



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

CRIMINAL WRIT PETITION NO.301 OF 2025

Baban Vasantrao Kasab
Aged about 35 years,
Occupation: Labour,
R/o. Shivaji Ward, Pusad,
Tah. Pusad, District Yavatmal

...PETITIONER

VERSUS

State of Maharashtra
through Police Station Officer,
Pusad (Gramin),
District Yavatmal

...RESPONDENT

Mr. P.J. Vairagade, Advocate for the petitioner.
Mrs. M.A. Barabde, 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. By this writ petition, the petitioner has challenged the order passed by the Judicial Magistrate First Class, Pusad in Misc. Criminal Case No.263/2024 by which the application of the present petitioner for release of the vehicle bearing No.MH-29-BD-1995 is rejected and the said order is conferred by the Additional Sessions Judge, Court No.1, Pusad by order dated 04/12/2024.

4. The brief facts for the disposal of the petition are at under:

A] The petitioner is the owner of three wheeler passenger auto bearing No.MH-29-BD-1995 bearing Chassis No.MBX0007BF1K228237 and Engine No.S1D9172397. The respondent has lodged the First Information Report dated 31/08/2024 against the present petitioner and others for the offences punishable under Section 49 of Bharatiya Nyaya Sanhita, 2023 and Section 65(E) of Maharashtra Prohibition Act, 1949 on an allegation that the respondent has received a secret information regarding transport of illegal alcohol in the auto bearing No.MH-29-BD-1995 owned by the present petitioner and found one thousand bottle of liquor amounting to Rs.2,35,000/- and said vehicle was seized and lying with the investigating agency.

5. It is the contention of the learned Counsel for the petitioner that the confiscation proceeding is not initiated. If the vehicle is kept at

the police station it would become worthless for non-using of the said vehicle. He submitted that he would abide by all the conditions imposed by this Court. He also invited my attention towards the order passed by the Judicial Magistrate First Class as well as the Additional Sessions Judge, Pusad and submitted that the application and the criminal revision is dismissed only on the ground that no confiscation proceeding was initiated against the said vehicle, and therefore, the application is rejected and the said order is maintained. He submitted that as far as the confiscation of the vehicle is concerned it was the Investigating Officer who has to initiate the action by obtaining the order of the Magistrate. Merely because they have not obtained the order, the vehicle of the present applicant cannot be detained. In support of his contention he placed reliance on the decision of this Court in the case of **Mr. Vijay s/o Kashinath Wankar Vs. Additional Superintendent of Police/Competent Authority, Gadchiroli and anr.** in Criminal Writ Petition No.987/2017 dated 09/01/2018 and submitted that the present writ petition is covered by the observation of this Court in the said decision reported in Law Finder document id No.979560.

6. Learning APP strongly opposed the said petition on the ground that the learned trial Court has rightly considered that the investigation is in progress and admittedly the confiscation proceeding is

not initiated but if the vehicle is handed over to the present petitioner, then it is every possibility that the same would be used in rebutting the said offence. In view of that, the order passed by the Magistrate as well the Additional Session Judge is proper and correct one and writ petition is devoid of merits and liable to be dismissed.

7. I have heard learned Counsel for both the sides and on perusal of the recitals of the writ petition as well as the documents on record, it reveals that a criminal prosecution was lodged against the present petitioner for offences punishable under Section 65(a) of the Maharashtra Prohibition Act arising out of Crime No.627/2024 and during the raid one thousand bottles of illicit liquor were seized from the said vehicle. Admittedly, no confiscation proceeding is initiated against the petitioner pending the trial. No order is obtained from the Magistrate also for confiscating the vehicle. Thus, the vehicle is lying with the police station.

8. Learned Counsel for the petitioner rightly submitted that as no confiscation proceeding is initiated, keeping the vehicle at the police station would turn the vehicle in a worthless position. In view of that, the petitioner be permitted to use the vehicle for earning his livelihood.

9. This Court has considered the provisions of Section 98(2), 100 to 101 of the Maharashtra Prohibition Act in the decision which is relied upon and by reproducing the same, it is observed that seized vehicle is Auto Rickshaw and if the vehicle is kept at the police station ideally then definitely there is every possibility of causing damage to the said vehicle. It is further observed by this Court that as confiscation proceeding is not initiated against the said vehicle, no purpose would be served by keeping the said vehicle at the police station. As far as the apprehension regarding the use of the said vehicle in any crime is concerned, the condition can be imposed. It is further requires to be taken into consideration the observation of this Court while entertaining the writ petition in para No.9 wherein it is observed as under :

“09] Whenever, a manifestly illegal order is passed and some relief which cannot be ordinarily granted by an authority before whom the statutory appeal lies, the writ jurisdiction of this Court under Article 227 of the Constitution of India can always be invoked. This is what happened in the present case. The impugned order as stated earlier is manifestly illegal and has been passed without any jurisdiction having been vested in the authorized officer.”

10. In the present case, by observing the order passed by the Magistrate it reveals that the Magistrate only assigned the reasons that 1000 bottles are found in the said vehicle and the accused No.2 has not

cooperated with the investigating agency. Except the abovesaid reason, no other reason is assigned behind the rejection of the application. Considering that non-reasoned order is passed by the Magistrate which requires to be interfered. Moreover, no purpose would be served by keeping the said vehicle at the police station. However, considering the vehicle is used in transporting the illicit liquor, some conditions require to be imposed. In view of that, the writ petition deserves to be allowed. Accordingly, I proceed to pass the following order:

- (i) The writ petition is allowed.
- (ii) The impugned order is quashed and set aside.
- (iii) The vehicle bearing No.MH-29-BD-1995 shall be released and handed over to the petitioner on executing the bond of Rs.2,00,000/-.
- (iv) The petitioner shall not sale or create any charge on the said vehicle and shall not change the outer or inner look of the said vehicle till the disposal of the trial.
- (v) The petitioner shall present the vehicle before the Investigating Officer or before the Court if directed by the Court.

(vi) Learned Magistrate shall obtain the details of the vehicle and also obtain the photographs of the said vehicle from the petitioner.

(vii) The petitioner shall also produce before the Magistrate the photocopy of the RTO registration certificate and keep it on the record.

11. The writ petition stands disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*