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

CRIMINAL WRIT PETITION NO. 1946 OF 2024

BABU KHAN KHAJU KHAN

VERSUS

- 1. THE STATE OF MAHARASHTRA
THR. PISHOR POLICE STATION, TQ. KANNAD, DIST.
AURANGABAD**
- 2. SHREE GANESH GAUSHALA, PALSI, TQ. SILLOD, DIST.
AURANGABAD**

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Mr Niraj P. Chudiwal, Advocate h/f Mr Satej S. Jadhav, Advocate for
Petitioner

Mr G. O. Wattamwar, APP for Respondent No.1/State

Mr Rahul G. Joshi, Advocate for Respondent No.2

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CORAM : SUSHIL M. GHODESWAR, J.

**RESERVED ON : 06 OCTOBER 2025
PRONOUNCED ON : 12 NOVEMBER 2025**

ORDER :-

1. The petitioner is praying for quashing and setting aside the order dated 30/09/2024, passed by the learned Additional Sessions Judge-11, Aurangabad in Criminal Revision Applications No.223/2024, which was arising out of the order dated 19/08/2024, passed by the learned Judicial Magistrate First Class (JMFC), Kannad, Dist. Aurangabad in Criminal Misc. Application No.204/2024, thereby rejecting his prayer for interim custody of 17 buffaloes seized in C.R. No.236/2024 and handing over the same to respondent No.2/Goshala.

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2. The petitioner claims that he is in the business of purchasing and selling animals and had purchased 17 she buffaloes from Nagar Parishad, Ratlam (M.P.) on 02/07/2024. After purchasing the said animals, when he was carrying them to sale out at weekly market at Chhawani, Aurangabad, his vehicle came to be intercepted by Pishor Police and accordingly, his animals came to be seized. Being aggrieved by this, the petitioner had filed an application bearing Cri. Misc. Application No.204/2024 before the learned JMFC, Kannad for getting interim custody of the animals. Respondent No.2 herein who is a Goshala had filed an intervention application in the said application before the learned JMFC, Kannad. Learned JMFC, vide his order dated 19/08/2024, rejected the application of the petitioner and allowed intervention application of respondent No.2 and handed over custody of the said 17 animals to respondent No.2/Goshala. Learned JMFC also directed the petitioner to pay amount of Rs.300/- per day per buffalo for maintenance and care of the seized buffaloes. Being aggrieved by the said order of the learned JMFC dated 19/08/2024, the petitioner preferred Criminal Revision Application No.223/2024 before the learned Additional Sessions Judge-11, Aurangabad. Learned Sessions Judge, vide his order dated 30/09/2024, modified the order of the learned JMFC to the extent only

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reducing of maintenance amount from Rs.300/- to Rs.100/- per day per buffalo. Being aggrieved by the said order, the petitioner has approached this Court, thereby challenging the said order dated 30/09/2024 and also praying for grant of custody of seized buffaloes.

3. Learned Advocate for the petitioner submits that the orders passed by the Courts below are on the basis of assumptions and presumptions, which resulted into great injustice to the petitioner and therefore, they are liable to be quashed and set aside. He further submits that the petitioner is the rightful owner of the buffaloes and is entitled for interim custody of the same. He then submits that the learned Courts below have failed to consider health inspection certificate issued by Government Veterinary Doctor which shows that all buffaloes were found to be healthy.

4. Learned APP for respondent No.1 strongly opposed the petition and submits that the cattle were being carried in cruel manner. There was no arrangement of fodder and water to them. He submits that the cattle were being transported without any permit or certificate or licence and in violation of the Transport of Animal Rules, 1978.

5. Learned Advocate for respondent No.2 also strongly opposed the instant petition. According to him, the petitioner was

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carrying/transporting in violation of transport rules. The informant who supplied information to the police noticed that 8 vehicles were coming from Sillod to Pishor. In the search, police found buffaloes in these vehicles and the said cattle were kept in cruel manner. There was no sufficient space available for the cattle in the vehicles and some buffaloes had also sustained injuries. There was no arrangement of fodder and water to them. Upon enquiry, the drivers of the vehicles could not give satisfactory answer, and therefore, all the cattle from the said vehicles came to be seized. Accordingly, crime is registered against the accused persons under Sections 11(1)(c), 11(1)(d), 11(1)(g), 11(1)(h), 11(1)(j) of the Prevention of Cruelty to Animals Act, 1960, under Sections 66 and 192 of Motor Vehicles Act, 1988 and under Section 119 of Maharashtra Police Act, 1951 and under Section 325 of the Bharatiya Nyaya Sanhita, 2023. He, thus, submits that the petitioner has not only violated the rules of transporting such cattle, however, it is found that the cattle were being treated very badly and in cruel manner. Thus, there is prima facie evidence of cruelty and in these circumstances, learned Courts below have rightly passed the orders, thereby not handing over custody of the said animals to the petitioner, till disposal of criminal cases. He also submits that the petitioner, despite directions given by the learned Magistrate has not

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paid any maintenance amount, and therefore, the instant petition is liable to be dismissed.

