



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

CRIMINAL WRIT PETITION NO.202 OF 2025

Aazam Khan s/o Aslam Khan
Aged about 24 years, Occ : Business,
R/o. Ward No.16, Mukerwadi,
Sarangpur, Rajgadh, Madhya Pradesh
At present R/at – Near Mokshadham
Chittorgarh, Rajasthan

...PETITIONER

VERSUS

State of Maharashtra,
through Police Station Officer,
Police Station Warud,
Tq. Warud, District Amravati

...RESPONDENT

Mr. S.B. Gandhe, Advocate for the petitioner.
Mr. N.R. Rode, APP for the State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : JULY 03, 2025.

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally with the consent of the learned Counsel for both the parties.

3. The order passed by the Judicial Magistrate First Class, Court No.1, Warud rejecting the application for release of the vehicle confirmed by the District Judge-1 and Additional Sessions Judge, Warud is under challenge in the present writ petition.

4. The respondent – police station registered an offence against the petitioner and other co-accused vide Crime No.556/2023 for the offences punishable under Sections 429 of the Indian Penal Code and Sections 11(1)(d), 11(1)(e) of the Prevention of Cruelty to Animals Act, 1960 ('the Act of 1960') and under Sections 5(a), 5(b) and 9 of the Maharashtra Animal Preservation Act, 1976 ('the Act of 1976'). The police have seized the vehicle truck bearing No.RJ-09-GD-6507. The petitioner is the owner of the said seized vehicle. The petitioner preferred an application before the Judicial Magistrate First Class, Warud being the owner of the seized truck for releasing of the vehicle under Section 457 of the Code of Criminal Procedure by preferring an application bearing Criminal M.A. No.324/2023. The same was rejected by the Judicial Magistrate First Class. Against the same, the Criminal Revision No.3/2024 is filed which is also came to be dismissed.

5. Learned Counsel for the petitioner submitted that though there is a special law but the special law nowhere restrains the court

from releasing of the vehicle. He further submitted that the general provisions contained under Chapter XXXIV of the Code of Criminal Procedure would apply. The trial Court ought to have consider this and no purpose would be served by keeping the said vehicle at the police station. It would cause the damage to the said vehicle. If the vehicle is kept lying at the police station during passage of time it would became worthless. In view of that, on some terms and conditions it be released and the custody be handed over to the present petitioner.

6. Learned APP strongly opposed the said petition on the ground that the cattle were found transported by the use of the said vehicle and the cattle were tied in the vehicle by causing cruelty to them due to which one of the cattle died. As far as the confiscation of the said vehicle is concerned that process is not completed but the cattle are already handed over to the Gaushala and there is no order of Magistrate for forfeiture of the animals. Moreover, there is likelihood of repetition of the said offence. In view of that, learned Magistrate as well as learned Sessions Judge rightly rejected the application, and therefore, no interference is called for.

7. Learned Counsel for the petitioner placed reliance on the order of this Court in **Mohammad Razique Mohammad Sabir Vs. State of**

Maharashtra and Shri Vijaykumar Mukundilal Vs. State of Maharashtra

[MANU/MH/2894/2022] wherein this Court has considered this aspect and release the vehicle.

8. On perusal of the provisions of the Act and the investigation papers it reveals that no proceeding was initiated as far as the confiscation of the vehicle is concerned which was used for transporting the animals against the Rules and Regulations. The Rules are exhaustive to contend about the custody of animals pending litigation, cost of care and maintenance of animals pending litigation, execution of bond etc. Rule 5(1) of the Rules of 2017 mandates that, the Magistrate while handing over the custody of animals to the Gaushala, shall determine the reasonable amount and cost incurred and anticipated to be incurred for transport, maintenance and treatment of the animals and shall direct the accused and the owner to execute a bond of determined value with surety within three days and on its failure, the animal shall stand forfeited to Gaushala. The said Rule never cast any obligation upon the vehicle owner, but it speaks about the obligation of the owner of animals. Much emphasis is laid on Sub-rules (4) and (5) of the Rules of 2017 which says that the vehicle involved in the offence shall direct to be held as a security and the vehicle owner shall be jointly and severally liable for cost of transport, treatment and care of animals. Since

Sub-clause (5) of said Rules casts joint and several liability, the vehicle owner cannot shade his responsibility of paying cost as directed.

9. Though vehicle is to be held as a security the aspect is about handing over temporary custody of vehicle during the pendency of the Trial. Rule 5(1) of the Rules of 2017 is specific having consequence of default that, if within three days from the order of the Magistrate, the owner fails to execute a requisite bond, animal shall stand forfeited to the Gaushala. Thus, there would be automatic forfeiture of animal on failure of owner.

10. Learned Counsel for the applicant submitted that still Magistrate has not passed any order as to the confiscation and the vehicle or the forfeiture of the cattle. It is informed that the owner has not approached to the Magistrate for release of cattle.

11. It is not disputed that the petitioner is the owner of the said vehicle. As observed by this Court by referring the judgment of **Sunderbhai Ambalal Desai Vs. State of Gujarat [(2002) 10 SCC 283]**, wherein the Hon'ble Apex Court held as under:

“In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass

appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time.”

12. Though the vehicle is seized for the offence under the special statute, no specific provision is brought to the notice about confiscation of vehicle. In absence of such provision under the Rules of 2017, the general provisions contained under Chapter XXXIV of the Code of Criminal Procedure would apply. The Trial Court will take considerable time for disposal of case. In the meanwhile, if vehicle is kept lying at the Police Station, during passage of time it would become worthless. In view of the above said findings recorded, the impugned order passed by the learned Magistrate, Warud as well as the District Judge-1 and Additional Sessions Judge, Warud are quashed and set aside. Accordingly, I proceed to pass following order:

- (i) The writ petition is allowed.
- (ii) The petitioner shall deposit the respective amount at the rate of Rs.200/- per cattle per day for the period of 10 days, during which the Magistrate if not already passed order, shall pass appropriate orders in terms of Rule 5(1) of the Rules of 2017.

(iii) The vehicle truck bearing No.RJ-09-GD-6507 shall be released temporarily tendering the photocopy of the document of ownership of the vehicle to the satisfaction of the Magistrate.

(iv) The temporary custody is handed over on condition that the vehicle shall not be used in any crime.

(v) The petitioner shall provide photograph of vehicle from all sides to the Investigating Officer. The detail panchnama of the vehicle shall be made by the Investigating Officer and place it along with photographs.

(vi) The petitioner shall not hand over possession of vehicle to third party, or shall not alienate or create charge in any manner and shall not change the appearance of vehicle outer or inner, till conclusion of trial.

(vii) The petitioner shall execute a bond of Rs.10,00,000/- for the satisfaction of the Magistrate.

13. The writ petition stands disposed of.

(URMILA JOSHI-PHALKE, J.)