



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 772 OF 2025

- 1] **Mata Indrayani Gaushala**
Bramhapuri Fata,
Bramhangaon,
Taluka & Dist. Parbhani
Through Its Authorized Person - Datta Raghunath Pahare
Age : 46 years, Occ. Agri.
R/o. Village Mandhani
Taluka Jinutur, District : Parbhani *... Petitioner*

VERSUS

- 1] **The State Of Maharashtra**
Through Police Station, Nanalpeth
Parbhani, Taluka & District : Parbhani
- 2] **Shaikh Yunus Shaikh Chand**
Age : 54 years, Occu. Agriculturist,
R/o. Pedgaon, Tq. & Dist. Parbhani *... Respondents*

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- Mr. Shrimant Mundhe, Advocate for the Petitioner
- Mr. A. S. Shinde, APP for Respondent No. 1 - State
- Mr. Saeed S. Shaikh, a/w Mr. Sidhesh V. Jadhwar, Advocates for Respondent No. 2

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CORAM : MEHROZ K. PATHAN, J.

RESERVED ON : 11.02.2026

PRONOUNCED ON : 26.02.2026

ORDER :

1. The petitioner has filed the present writ petition, thereby praying for quashing and setting aside the judgment and order dated

31.05.2025, passed by the learned Additional Sessions Judge – 2, Parbhani in Criminal Revision No. 22 of 2025 and further praying for confirming the order passed below Exh. 1 by learned Judicial Magistrate First Class in Criminal Miscellaneous Application No. 149 of 2024.

2. Case of the prosecution as is disclosed from the copy of the FIR shows that informant who is Assistant Police Inspector of Nanalpeth Police Station, Parbhani received secret information on 04/04/2024 that one Eicher Tempo filled with cattle was proceeding from Jintur road. He informed this fact to his superior and thereafter, he along with other police persons went to Visawa Fata by private vehicle to conduct raid. At about 04.15 p.m. they saw that the tempo filled with cattle was proceeding. They gave signal by the hand for stopping the Tempo. They inspected the Tempo and found 9 cattle (8 bullocks and 1 calf). When the police enquired with the driver of the tempo as to whether he possessed a valid permit or licence to transport the cattle, the driver replied that the cattle belonged to his brother, namely Shaikh Usman Shaikh Yunus, who also arrived at the spot on a motorcycle. However, neither the driver nor the said owner produced any licence or document authorising the purchase or sale of the cattle. Consequently, the police suspected that the cattle were being transported for the purpose of slaughter. On the complaint lodged by

the informant, a crime bearing No. 173/2024 came to be registered with Nanalpeth Police Station against the driver and the person claiming to be the owner of the cattle for the offences punishable under Sections 11(1)(d) and 11(1)(e) of the Prevention of Cruelty to Animals Act, 1960; Section 5A of the Maharashtra Animal Preservation Act, 1976 (as amended in 1995); Sections 3, 181, 5, 180 and 158 of the Motor Vehicles Act, 1988; and Section 119 of the Maharashtra Police Act.

3. Respondent No. 2 herein has filed an application for release of the vehicle and nine cattle seized in the aforesaid offences. The petitioner also filed an application for intervention below exhibit – 13 in the said Criminal Miscellaneous Application No. 149 of 2024. The application for release of the vehicle and nine cattle filed by respondent No. 2 was rejected and the intervention application filed below exhibit 13 by present petitioner was allowed vide order dated 02.05.2024 passed by learned Judicial Magistrate First Class (Court No. 3) Parbhani.

4. Respondent No. 2 herein has filed first Criminal Revision Application No. 30 of 2024, against the order dated 02.05.2024, passed by learned Judicial Magistrate First Class (Court No. 3) Parbhani, which was also decided by learned Additional Sessions Judge – 2, Parbhani vide order dated 31.05.2024, by partly allowing

the application for release of the vehicle in favour of respondent No. 2 herein and rejecting the application insofar as the release of nine cattle is concerned. Thus, the interim custody of the cattle as granted by the learned JMFC to the petitioner Gaushala was confirmed.

