



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.75 OF 2025

PETITIONER : **Omprakash S/o Madhukar Gotmare,**
Aged about 27 years, Occ – Private, R/o
Kurkheda, Tah-Kurkheda, District –
Gadchiroli.

..VERSUS..

RESPONDENTS : **State of Maharashtra,**
Through Forest Range Officer, South Umred
Nagpur.

Mr A. Y. Sharma, Advocate for Petitioner.
Mr N. R. Rode, APP for Respondent/State.

CORAM : **M. W. CHANDWANI, J.**

DATED : **28th MARCH, 2025.**

ORAL JUDGMENT

1. By this writ petition, the petitioner challenges the order dated 19.07.2024 passed below Exhibit – 1 by the learned Judicial Magistrate First Class, Bhiwapur, thereby rejecting the application of the petitioner for releasing the vehicle i.e. Bolero Pick Up having registration No.MH-33/T-2568 on Supratnama. The learned Additional Sessions Judge-1, Nagpur, by its judgment and order dated 14.11.2024 passed in Criminal Revision Application No.180 of 2024 confirmed the order of the learned Trial Court.

2. It is not necessary to go into the matrix of the case in detail. Suffice to say that the petitioner is the owner of the alleged Bolero Pick

Up vehicle. The driver of the said vehicle was prosecuted for transporting wild pigs and therefore, offences under Sections 9, 39, 49(A) and 51 of the Wild Life (Protection) Act, 1972 (hereinafter referred to as, “the Act of 1972”) were registered. The chargesheet came to be filed. The petitioner moved an application for releasing the vehicle on supratnama. The learned Trial Court as well as the learned Revisional Court held that the vehicle is liable to be confiscated under Section 52 of the Indian Forest Act, 1927 and therefore, it cannot be released. The contention is that the confiscation proceedings have not been initiated by the Assistant Conservator of Forest and therefore, the Revisional Court erred in holding that the Magistrate has no power to release the vehicle on supratnama. Therefore, the order impugned does not sustain.

3. Per contra, the learned Additional Public Prosecutor for the respondent/State submitted that it is not the Forest Act but the provisions of the Wild Life (Protection) Act that will be applicable since the offence is registered under the Act of 1972. He drew my attention to Section 39(1)(d) of the Act of 1972 which provides that any vehicle used in the commission of an offence under the Act shall be the property of the Government. Further, the provision under Section 51(2) provides that when any person is convicted in any offence against this Act, the vehicle used in alleged crime will be forfeited to the State Government. Therefore, the argument that until the confiscation proceedings are not

initiated by the concerned Authority, the Magistrate has power to release the vehicle is not applicable in cases of seizure of the vehicles under the Act of 1972.

4. With the able assistance of the learned counsel for the petitioner as well as the learned A.P.P. for the respondent/State, I have gone through Section 39(1)(d) of the Act of 1972, which is reproduced as under :

“39. Wild animals, etc., to be Government Property -

(1) Every -

(d) vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of this Act shall be the property of the State Government, and, where such animal is hunted in a sanctuary or National Park declared by the Central Government, such animal or any animal, article, trophy, uncured trophy or meat [derived from such animal or any vehicle, vessel, weapon, trap or tool used in such hunting] shall be the property of the Central Government.”

5. Even Section 51(2) of the Act of 1972 contemplates forfeiture of the vehicle by the Government upon conviction. Apart from this, the Hon’ble Supreme Court in the case of ***State of Madhya Pradesh and Others vs. Madhukar Rao, (2008) 14 SCC 624***, relied upon by the learned counsel for the petitioner, has held in para 19 of the decision as under :

“19. We find that the Full Bench of the High Court has correctly taken the view that the deletion of sub-section (2) and its replacement by sub-section (3-A) in Section 50 of the Act had no effect on the powers of the Magistrate to release the seized vehicle

during the pendency of trial under the provisions of the Code. The effect of deletion of sub-section (2) and its replacement by sub-section (3-A) may be summed up thus: as long as, sub-section (2) of Section 50 was on the Statute Book the Magistrate would not entertain a prayer for interim release of a seized vehicle etc. until an application for release was made before the departmental authorities as provided in that sub-section. Further, in case the prayer for interim release was rejected by the departmental authority the findings or observations made in its order would receive due consideration and would carry a lot of weight before the Magistrate while considering the prayer for interim release of the vehicle. But now that sub-section (2) of Section 50 stands deleted, an aggrieved person has no option but to approach the Magistrate directly for interim release of the seized vehicle.”

Thereafter, the Supreme Court in paragraphs 22 and 23 of the same decision has held as under:

“22. We have, therefore, no doubt that the provisions of Section 50 of the Act and the amendments made thereunder do not in any way affect the Magistrate’s power to make an order of interim release of the vehicle under Section 451 of the Code.

23. Learned counsel submitted that Section 39(1)(d) of the Act made the articles seized under Section 50(1)(c) of the Act as government property and, therefore, there was no question of their release. The submission was carefully considered by the Full Bench of the High Court and on an examination of the various provisions of the Act it was held that the provision of Section 39(1)(d) would come into play only after a court of competent jurisdiction found the accusation and the allegations made against the accused as true and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence. Any attempt to operationalise Section 39(1)(d) of the Act merely on the basis of seizure and accusations/allegations levelled by the departmental authorities would bring it into conflict with the constitutional provisions and would render it unconstitutional and invalid. In our opinion, the High Court has taken a perfectly correct view and the provisions of Section 39(1)(d) cannot be used against exercise of the Magisterial power to release the vehicle during pendency of the trial.”

6. In view of the law enunciated by the Supreme Court, particularly post-amendment to Section 50 of the Act of 1972, it is the Magistrate who has the power to release the vehicle seized in crime alleging commencement of offence under the Act of 1972 pending trial. More particularly, since there is no provision under the Wild Life (Protection) Act, 1972 empowering any Authority to confiscate the vehicle. Rather, here, only upon conviction by the Magistrate will the vehicle become property of the Central Government. In view of this, the finding recorded by the Trial Court relying on the provisions of the Forest Act does not stand to reason and is required to be set aside. The petition deserves to be allowed. Hence, I proceed to pass the following order :

(i) The criminal writ petition is **allowed**.

(ii) The impugned order dated 19.07.2024 passed below Exhibit – 1 in Criminal M. A. No.66 of 2024 by the learned Judicial Magistrate First Class, Bhiwapur and the impugned judgment and order dated 14.11.2024 passed in Criminal Revision Application No.180 of 2024 by the learned Additional Sessions Judge-1, Nagpur, are hereby quashed and set aside.

(iii) Pending the trial, the vehicle i.e. Bolero Pick Up having registration No.MH-33/T-2568 seized in Forest Crime

No.04857/121402/2024 shall be handed over to the petitioner on executing supratnama bond of Rs.10,00,000/- subject to the condition that the petitioner shall not dispose of or alter the nature of the vehicle.

(iv) The Authority shall take photographs, prepare a detailed panchanama regarding the vehicle's condition and produce it as and when directed.

7. The Criminal writ petition stands disposed of accordingly.

(M. W. CHANDWANI, J.)

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