6. After hearing the submissions of the respective sides and having perused the investigation papers available on record, it is pertinent to note that the issue involved in the instant matter as regards handing over the custody to the cattle owner during the pendency before the trial Court is no more *res integra* [**Ansar Ahmad and others Vs. State of Maharashtra, thr. PSO and another, (2023 SCC OnLine Bom 1123)**]. Section 8 of the Maharashtra Animal Preservation Act, 1976 (for short 'the 1976 Act') specifically deals with provisions as regards handing over the custody of such seized cattle to the nearest *gosadan, goshala, panjrapole, Hinsa Nivaran Sangh etc.* Sub Section (3) of Section 8 of the 1976 Act reads as under:-

“(3) Any Police Officer not below the rank of Sub-Inspector or any person authorised in this behalf by the State Government, may, with a view to securing compliance of the provisions of sections 5A, 5B, 5C or 5D, for satisfying himself that the provisions of the said sections have been complied with may,—

(a) enter, stop and search, or authorise any person to enter, stop and search any vehicle used or intended to be used for the export of cow, bull or bullock ;

(b) seize or authorise the seizure of cow, bull or bullock in respect of which he suspects that any provision of sections 5A, 5B, 5C or 5D has been, is being or is about to be contravened, alongwith the vehicles in which such cow,

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bull or bullock are found and there after take or authorise the taking of all measures necessary for securing the production of such cow, bull or bullock and the vehicles so seized, in a court and for their safe custody pending such production:

Provided that pending trial, seized cow, bull or bullock shall be handed over to the nearest Gosadan, Goshala, Panjrapole, Hinsa Nivaran Sangh or such other Animal Welfare Organizations willing to accept such custody and the accused shall be liable to pay for their maintenance for the period they remain in custody with any of the said institutions or organizations as per the orders of the court.”

7. The aforesaid provision discloses the power of Police Officer not below rank of Sub-Inspector empowered to seize cattle in respect of which he suspects that any provision of Sections 5A, 5B, 5C and 5D *has been, is being or is about to be* contravening, alongwith the vehicles in which such cow, bull or bullock are found. The said vehicle is required to take all measures necessary for securing of production of such cow, bull or bullock and the vehicle so seized, in a Court and for their safe custody pending such production. Vide aforesaid proviso, the custody of the said seized cattle can be handed over to nearest *Gosadan, Goshala, Panjrapole*, etc. for regular day to day maintenance of these cattle. By virtue of said provisions, the custody of the animals accordingly handed over to respondent No.2 which is a Goshala and which is maintaining the cattle so seized by the Investigating Officer. However, it is brought to the notice of this Court

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that, despite so being directed by the learned JMFC, that the petitioner is required to pay maintenance of Rs.300/- per day per cattle, which came to be subsequently reduced to the extent of Rs.100/- per day per cattle, is not being paid till date and this position is not disputed by anybody including Advocate for the petitioner. In this respect, the Central Legislation, namely, Prevention of Cruelty to Animal Act, 1960 is very relevant. Section 3 of the said Act deals with a duty of person having charge of animals, which reads thus :

“3. Duties of persons having charge of animals : It shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering.”

8. The Chapter III of the above Act is ‘Cruelty To Animals Generally’. Section 11 explains what is cruelty to the animals. It is also pertinent to mention here that the Government has also framed the Rules, namely, Transport of Animals Rules, 1978 in which procedures and rules for transporting the cattle through vehicle have been elaborately provided. The Chapter IV of the said Rules is very clear, elaborative and mandatory in nature.

9. Now coming back to the provisions of Section 8(3) of the Maharashtra Animal Preservation Act, 1976 which depicts very clear

intention of the legislature by indicating to give effect to the object of the Maharashtra Act to preserve and protect the cow, bull and bullocks useful for milch, breeding, draught or agricultural purpose. The said enactment also provides for handing over all the seized cow, bull or bullocks to the nearest Goshala willing to accept custody of such cattle. In the case in hand, respondent No.2 i.e. Goshala very much ready and willing to accept the custody of the cattle.

10. It is to be stated here that while deciding such matter, the prime consideration must be the welfare, protection and proper maintenance of the animals. The Court is required to see who is comparatively better suited and equipped to provide the necessary comfort and protection to animals. The Courts below have rightly found that petitioner is not entitled to get custody of animals.

11. The petitioner has been found transporting the cattle by breaching of the provisions of Act and Rules. The custody of the seized cattle has been handed over to respondent No.2/Goshala which is maintaining the said seized cattle. The trial in respect of FIR for the offence registered against the petitioner in respect of Crime No. 236/2024 for the offences punishable under Sections 11(1)(c), 11(1)(d), 11(1)(g), 11(1)(h), 11(1)(j) of the Prevention of Cruelty to Animals

Act, 1960; under Sections 66 and 192 of Motor Vehicles Act, 1988; under Section 119 of Maharashtra Police Act, 1951 and under Section 325 of the Bharatiya Nyaya Sanhita, 2023, is pending before the Trial Court. In such circumstances, it is not appropriate to hand over the custody of the animals to the petitioner who is facing aforesaid prosecution. If the petitioner/accused is finally found to be not guilty, then the issue of handing over the custody of the animals will be logically dealt with in accordance with the concerned Rules and Regulation. But at this stage the accused is definitely not entitled to claim custody of the seized cattle. However, the case before the learned JMFC cannot also be prolonged as the issue is of custody and maintenance of the livestock/cattle which are seized and are being maintained by respondent No.2/Goshala. Therefore, it will be appropriate to direct to the learned Trial Court to complete the trial within a period of six months from today.

12. With the above observations and directions, the writ petition is dismissed.

[SUSHIL M. GHODESWAR, J.]