5. The charge-sheet came to be filed in the present crime on 06.06.2024, which came to be registered as S.C.C. No. 1380 of 2024. Respondent No. 2 herein has thereafter filed an application for release of the cattle. The said application below Exhibit – 04 in S.C.C. No. 1380 of 2024 came to be rejected vide order dated 03.03.2025, by the learned JMFC, (Court No. 4) Parbhani. Respondent No. 2 herein has thereafter filed another Revision Application before the learned Additional Sessions Judge, Parbhani against the order dated 03.03.2025. The learned Additional Sessions Judge -3, Parbhani vide order dated 31.05.2025 has allowed the second Revision Application filed by Respondent No. 2 herein in his favour. The petitioner has thus filed the present Criminal Writ Petition challenging the order dated 31.05.2025, handing over the custody of the cattle to respondent No. 2 herein.

6. This Court, vide order dated 06.06.2025, has granted stay to the impugned order dated 31.05.2025.

7. Learned counsel for the petitioner submits that learned Sessions Judge has committed an error in holding that respondent

No. 2 had not committed cruelty to the said animals hence entitled for custody of the cattle. The allegation in the FIR itself shows cruelty committed by the applicant. Learned Sessions Judge has not considered the relevant Rule 3(b) of the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017, wherein the Magistrate may direct the animal to be handed over to the 'Panjarapole' or to animal welfare association or Gaushala during the pendency of the litigation. The learned Sessions Judge has further failed to consider the relevant rule 5(4), 5(5) of Prevention of Cruelty to the Animals (Care and Maintenance of Case Property Animals) Rules, 2017, wherein it is held that when the vehicle has been involved in the offence, the Magistrate shall direct that the vehicle be held as security and the vehicle owner, consignor and other persons involved shall be jointly and severally liable for the cost of transport, treatment and care of animals.

8. Learned counsel for the petitioner further submits that the earlier order rejecting the revision filed by the petitioner dated 31.05.2024 has attained finality and as such the order passed by the learned JMFC dated 02.05.2024, has become final. Thus, respondent No. 2 herein could not have filed another application for release of the cattle in his favour, which is exhibit – 04 rejected by learned JMFC on 03.03.2025. Consequentially, the petitioner could not have

filed any such revision after the earlier revision was already rejected vide order dated 31.05.2024. The impugned order dated 31.05.2025, passed in Criminal Revision Application No. 22 of 2025 is therefore liable to be set aside on this ground also.

9. Learned counsel for the petitioner relies upon clauses 3, 4 and 5 of the said rules, which provides for custody of animal pending litigation, cost of care and keeping animals pending litigation or execution of bonds in favour of the persons to whom the custody is handed over. The Court's below have earlier rightly handed over the possession of the animals which were taken for slaughtering by respondent No. 2 herein and his family members. Relying upon the judgment in the case of *Shri Chhatrapati Shivaji Gaushala Vs. State of Maharashtra and Others; Criminal Appeal No. 1719 of 2022 (Arising out of SLP (Cri.) No. 412 of 2020)*. The learned counsel for the appellant submits that when the Gaushala has shown his willingness to accept the interim custody of the cattle and it has prima facie appeared that respondent No. 2 were carrying the cattle in cruel condition and also without the valid permit, the learned JMFC Court Parbhani vide its order dated 02.05.2024 has rightly concluded that the cattle should be shifted in the custody of the appellants, instead of respondent No. 2. The order dated 31.05.2025 passed by the learned Additional Sessions Judge, Parbhani directing

the custody to the respondent No. 2 is therefore found to be in violation of the provisions of the Maharashtra Animal Preservation Act and is liable to be quashed and set aside while restoring to the order dated 02.05.2024 of the learned JMFC Parbhani.

