



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

CRIMINAL WRIT PETITION NO. 1338 OF 2025

Devendra s/o Jagdish Khattar
Age: 36 years, Occ: Business,
R/o: Balaji Bhavan, Talreja Nagar,
Post Off. Road, Jalna

.....APPLICANT
(Original Accused No.2)

VERSUS

The State Of Maharashtra
Through the Police Inspector,
Pishore Police Station, Dist. Aurangabad

.....RESPONDENT

Mr. Abhaysinh K. Bhosle, Advocate for the Petitioner
Mr. S. S. Dande, APP for Respondent-State
Mr. V. P. Raje, Advocate for intervenor/informant

CORAM : AJIT B. KADETHANKAR, J.

DATED : 17TH OCTOBER, 2025

ORDER :-

1. Criminal Application No.4051 of 2025 filed by the intervenor/applicant is allowed and he is allowed to prosecute the proceedings.

2. Commercial relations in between the petitioner and the informant/complainant which gradually formed discord between them over financial transactions, resulted into lodging of the First Information Report bearing no.85 of 2025

at Pishore Police Station, Chhatrapati Sambhajnagar against the present petitioner under Section 406, 420 and 468 of the Indian Penal Code.

3. It seems that the petitioner is engaged in the trading of country liquor as well as foreign liquor. As also, the informant was also involved in the similar business. The complaint in brief was that by showing a lucrative proposal of expanding the business of liquor trading, the petitioner earned huge amount from informant from time to time which were atleast Rs.94,45,000/-. The complainant alleged that the accused/petitioner cheated him under the pretext of partnership and transfer of liquor license and has committed the offence as are registered in the First Information Report. On receipt of the complaint, the police authorities registered the First Information Report against the petitioner under Section 406, 420, 468, 120B of the Indian Penal Code read with Section 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

4. It is a matter of fact that the prosecution was also against some other five persons. Consequent to the registration of the First Information Report, the vehicle

bearing registration no.MH-21-BV-7866, being the make of 'ERTIGA PERL WHITE CNG' with chasis no. MA3BNC62SNJ532208 and Engine No.K15CN9066189 in the name of the petitioner came to be seized by the concerned Police Authority. The petitioner filed an application under Section 503 of the Bharatiya Nyaya Suraksha Sanhita before the learned Sessions Court, Aurangabad bearing Criminal Miscellaneous Application No.272 of 2025.

5. Mr. Abhaysinh K. Bhosle, learned Advocate would submit that while the application was before the learned Sessions Court, the Investigating Officer made a statement that there may be no objection to release the property however as Section 3 of the M.P.I.D. is invoked, the vehicle may not be released. Mr. Bhosle, learned Advocate would submit that it shows that the Investigating Officer is also not interested to keep the property no more in his custody.

6. The learned Sessions Judge, Aurangabad however vide his order dated 29.07.2025, rejected the application filed by the petitioner. In order to justify the rejection, the learned Sessions Judge, Aurangabad observed that release of the vehicle under the given circumstances would frustrate the

object of Section 4 of the M.P.I.D. Act, and as such the application stood rejected. Now, the petitioner is before this Court vide present Criminal Writ Petition.

7. Mr. Abhaysinh K. Bhosle, learned Advocate for the petitioner would submit that the petitioner has been granted interim protection by this Court in Anticipatory Bail Application No.829 of 2025. He would submit that his Anticipatory Bail Application is yet pending for final consideration. He would submit that the seizure of the vehicle will nothing but to deteriorate the condition of the vehicle and would be in the interest of nobody if they are not released. Mr. Bhosle, learned Advocate would further submit that the petitioner is ready to give adequate undertaking, security as also to convince the Court that the interest of the complainant would be secured even if the subject matter-vehicle would be released. He would further submit that this application is only meant for interim arrangement of hand over of custody of the subject matter-vehicle.

