

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 5888 OF 2025

Mehernosh Jamshed Bharucha ...Petitioner

Versus

State Of Maharashtra And Anr. ...Respondents

Mr. Tushar Halwai, for the Petitioner.
Smt. R. S. Tendulkar, APP for the State.

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CORAM: N. J. JAMADAR, J.
DATED: 17th NOVEMBER, 2025

Oral Order:-

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 10th July, 2024 passed by the learned Magistrate, 38th Court, Ballard Pier, Mazgaon, whereby an application preferred by the petitioner – first informant to return the car i.e. MP43/CA1097, which was seized from respondent No.2 - accused No.1, during the course of investigation, came to be rejected.
3. The case of the first informant was that, accused No.1 and the co-accused had extorted huge money from the first informant and out of the proceeds of crime the above-numbered car was purchased in the name of accused No.1. The learned Magistrate has rejected the application on the ground that the

petitioner is not the registered owner of the said car, and whether the car was purchased out of the proceeds of crime is a matter for adjudication at the trial.

4. Evidently, respondent No.2 – accused No.1 has not filed reply to the application for return of the car. As the car stands in the name of respondent No.2 and has also been seized at the instance of respondent No.2, it was necessary to obtain the say of respondent No.2 on the said application. In the event, respondent No.2 chooses not to file reply to the application for return of the property, the learned Magistrate would be justified in drawing an appropriate inference. Moreover, the learned Magistrate would be required to bestow consideration on the aspect as to whether the car should be allowed to be kept in the custody of the police during the pendency of the trial, which may take its own time, having regard to the decision of the Supreme Court in the case of *Sunderbhai Ambalal Desai vs. State of Gujarat*¹.

5. The Writ petition, thus, stands disposed with the following directions:

(i) The impugned order stands quashed and set aside.

¹ 2002 (10) SCC 283.

(ii) The application stands remitted back to the Court of the learned Magistrate for a fresh decision.

(iii) The learned Magistrate shall give four weeks time to respondent Nos.2 and 3 - the accused, to file say to the application for return of property.

(iv) In the event, respondent Nos.2 and 3 – accused do not file say, the learned Magistrate would be at liberty to draw appropriate inferences on account of failure of respondent Nos.2 and 3, and decide the application for return of the property in accordance with law.

[N. J. JAMADAR, J.]