10. As against this, learned counsel for respondent No. 2 submits that the applicant/respondent No. 2 being the owner of the said cattle had produced a receipt showing the ownership of the said cattle and hence was entitled to be granted the custody of the cattle. Respondent No. 2 had produced on record 7/12 extract to show that respondent No. 2 is an agriculturist and that respondent No. 2 requires the said cattle for agriculture purpose. Respondent No. 2 is not having any criminal antecedents and offences under the Prevention of Cruelty to Animals Act, 1960 and as per the judgment of the Hon'ble Supreme Court in the case of ***Manager, Pinjrapole Deudar and another Vs. Chakram Moraji Nat and Others; AIR 1998 SC 2769***, the applicant was rightly handed over the custody of the cattle, by setting aside the order passed by the learned JMFC. The Sections involved in the present crime against the applicant and his sons are Section 11(1)(d) and 11(1)(e) of the Prevention of Cruelty to Animals Act, 1960, the same is punishable with fine and it is only Section 5 of the Maharashtra Animal Preservation Act, 1976, which is punishable with five years under Section 9. The allegations in the FIR

would itself show that the applicant's son was transporting the said cattle and it is only upon suspicion that the said cattle was being taken for slaughtering, that the offence is registered. The cattle for which the applicant has paid huge amounts for purchasing through the open market, is handed over to the petitioner, since 22 months i.e. from 04.04.2024. The police has already reported that two of such cattle was ill and one of such cattle is already dead, which is noted by the learned Courts below. Thus, the petitioner who was granted the custody with a purpose of taking care of the cattle, is rather derelict in his duty to take care of the cattle and has himself committed cruelty by not taking proper care of the custody after the custody was handed over to him.

11. Learned counsel for respondent No. 2 on the other hand submits that taking into consideration the various factors involved in the present case, and also the fact that one of the cattle has died during the custody of over 22 months with the petitioner Gaushala, all the cattle which were purchased legally by respondent No. 2 herein was rightly handed over to the petitioner by respondent No. 2 by the impugned order. The impugned order is therefore just and proper and liable to be maintained.

12. Learned counsel for respondent No. 2 further submits that the petitioner is found to be renting the animals in the village and

earning money out of the cattle belonging to the present respondent No. 2. Respondent No. 2 has filed an affidavit of the villagers who has stated about the petitioner not being present in the cattle shed and the cattle were also not present in the cattle shed. Upon enquiry it was found that the petitioner has used the said cattle for giving it on rent to the villagers for conducting their agricultural works and has earned money out of it. The affidavit of one Haris Khan and Baliram Shinde is annexed with the photographs. The police report submitted to the Magistrate also informs about the petitioner not being present in the cattle shed at the time of inspection of the cattle. The police report is also annexed along with the affidavit filed by respondent No. 2 also confirms the said fact about the petitioner utilizing the said cattle. The police report dated 09.06.2025 submitted to the Magistrate speaks of the visit of the Police Officers to the Gaushala, Bramhapuri Phata, Bramhangaon, Tq. and Dist. Parbhani dated 05.06.2025, upon visit, it was informed that the petitioner has transferred the said Gaushala to village Mandhani Taluka Jintur, Dist. Parbhani. The police officers therefore visited the village Mandhani Taluka Jintur, District Parbhani on 06.06.2025 and made a search for the petitioner – Datta Ragunath Pahare, however, he was not found. The cattle was also not found in the cattle shed at village Mandhani. The notice of execution of order dated 31.05.2025 was therefore

pasted on a conspicuous place in Gaushala. The petitioner has thereafter sent a reply on whatsapp to the police authority about stay order passed by this Court in the present writ petition. The perusal of the affidavit of Baliram Shinde a villager would show that when they had gone in the village to find out the cattle, the cattle was not found in the cattle shed. The said cattle was given on rent to one Anandrao Kurde and Karbhari Shinde. Upon enquiry, these two people have informed that the cattle belonging to respondent No. 2 was taken on rent by the villagers from Mata Indrayani Gaushala run by the petitioner – Datta Ragunath Pahare. Thus, the respondent No. 2 submits that taking into consideration the conduct of the petitioner, the petitioner is not entitled for the custody of the cattle, the cattle is in custody of petitioner from last 22 months, and one bovine has already expired while in custody of the petitioner and there is every likelihood that the other cattle may also meet the same fate. Hence, respondent No. 2, who is the owner of the cattle is ready to take care of the cattle was rightly handed over the cattle's custody by the Revisional Court during the pendency of the trial.

