



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.21 OF 2026

Syed Shah Azizul Hasan s/o. Manzurull Hasan,
Age: 55 years, Occ. Agri.,
R/o.H.No.6-2-4, Holi, Itwara,
Tq. & Dist. Nanded.

.. PETITIONER

VERSUS

The State of Maharashtra
Through the Police Inspector,
Nanded Rural Police Station,
Tq. & Dist. Nanded.

.. RESPONDENT

...

- Mr. S. S. Gangakhedkar, Advocate for the petitioner.
- Mr. Shrimant Mundhe, Advocate for the applicant in Criminal Application No.912 of 2026.
- Mr. K. K. Naik, Advocate for the Respondent-State

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**WITH
CRIMINAL APPLICATION NO.912 OF 2026
IN CRIMINAL WRIT PETITION NO.21 OF 2026**

...

CORAM : MEHROZ K. PATHAN, J.

Reserved on : 10.03.2026

Pronounced on : 02.04.2026

ORDER :

1. The petitioner has filed the present Writ Petition thereby praying for quashing and setting aside the order dated 25.11.2025

passed by the Additional Sessions Judge, Nanded in Criminal Revision Application No.78/2025 as well as the impugned order dated 04.10.2025 passed by the learned Judicial Magistrate First Class, Nanded in OMCA No.649/2025.

2. The learned counsel for the petitioner submits that the petitioner belongs to agriculturist family and their business is of agriculture. It is submitted that the family of the petitioner holds substantial agricultural land at village Pimpari Mahipal, Tq. & Dist. Nanded. It is submitted that, two sons of the petitioner namely Azizull and Anwarull holds agricultural land of 1 H 81 R and 1 H 60 R respectively along with wife of the petitioner namely Nafisa Begum who holds 1 H 60 R of land at Gat No.120 village Pimpari Mahipal, Tq. & Dist. Nanded. The entire family of the petitioner is dependent upon the agricultural income.

3. The learned counsel for the petitioner further submits that for the purposes of agricultural work the family of the petitioner has purchased three bulls from the weekly market on 19.08.2025 and receipt to that effect was issued by Contractor namely Venkat Digambar Dangat about purchase of the cattle's vide receipt bearing No. 35, 91 and 92. The cattle's were purchased from Maroti Sakharam Kolge and Lahu Ganpati Pawar. It is submitted that when

the purchased cattle were being transported to his agricultural field at the relevant point of time while passing from Loha to Nanded the vehicle was apprehended.

4. The learned counsel for the petitioner submits that on 19.08.2025 while proceeding towards agricultural field along with cattle, the vehicle of petitioner reached near Doodh Dairy Square at Dhanegaon Road and the relevant point of time the police machinery apprehended the vehicle alleging that, the cattles were being transported for slaughter in inhuman condition. It has been further alleged that, the cattles were tied in a condition which was causing injury to them and as such upon enquiry the receipts about purchase of the cattles were shown which were found in the said vehicle. It is submitted that, despite pointing out the receipt about purchase of the cattle's, they were taken into possession along with the vehicle. It is submitted that, based upon these allegations crime came to be registered bearing FIR No.802/2025 on 20.08.2025 at around 00.36 hours by the Nanded Rural Police Station for the offence punishable under Section 11 (1) (D) of Prevention of Cruelty of Animal Act, 1960. The petitioner had thereafter filed an application under Section 503 of the BNSS, 2023 for return of the property i.e. three cattle seized by Nanded Rural Police Station in the aforesaid crime.

The prosecution had filed its say and opposed the said application on the ground that the petitioner may indulge into illegal act after release of the cattle. The learned JMFC after hearing the petitioner and the prosecution has rejected the application vide order dated 04.10.2025 simply relying upon the rule 3 of the Prevention of Cruelty to Animals [Care and Maintenance of Case Property Animals] Rules, 2017 [hereinafter referred to as 'Rules of 2017' for the sake of brevity].