8. Mr. S. S. Dande, learned APP would object the application contending that the purpose of seizure of the vehicle is to secure the interest of the complainant. He would

further submit that there is every reasonable apprehension that if the release is ordered, the petitioner may reduce the valuation of the said vehicle or destroy it. He would submit that even there is reasonable apprehension that the Peittioner shall dispose of the said vehicle. considering this, the application be rejected.

9. Mr. V. P. Raje, learned Advocate for the intervenor/informant of the crime adopts the arguments advanced by Mr. S. S. Dande, learned APP.

10. After hearing both the parties, I find that today the petitioner is enjoying the interim protection granted by this Court. The vehicle is in the custody of the Police Authorities. Undoubtedly, keeping the vehicle idle without absolutely no use would speedily deteriorate the condition of such vehicle. The offences registered against the petitioner also involved offence under M.P.I.D Act. Section 4 of the Act specifically refers to complaints received in respect of failure of financial establishment 'to return the deposit after maturity or on demand by the depositor, or to pay interest or other assured benefits or to provide service promised against such deposit or where the government has reason to believe that any

Financial Establishment is acting in a calculated manner detrimental to the interest of the depositors with an intention to defraud them’.

11. While deciding present petition on the point of handover fo the seized vehicle to the Petitioner, this Court won’t go in the truthfulness of the accusation, and the sole issue would be whether the seized vehicle be released or not. Under these circumstances, the view taken by and the guidelines find by the Hon’ble Supreme Court in the case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat, SLP (Criminal) No.2755 of 2002*** with connected matters could be referred to judge the prayer made by the petitioner in the Writ Petition. The Hon’ble Supreme Court at paragraph 7 and 8 has recorded as follows:

7. In our view, the powers under Section 451 Criminal Procedure Code, 1973 should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

- 1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;*
- 2. Court or the police would not be required to keep the article in safe custody;*
- 3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before*

the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

8. The question of proper custody of the seized article is raised in numbers of matters. In Smt. Basavva Kom Dyamangouda Patil v. State of Mysore and another [(1977)4 SCC 358], this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under:

“4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge

proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance.”

12. So far as custody of vehicle is concern, the observations made by the Hon’ble Supreme Court at paragraph no.17 of this judgment would be relevant.

13. I am of the considered view that in the given circumstances, keeping the running vehicle in idle condition for indefinite period would serve no purpose in the interest of any party. If appropriate rider is imposed on the petitioner in respect of maintaining the said vehicle, producing it before the Court or Investigation Agency as and when called and offering security for such protection would serve purpose of securing the vehicle, but not by custody.

14. In view of above, I pass following order:

ORDER

- a. Writ Petition stands allowed.
- b. The Investigating Officer in Crime No.85 of 2025, Pishore Police Station Chhatrapati Sambhajnagar would release the vehicle bearing registration no.MH-21-BV-7866, being the make of '*ERTIGA PERL WHITE CNG*' with chasis no. MA3BNC62SNJ532208 and Engine No.K15CN9066189 upon furnishing solvent security by the petitioner in the tune of Rs.10,00,000/-.
- c. The petitioner would also file a clear undertaking before the Investigation Officer that in the event of notice given to him to produce the subject matter-vehicle for investigation or inquiry purpose, he would immediately produce the said vehicle to the satisfaction of the Investigation Officer.
- d. The petitioner shall not alter any part or any portion or any nature of the subject matter-vehicle nor shall destroy it nor shall create any charge or third party interest over the subject matter-vehicle.

e. While handing over custody of the subject matter-vehicle to the petitioner, that to after the petitioner complied the condition imposed by this Court, the Investigation Officer shall prepare a detailed proper panchnama of the said vehicle, shall obtain photographs of such vehicle and shall obtain proper security as is directed above.

f. The petitioner in addition shall submit an indemnity bond to the Investigation Officer.

It is clarified that the recording in the order is only to the extent of the prayer for release of the seized vehicle, and nothing in this order shall have any effect on the hearing of the anticipatory bail application and the Trial.

(AJIT B. KADETHANKAR, J.)