13. Learned APP submits that the application filed by the applicant for release of the cattle had already been rejected by the learned JMFC, Parbhani, vide order dated 02.05.2024. Being aggrieved thereby, the applicant had preferred Criminal Revision Application

No. 30/2024 before the learned Sessions Court. The learned Additional Sessions Judge, Parbhani, by order dated 31.05.2024, dismissed the said revision. It is further submitted that despite dismissal of the earlier revision application, a subsequent application (Exhibit-4) came to be filed before the learned Trial Court seeking similar relief. According to the learned APP, such successive application was not maintainable in view of the bar contained under Section 362 of the Code of Criminal Procedure, as the earlier order had already attained finality. It is contended that the subsequent Criminal Revision Application No. 22 of 2025 filed by Respondent No. 2 herein was also not maintainable, inasmuch as the earlier proceedings between the parties had already attained finality and the said orders were never challenged before the High Court. Therefore, according to the learned APP, the learned Additional Sessions Judge ought not to have entertained the revision and passed the impugned order dated 31.05.2025 in Criminal Revision Application No. 22 of 2025, and hence the same is liable to be set aside.

14. I have gone through the judgment and order dated 31.05.2025 passed by the learned Additional Sessions Judge, Parbhani in Criminal Revision Application No. 22 of 2025. I have also perused the order dated 03.03.2025 passed by the learned Judicial Magistrate First Class, Parbhani. Further, I have gone through the earlier order

dated 31.05.2024 passed in Criminal Revision Application No. 30 of 2024, whereby the application for release of cattle and vehicle was partly allowed and Respondent No. 2 herein was granted custody of the vehicle, whereas the prayer for custody of the animals came to be rejected. I have also perused the order dated 02.05.2024 passed by the learned JMFC, Parbhani Court No. 3, in Criminal Miscellaneous Application No. 149 of 2024, whereby the application for release of the vehicle and animals was initially rejected.

15. Insofar as filing of the Second Revision taken by the learned counsel for the petitioner as well as the learned APP for the State is concerned, it could be seen from the record that the first application being MCA No. 149 of 2024 is filed by respondent No. 2 under Section 457 of the Cr.P.C., while the investigation was still going on and the charge-sheet was yet to be filed. It further appears from the record that the second application for release of the cattle was filed by respondent No. 2 under Section 451 of the Cr.P.C., when the property is produced before any Criminal Court during any enquiry or trial. Thus, the two stages of filing of the applications are entirely different and as such the objection taken by the petitioner as well as the learned APP pertaining to the second application being filed by respondent No. 2 herein, does not deserve any interference, is misconceived and is liable to be rejected.

16. Perusal of the impugned order dated 31.05.2025 would indicate that Respondent No. 2 had produced photo copies of the original purchase receipts of total nine cattle along with Exhibit-15, wherein his name is reflected as purchaser. He had also produced 7/12 extracts of Gat No. 12 dated 13.02.2017, wherein his name appears in the column of “Bhogwatdar” along with other persons. Further, 7/12 extract of Gat No. 189 was also placed on record, wherein the name of his mother – Zaitunbi Shaikh Chand – appears as one of the Bhogwatdars. An affidavit at Exhibit-12 was also filed stating that after sale of his property, he is using agricultural field of his brother Shaikh Ayub Shaikh Chand in Gat Nos. 12, 189, 190 and 204 for agricultural purposes and for maintaining the cattle. The Revisional Court has taken into consideration that no third person had come forward to claim custody of the seized cattle and that the charge-sheet had already been filed and the trial is likely to take time for conclusion. On that basis, relying upon the ratio laid down in the cited judgments, the Revisional Court concluded that interim custody of the remaining eight cattle ought to be granted to the owner and accordingly allowed the Revision Application.

