



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

Criminal Writ Petition No. 1292 Of 2024

Bhimrao s/o Sahebrao Nirmal
Age : 76 years, Occupation-Agri.
R/o Thergaon, Tq. Paithan,
District Chatrapati Sambhajinagar. .. **Petitioner**

Versus

State of Maharashtra
through Pachod Police Station,
Pachod, Tq. Paithan,
District Chatrapati Sambhajinagar. .. **Respondent**

- * Mr. Swapnil S. Patunkar i/by J.P. Legal Associates, Advocate for the Petitioner.
- * Mr. K.K. Naik, APP for Respondent/State.

CORAM : SHAILESH P. BRAHME, J.

Date On Which The
Arguments Were Heard : **19th MARCH 2025**

Date On Which The
Order Is Pronounced : **27th MARCH 2025**

FINAL ORDER :

. Heard both sides finally as the matter pertains to custody of the vehicle.

2. The Petitioner is aggrieved by the order of rejecting his Criminal Application No.77/2024 vide order dated 06.05.2024 denying him custody of the

vehicle and order of Revisional Court, dismissing the revision on 07.07.2024.

3. The Petitioner is involved in offence bearing C.R. No.127/2024 registered with Pachod Police Station for offence under Section 65(a) of Maharashtra Prohibition Act, 1949 (hereinafter referred to as 'Act'). By seizure panchanama dated 15.04.2024, the vehicle, four-wheeler Bolero, having registration no. MH20EJ7466 was seized which was carrying illicit liquor. Since then, the vehicle is lying with the Police Station. By impugned order the Petitioner is denied the custody of the vehicle, though he produced document showing ownership of it.

4. Learned Counsel Mr. Swapnil Patunkar for the Petitioner submits that there is cogent evidence on record to show that Petitioner is the owner of the vehicle and even to the extent of ownership, both the Courts are in his favour, then he should have been given custody. It is submitted that there is no point in keeping the vehicle in the Police Station which would cause damage to it. He would further submit that Petitioner has obtained loan over the vehicle and using the same to earn his livelihood. It is further submitted that though previously the same was involved in offence, that would not be a ground to deny the custody.

5. Learned Counsel for the Petitioner places reliance on the following judgments :

- i Sunderbhai Ambalal Desai Vs. State of Gujarat
2002(10) SCC 283.
- ii Jeevan Pundlikrao Kendre Vs. State of Maharashtra
2005 (Supp.) Bom.C.R. (Cri.) 129.

6. Per contra, learned APP supports orders passed by both Courts below. He would tender relevant papers on record to demonstrate that the Petitioner is habitual offender and he has indulged in similar kind of offences frequently. On earlier occasion, selfsame vehicle was seized which was found to have carrying illicit liquor and it was released in his favour by imposing conditions. Flouting those conditions and the bond executed by him, again the present offence is committed. It is further submitted that there is every possibility of using the vehicle for committing the similar offences.

7. I have considered rival submissions of the parties. There is no dispute that selfsame vehicle was also involved in offence bearing C.R. No.311/2021 registered under Section 65(e) of the Act. It was released vide order dated 03.12.2021. Again the Petitioner used same vehicle for carrying illicit liquor and present offence is registered on 16.04.2024 bearing C.R. No.127/2024. In this backdrop, the Petitioner's claim for custody of the vehicle needs to be addressed.

8. It transpires from police papers that the Petitioner is a habitual offender. Following are the offences registered against him :

Sr. No.	Cr. No.	Date	Offence
1	120/2024	12.04.2024	65 (e)
2	39/2019	26.01.2019	65 (e)
3	324/2018	14.10.2018	65 (e)
4	127/2024	16.04.2024	65 (a)

9. In a previous offence the same vehicle was seized and released in favour of the Petitioner vide order dated 03.12.2021. While releasing the vehicle, the condition was imposed that it should not be used for any illegal activity. In pursuance of the order, Petitioner had executed bond on 04.12.2021 and undertaken not to use the vehicle in any offence. On 15.04.2024, he was found to have used the vehicle for carrying illicit liquor. This conduct is in breach of earlier order as well as bond executed by him. There are eye witnesses to the incident in question. There is clinching evidence against him.

10. Normally, the vehicle could have been released to the owner, though involved in the offence. There is a record that Petitioner is habitual offender. He has habit of using the vehicle for committing similar type of offence. Thus his claim that he needs vehicle to earn his livelihood is vulnerable. Under these particular circumstances, I find that no discretion can be exercised in his favour to release the vehicle.

11. The orders passed by both the Courts below do not suffer any perversity or illegality. All aspects of the matter have been taken into consideration by them. The Petitioner's claim is rightly rejected by both the Courts below and no interference is called for.

12. The Petitioner is relied on the judgment of Sunderbhai Ambalal Desai (supra). That was not a case wherein the accused was found to be habitual and he was using the vehicle repetitively for committing similar type of offences. On facts the case is distinguishable. Therefore I do not find that this judgment is helpful to the Petitioner. The reliance is placed on the judgment in the matter of Jeevan Pundlikrao Kendre (supra). That is also distinguishable on facts and does not help to the Petitioner.

13. For the reasons recorded above, I do not find that any case is made out. Petition sans merit. Criminal Writ Petition is dismissed.

**SHAILESH P. BRAHME
JUDGE**

Najeeb..