave registered number of Hyva Truck as MH-20-DG-6277. Therefore, entry of said number was made in the seizure panchnama. However, on 04.11.2022 at about 9.00 a.m., Shri Gajanan Chipde, clerk attached with Tehsil office informed on phone to the Revenue Officer / Additional Tehsildar about missing of seized Hyva Truck. As per information received from the reliable sources it came to know that, one Mr. Khayyumbhai R/o Shahaganj is the owner of said Hyva Truck No. MH-46-F-4816 and said Truck given to one Shri Pappu R/o Sanjay Nagar, Aurangabad and Mr. Mohsin R/o Mill corner, Aurangabad. As per information from reliable sources, description and number of said Truck was scratched. On the basis of said report a crime No. 0345 of 2022 registered against three accused persons i.e. (i) Shri Pappu, (ii)

Mr. Mohsin and (iii) Khayyumbhai, for the offence punishable Under Section 379 read with Section 34 of IPC.

5. On 16.02.2023, the learned Judicial Magistrate First Class passed the order in Criminal Misc. Application No. 243 of 2023 and released the Hyva Truck in favour of the present Petitioner on furnishing indemnity bond of Rs. 15,00,000/- (Rs. 15 Lacs) and with other certain conditions.

6. Being aggrieved by the said order, the prosecution filed Criminal Revision No.49 of 2023 under Section 397 of Code of Criminal Procedure. On 12.05.2023, the learned Additional Sessions Judge, passed the impugned order and quashed and set aside order of released of Truck passed by the learned Judicial Magistrate First Class, Aurangabad, on 16-02-2023 in Criminal Misc. Application No.345 of 2022. The learned Revisional Court further directed the present Petitioner to reinstate possession of Truck by producing before the Investigation Officer.

7. Needless to say that, the dispute exists about the Chasis and Registration Number of the seized Hyva Truck. As per allegations made by prosecution chasis and registered number of the seized Hyva

Truck were scratched and another fake number plate was put on the Truck. Neither the present Petitioner nor the prosecution have produced seizure panchanama of the Hyva Truck, which was drawn by the Talathi Smt. Jyoti Kapdane, on 02.11.2022. It is a matter of record that, neither the Petitioner nor the Prosecution brought any inspection report from the Regional Transport Office to show correct chasis and registration number of the subject matter of Hyva Truck.

8. While passing the impugned order, the learned Sessions Court considered that, the Revenue Officer / Tahsildar seized the Hyva for initiation of confiscation proceeding because of transportation of sand illegally. But said seized Hyva Truck was stolen from the custody of the Revenue Officer. On perusal of F.I.R., it appears that, Chasis and Registration number of the seized Hyva Truck was found scored off. At the time of drawing of seizure panchanama registration number of the Hyva Truck was noted as MH-20-DG-6277 as per say of the Driver of said Hyva Truck but subsequently it was found missing from the parking place on 04.11.2022.

9. According to the informant as per the confidential information, original registration number of the seized Hyva Truck is

MH-46-F-4816. According to the seizure panchanama, registration number of the Hyva Truck is MH-20-DG-6277, which is written as per say of Driver of Hyva Truck, but subsequently it was found missing from the parking place on 04.11.2022. There is also existence of dispute about actual Chasis number as it was found scored off. Therefore, unless and until, report of the Registration Authority i.e., Regional Transport Office is called to testify which is the correct Chasis and Registration number of the seized Hyva Truck, it cannot be held that the present Petitioner is the owner of the seized Hyva Truck. However, without considering and examining all these aspects, the learned Judicial Magistrate First Class, Aurangabad passed an order and released the seized Hyva Truck in favour of the Petitioner. While passing the impugned order, the learned Sessions Court categorically held that, the Hyva Truck was seized for conducting confiscation proceeding, but it was stolen by the accused. So also, the petitioner claimed to be the owner of the said vehicle. Therefore, learned Session Court directed the present Petitioner to reinstate possession of said Truck to the Investigating Officer, hence, impugned order does not appear illegal, perverse, bad in law and no substantial grounds are set out to interfere with said findings. Therefore, Petition is dismissed. The earlier Interim Relief granted by this Court is hereby

stand vacated. At this juncture, the learned counsel for the petitioner seeks two weeks time for return of the Hyva Truck. Therefore, the petitioner is hereby directed to handover custody of the Hyva to the investigation officer within a period of two weeks from today, failing which, the Investigation Officer will be at liberty to take necessary action as per law.

[Y. G. KHOBRAGADE, J.]

HRJadhav