5. Being aggrieved by the said order dated 04.10.2025, the petitioner had filed Revision before the learned Additional Sessions Judge, Nanded. The learned Additional Sessions Judge, Nanded, vide it's order dated 25.11.2025 was pleased to reject the revision filed by the petitioner, again relying simply upon rule 3 of the Rules of 2017. The petitioner has, thus, approached this Court seeking quashment of both the orders below with consequent prayer of allowing the application i.e. OMCA No.649/2025.

6. It is the submission of the learned counsel for the petitioner that the petitioner has purchased three bulls from the weekly market held at Loha on 19.08.2025, which is 25 kilo-meters away from Nanded. The receipt to that effect was issued by the Contractor, namely, Venkat Digambar Dangate about purchase of the cattle vide

receipt bearing No.35, 91 and 92. The cattle were purchased from Maroti Sakham Kolge and Lahu Ganpati Pawar. After purchasing the said cattle, the same was required to be transported to the agricultural field of the petitioner. The petitioner owns an agricultural field at village Pimpri Mahipal, Taluka and District Nanded along with one field admeasuring 1 H. 81 R. and 1 H. 60 R. and another field admeasuring 1 H. 60 R. of the same Gat No.120, at village Pimpri Mahipal, Taluka and District Nanded in the names of the wife and sons of the petitioner.

Azizull son of the petitioner : 1 H. 81 R.

Anwarull son of the petitioner : 1 H. 60 R.

Nafisa Begum wife of the petitioner : 1 H. 60 R.

7. The learned counsel for the petitioner submits that the said cattle were being transported in the rented vehicle. The raid was conducted and the vehicle was intercepted despite of showing receipt to the Police Officer, the offence was registered. The learned counsel for the petitioner further submits that the impugned order dated 04.10.2025 would show that after conducting raid, the Police Inspector had immediately admitted the said cattle in Varagi Leela Goshala, Lath [Kh.], Taluka Kandhar, District Nanded. The learned trial Court had simply relied upon rule 3 of the Rules of 2017 to hold

that the applicant is not entitled to get custody of the cattle. There is no observations on merits by the learned Magistrate as to why the applicant is not entitled to get custody of the cattle. Rule 3-b nowhere prohibits handing over of the custody to the owner of the cattle. It is submitted that rule 3 b only provides for enabling provision that the Magistrate may direct the animal to be housed at infirmary, Pinjrapole, SPCA, Animal Welfare Organization or Gaushala during the pendency of the litigation. The learned counsel, therefore, submit that once the petitioner has established himself to be the owner of the said cattle, the learned trial Court ought to have directed custody of the animal to be handed over to the petitioner.

8. The learned counsel for the petitioner submits that the Revisional Court had also failed to apply its mind to the fact that rule 3 of the Rule of 2017 is an only enabling proviso and word used in rule 3 of the Rules of 2017 is as under :

The Magistrate may direct the animal to be housed at infirmary, Pinjrapole, SPCA, Animal Welfare Organization or Gaushala

9. The enabling provision is thus directory in nature and cannot be said to be mandatory. The cattle were seized only on suspicion of cruelty to the animal as they were found in vehicle. The trial is yet to be concluded and it is yet to be proved that there was a cruelty

committed upon the animal. In absence of any finding of cruelty committed upon the animal, the direction to hand over custody to the Gaushala instead of handing over custody to the petitioner is, therefore, illegal and liable to be rejected. The learned counsel for the petitioner further relies upon the judgment in the case of ***Manager, Pinjrapole Daudar and another Vs. Chakram Maroaji Nat and others reported in AIR 1998 SC 2769*** wherein Section 35 of the Prevention of Cruelty to Animals Act, 1960 came to be interpreted by the Hon'ble Supreme Court to hold that the Magistrate has discretion to hand over interim custody of the animal to Pinjrapole but he is not bound to hand over custody of the animal to Pinjrapole. It is further held in the said judgment that in a case where the owner is claiming the custody of the animal, Pinjrapole has no preferential right and in the case where there is no previous offence registered against the petitioner and if the owner is facing the first prosecution under the Act, the owner will have a better claim for the custody of the animal during prosecution.

