



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

26 CRIMINAL WRIT PETITION NO. 1302 OF 2022

Jyoti Rajendra Mali

VERSUS

The State of Maharashtra and another

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Advocate for the Petitioner : Mr. Undre Vikram S

APP for Respondent No.1: Mr. A.R. Kale

Advocate for Respondent No.2 : Mr. Satej S. Jadhav

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**CORAM : SMT. VIBHA KANKANWADI AND
SANJAY A. DESHMUKH, JJ.**

DATED : 29th JANUARY, 2025

PER COURT :-

1. By invoking the Constitutional powers of this Court, under Article 226 of the Constitution of India, the petitioner has made the following prayer:-

“A) By issuing writ of mandamus or any other writ in the like nature, this Hon'ble court may kindly be pleased to direct the respondent to take action in accordance with the application dated 28.01.2022 filed by the present petitioner and further hand over the custody of the Hyundai Creta Car bearing No. MH-19-CZ-8280 to the petitioner.”

2. Heard learned advocates for the respective parties.

3. Learned advocate for the petitioner has taken us through the F.I.R. lodged by the petitioner vide Crime No. 201 of 2021 on

03.08.2021, for the offence punishable under Section 392 of I.P.C. with Bodhwad police station, district Jalgaon, R.C. book extract of the vehicle, insurance cover note of the vehicle and also an application dated 28.01.2022, made to the District Superintendent of Police, Jalgaon. It is submitted that the petitioner is owner of four wheeler vehicle Hyundai Creta, bearing No. MH-19-CZ-8280 for which she has taken finance from ICICI bank. She states that her husband expired five years ago prior to lodging of F.I.R.. A hotel by name 'Raj Hotel', which was in the name of the petitioner, was given to respondent No.3 on rent basis. She states that respondent No.3 was not giving rent amount to her, as agreed between them. After purchase of the car, she says that respondent No.3 had come to her house with stamp paper and he requested her for the signature. Upon enquiry, it was stated by respondent No.3 that the said document would be executed for continuation of the rent agreement but she refused. Respondent No.3 then told that he has spent large amount on the hotel. The petitioner had also asked respondent No.3 to return the amount of Rs.6,00,000/-, which he had taken from her as hand loan, on which respondent No.3 got annoyed. At that time, respondent No.3 forcibly snatched the keys of the car from her hand, assaulted on her and took away the vehicle. Till 28.01.2022, the said vehicle was not seized and therefore, the said application was made that the investigating officer be directed to hand over the possession

of the car to her, after seizure. Learned counsel for the petitioner submits that inspite of charge sheet being filed, there was no effort only on the ground that respondent No.3 is a press reporter. If the action is taken in view of application dated 28.01.2022, the petitioner would take appropriate steps for getting the custody of the vehicle.

4. Learned A.P.P. for the respondent-State submits a report dated 18.07.2024, submitted by the investigating officer to him, wherein it is stated that statements of respondent No.3 and his son have been taken. He then says that search is on for the vehicle and if the vehicle is traced out, then further action will be taken. He submits that the investigating officer has been transferred and the present P.S.O. was not aware about the actions taken.

5. Learned advocate for respondent No.3 submits that husband of the petitioner was friend of respondent No.3. As respondent No.3 had intention to purchase the Creta vehicle, he had taken quotation from the Showroom on 06.07.2021 and even had transferred the amount online to the showroom for booking the car. He had sold his old vehicle and then for taking Creta vehicle on finance, he had transferred an amount of Rs.4,70,000/- and Rs.4,50,000/- on 16.07.2021 and 20.07.2021, respectively, through RTGS to the showroom. However, the finance was not getting in his name, therefore, it was the understanding that car would be

purchased in the name of the petitioner for which the amount was taken on loan from ICICI Bank. In fact, he himself had taken the delivery of the car. Photographs were taken at the time of taking possession of the car. Original documents in respect of the car and keys are with him. Respondent No.3 has filed an application for clubbing the F.I.R. and the charge sheet and he has produced all those documents in the said proceeding. Therefore, respondent No.3 is claiming to be owner of the said vehicle though the car stands in the name of the petitioner in RTO record. Therefore, there is no question of seizure of the vehicle nor any offence is transpiring.

6. At the outset, it is to be noted that there appears to be confusions created by the investigating officer when the F.I.R. has been lodged and the investigation has been carried out. It should be fair investigation and this investigating officer appears to have come to the conclusion that the offence has been made out and case needs to be proceeded further by filing charge sheet before the learned J.M.F.C. Bodhwad, bearing R.C.C.No. 20 of 2022. Here, it is to be noted that the said charge sheet has been filed on 31.12.2021 and the present writ petition has been filed somewhere around 17.08.2022. Still copy of the charge sheet was not annexed. If the matter requires further investigation, then the informant can still approach the concerned Magistrate under section 173(8) of the Code of Criminal Procedure, 1973, as has been held by the Hon'ble

Supreme Court in the case of ***Vinubhai Haribhai Malaviya and Ors. vs. The State of Gujarat and Ors.*** ***AIR 2019 SC 5233***. It appears that the present petitioner has not filed any such application but has directly come to this court on the basis of her representation /complaint dated 28.01.2022.

7. As it is transpiring even from the report of the investigating officer, which is alongwith the statement of respondent No.3 and his son (we are not considering its admissibility) but only on the fact that respondent No.3 claims that he possesses the car with him. But at the same time, he is also claiming ownership over the said vehicle. He also admits that the documents are in the name of present petitioner but disputes the possession ever since the date of delivery of the car and also claims transfer of amount of Rs.9,33,000/- by RTGS to the showroom. Under such circumstances, when there are disputed questions of fact, this Court in its Constitutional powers under Article 226 of the Constitution of India, will not dwell upon it and therefore, no case is made out for any such direction as prayed for. The writ petition therefore, stands dismissed.

(SANJAY A. DESHMUKH, J.) (SMT. VIBHA KANKANWADI, J.)

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