17. The Hon’ble Supreme Court in *Manager, Pinjrapole Deudar v. Chakram Moraji Nat*; AIR 1998 SC 2769 has laid down guidelines to be considered while determining interim custody of animals seized

under the Prevention of Cruelty to Animals Act, 1960. The relevant considerations include (i) the nature and gravity of the offence alleged against the owner, (ii) whether it is the first offence alleged or whether he has been found guilty earlier, (iii) if it is a first prosecution, the owner would ordinarily have a better claim for custody, (iv) the condition in which the animals were found at the time of inspection and seizure, and (v) the possibility of the animals being subjected to cruelty again. It has further been clarified that neither the Pinjrapole nor the Gaushala has any preferential right over the owner when the owner seeks custody.

18. The perusal of the provisions and Rules framed under the Act, namely the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017, particularly Rules 3 to 5, confer discretion upon the Magistrate to entrust interim custody to a Gaushala, Panjarapole or other recognized institution. However, such entrustment is not mandatory and the discretion is to be exercised keeping in view the welfare and protection of the animals as the paramount consideration.

19. Recently, in **Shri Chhatrapati Shivaji Gaushala v. State of Maharashtra**, (Supra) discussing the judgment in **Manager, Pinjrapole Deudar v. Chakram Moraji Nat** (Supra), interpreting Section 35(2) of the P.C.A. Act, the Hon'ble Supreme Court has reiterated that though

the Magistrate has discretion to hand over interim custody of seized animals to a Panjarapole or Gaushala, the Court is not bound to do so in every case and such discretion must be exercised judiciously on the facts of each case.

20. In the present case, the Revisional Court has considered the ownership documents produced by Respondent No. 2, his agricultural background, the absence of criminal antecedents and the fact that the offences under Section 11(1)(d) and 11(1)(e) of the Prevention of Cruelty to Animals Act, 1960 are punishable with fine for first offence. The allegation under Section 5A of the Maharashtra Animal Preservation Act, 1976 is based on suspicion of transportation for slaughter, which is yet to be established during trial.

21. At the same time, the material placed on record indicates that the cattle remained in the custody of the petitioner–Gaushala for a period of about twenty-two months. It has also come on record that one bovine expired during such custody. Police inspection reports and affidavits relied upon by Respondent No. 2 indicate that at the time of inspection, the petitioner was not found present at the cattle shed and the cattle were allegedly not available there. There are also allegations that the cattle were given on rent for agricultural purposes. Though this Court is not adjudicating upon the truthfulness of these allegations in the present proceedings, the same were

relevant considerations before the Revisional Court while exercising discretion.

22. This Court, while exercising writ jurisdiction under Articles 226 and 227 of the Constitution of India, does not act as an appellate Court to re-appreciate evidence or substitute its own view unless the order impugned suffers from perversity, illegality or material irregularity. Upon careful scrutiny, it cannot be said that the discretion exercised by the learned Additional Sessions Judge is arbitrary or contrary to the settled legal principles governing interim custody of seized animals.

23. Accordingly, this Court does not find any reason to interfere with the impugned order dated 31.05.2025. Hence, the following order is passed :-

ORDER

- A)** The Criminal Writ Petition stands dismissed.
- B)** The interim order dated 06.06.2025 stands vacated.
- C)** The petitioner shall hand over custody of the cattle to Respondent No. 2 within a period of fifteen (15) days from today through the concerned Police Station.
- D)** The concerned Police Officer shall remain present at the time of handing over and shall prepare a detailed panchnama recording the condition of the cattle.

E) Respondent No. 2 shall ensure proper care and maintenance of the cattle and shall produce the same before the Trial Court as and when directed.

24. Needless to mention that the observations made herein are prima facie in nature and shall not influence the Trial Court while deciding the case on its own merits.

(MEHROZ K. PATHAN)
JUDGE

25. After pronouncement of the order, learned counsel for the petitioner requested that the interim relief be continued for a period of four weeks. Since the learned Revisional Court had directed handing over custody of the cattle to respondent No. 2 within a period of 15 days, and as there was a stay operating vide order dated 06.06.2025 passed by this Court, and further considering that one cattle has already died while in the custody of the petitioner, the request to continue the interim relief stands rejected.

(MEHROZ K. PATHAN)
JUDGE