10. The learned counsel for the petitioner, therefore, submits that the petitioner has purchased the said cattle by paying a substantial amount and is the lawful owner thereof. It is submitted that due to the impugned orders passed by the Courts below, the petitioner is

deprived of the ownership rights as well as the use of the said cattle for agricultural purposes. It is contended that the findings recorded by both the Courts below are erroneous and contrary to law. The impugned orders are, therefore, illegal, unjust, and liable to be quashed and set aside.

11. As against this, the learned APP as well as the learned assisting counsel vehemently oppose the present writ petition on the ground that the learned Trial Court as well as the Revisional Court have rightly applied the provisions of Rule 3(b) of the Rules of 2017 and have rightly rejected the application filed by the present petitioner. The impugned orders are just and proper and are liable to be maintained.

12. The learned counsel Mr. Mundhe for the intervenor submits that the applicant-intervenor is running a Gaushala and has placed on record the registration certificate dated 16.07.2024. It is submitted that the intervenor is presently maintaining about 140 animals and that the cattle in question are being properly maintained, as the Gaushala is well equipped. It is further submitted that the petitioner claims to be the owner of the said cattle, which were found being transported in a vehicle by accused Salim Shaikh, who is named in the FIR, and therefore, an offence punishable under

Section 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 has been registered. It is further submitted that Rule 3 of the Rules of 2017 empowers the Magistrate to direct that the animals be housed at an infirmary, Pinjrapole, SPCA, Animal Welfare Organization, or Gaushala during the pendency of the litigation.

13. The learned counsel for the intervenor Gaushala has further submitted that Rule 5 of the Rules of 2017 provides that the transporter, owner, etc., shall be jointly and severally liable for the cost of transport, treatment, and care of the animals.

14. The learned counsel for the intervenor further submits that Sections 5, 5A, and 5B of the Maharashtra Animal Preservation Act, 1976 specifically prohibit slaughter, transport for slaughter, and sale for slaughter of cow, bull, or bullock. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Chatrapati Shivaji Gaushala vs. State of Maharashtra and Others* (Criminal Appeal No. 1719 of 2022, decided on 30.09.2022) and other judgments to contend that it is incumbent upon the Courts to hand over the seized cattle to the nearest Gaushala or such other animal welfare organization willing to accept custody during the pendency of the litigation.

15. The learned counsel for the intervenor, therefore, submits that the applicant-intervenor was always ready and willing to accept custody of the seized cattle. It is submitted that though the cattle were initially handed over to the petitioner by the police authorities after the raid, the learned Trial Court, by order dated 04.10.2025, rightly rejected the application filed by the petitioner seeking custody of the said bullocks.

16. The learned counsel for the intervenor as well as the learned APP further submit that the learned Revisional Court has also rightly rejected the revision application filed by the petitioner against the order dated 04.10.2025 passed by the learned Trial Court, by placing reliance on Rule 3 of the Rules of 2017, which empowers the Court to direct that the animals be housed in a Pinjrapole or Gaushala during the pendency of the litigation, vide order dated 25.11.2025. It is submitted that the impugned orders are just, proper, and do not warrant interference. The petition is devoid of merit and is liable to be rejected.

17. The learned counsel for the intervenor has further submitted that Rule 5 of the Rules of 2017 also provides that the Magistrate shall determine an amount sufficient to cover the reasonable cost incurred for transport, maintenance, and treatment of the animals,

and shall direct the accused and owner to execute a bond for the said amount with surety within three days. In case of failure to execute such bond, the animals are liable to be forfeited to the infirmary, Pinjrapole, or Gaushala.

18. The learned counsel for the intervenor, therefore, submits that although both the Courts below have rejected the application filed by the petitioner, they have failed to determine the cost of maintenance payable to the intervenor as required under the Rules of 2017. It is further submitted that in the event this Court grants custody of the cattle to the petitioner, appropriate directions may be issued to the petitioner to pay maintenance charges, which are quantified at Rs.200/- per day as per the circular dated 02.07.2019 issued by the Maharashtra Animal Welfare Board, from the date of handing over custody to the intervenor till the date of restoration to the petitioner.

REASONING :-

19. I have carefully gone through the judgment and order dated 04.10.2025 passed by the learned Trial Court and the judgment and order dated 25.11.2025 passed by the learned Revisional Court. A perusal of both the judgments indicates that the Courts below have rejected the application for grant of custody primarily by relying upon Rule 3 of the Rules of 2017. The said Rules have been framed

in exercise of powers under sub-sections (1) and (2) of Section 38 of the Prevention of Cruelty to Animals Act, 1960 (hereinafter referred to as the “PCA Act, 1960” for the sake of brevity). Rule 3 of the Rules of 2017 is analogous to sub-section (2) of Section 35 of the PCA Act, 1960.

20. The provisions of Section 35 of the PCA Act, 1960 came up for consideration before the Hon’ble Supreme Court in *Manager, Pinjrapole Deudar and Another vs. Chakram Moraji Nat and Others* (AIR 1998 SC 2769).

21. In paragraph 10 of the said judgment, the Hon’ble Supreme Court has interpreted the scope of Section 35(2) of the PCA Act, 1960. Which reads as under :-

“10. It follows that under Section 35(2) of the Act, the Magistrate has discretion to handover interim custody of the animal to Pinjrapole but he is not bound to handover custody of the animal to Pinjrapole in the event of not sending it to an infirmary. In a case where the owner is claiming the custody of the animal, Pinjrapole has no preferential right in deciding whether the interim custody of the animal be given to the owner who is facing prosecution, or to the Pinjrapole, the following factors will be relevant : (1) the nature and gravity of the offence alleged against the owner; (2) whether it is the first offence alleged or he has been found guilty of offences under the Act earlier; (3) if the owner is facing the first prosecution under the Act, the animal is not liable to be seized, so the owner will have a better claim for the custody of the animal during the prosecution;”

22. It is thus evident that the provisions of Rule 3 of the Rules of 2017, being almost analogous to Section 35(2) of the PCA Act, 1960, confer discretion upon the Magistrate to entrust interim custody of the animals to a Pinjrapole or Gaushala. However, the said provision cannot be interpreted to mean that the Magistrate has no other option but to send the animals to such institutions, Pinjrapole or Gaushala. The Hon'ble Supreme Court has categorically held that the Magistrate retains discretion in the matter, and that the Pinjrapole or Gaushala does not have a preferential right over the owner. The mandatory guidelines laid down by the Hon'ble Supreme Court are required to be taken into consideration while deciding applications for interim custody of animals.

23. One of the important guidelines is to ascertain whether the owner is facing prosecution for the first time under the Act. If it is found that the owner has no criminal antecedents and is facing the first prosecution, the owner would have a better claim for interim custody of the animals.

24. In the present case, both the Courts below have failed to consider the aforesaid guidelines laid down by the Hon'ble Supreme Court in the proper perspective. The petitioner has placed on record documents, including purchase receipts of the cattle. It is the case of

the petitioner that he has no criminal antecedents, and it is not the case of the prosecution that the petitioner has been involved in any similar offence in the past. The charge-sheet indicates that the offence is registered under Section 11(1)(d) of the PCA Act, 1960, and the allegations pertain only to transportation of the animals in a manner causing unnecessary pain and suffering. There are no allegations of **slaughter** either in the FIR or in the charge-sheet.

25. In the present case, the material on record indicates that the petitioner has produced documents to establish ownership of the cattle and has placed on record his agricultural background. There are no criminal antecedents attributed to the petitioner and the offence alleged under Section 11(1)(d) of the PCA Act, 1960 is punishable with fine for the first offence. The charge-sheet does not show that Maharashtra Animal Preservation Act, 1976 is invoked in the present crime.

26. Considering the aforesaid facts and the law laid down by the Hon'ble Supreme Court, the impugned orders passed by both the Courts below cannot be said to be just and proper. The Courts below have failed to exercise the discretion vested in them in accordance with law and have instead treated Rule 3 of the Rules of 2017 as mandatory. A conjoint reading of Sections 451 and 457 of the Code

of Criminal Procedure, 1973, Section 35(2) of the PCA Act, 1960, Rule 3 of the Rules of 2017, and the law laid down in *Manager, Pinjrapole Deudar* (supra), makes it clear that there is no absolute bar and the interim custody of the animals can be given to the owner upon undertaking to produce animals as and when the Trial Court directs.

27. The discretionary power to entrust custody to a Gaushala cannot be construed as mandatory in blatant disregard of the binding guidelines issued by the Hon'ble Supreme Court in *Manager, Pinjrapole Deudar (Supra)*. The impugned orders dated 04.10.2025 and 25.11.2025, therefore, do not withstand the scrutiny of law and are liable to be quashed and set aside.

28. As regards the claim of the intervenor for maintenance charges, the same cannot be adjudicated in the present writ petition filed by the owner of the cattle. The record indicates that despite issuance of notices by the Trial Court as well as the Revisional Court, the intervenor failed to appear and press its claim. The intervenor cannot be permitted to raise such a claim for the first time in the present proceedings. However, it is open for the intervenor–Gaushala to file an appropriate application before the Trial Court, and if such fresh application is filed by the Intervenor Gaushala, the same shall

be decided on its own merits in accordance with law at the time of deciding the criminal case against the accused after completion of trial, after granting an opportunity of hearing to the intervenor and the accused/owner of the cattle.

29. Hence, the following order :-

ORDER

- A) The Criminal Writ Petition is allowed.
- B) The impugned order dated 04.10.2025 passed by the learned Judicial Magistrate First Class, Nanded in OMCA No.649/2025 and the impugned order dated 25.11.2025 passed by the learned Additional Sessions Judge, Nanded in Criminal Revision Application No.78/2025 are quashed and set aside.
- C) The intervenor–Gaushala shall hand over the custody of the cattle to the petitioner within a period of 15 days from today through the concerned Police Station. The concerned Police Officer shall remain present at the time of handing over and shall prepare a detailed panchnama noting the condition of the cattle.
- D) The petitioner shall not sell, transfer, or part with possession of the cattle and shall maintain them in proper health and condition, and shall not subject them to any cruelty.
- E) The petitioner shall make the cattle available for inspection by the Investigating Officer or any authority authorized by the Trial Court, as and when required.

F) In case of breach of any of the above conditions, it would be open for the prosecution to seek cancellation of custody granted to the petitioner.

30. Needless to state that the observations made herein are prima facie in nature and are made for deciding the application by the owner for interim custody. The said observations shall not influence the Trial Court while deciding the case on its own merits.

[MEHROZ K. PATHAN, J.]

31. At this stage, the learned counsel for the intervenor seeks stay to the effect and operation of the present order for a period of three weeks. The record indicates that despite issuance of notices by the learned Trial Court as well as the Revisional Court, the intervenor has chosen to remain absent and has now appeared in the present petition for the first time.

32. This Court has allowed the writ petition on the ground that both the learned Trial Court and the Revisional Court have ignored the law laid down by the Hon'ble Supreme Court in the case of ***Manager, Pinjrapole Deudar (supra)***.

33. Thus, the custody of the cattle has been denied to the owner in utter disregard of the law laid down by the Hon'ble Supreme Court. Therefore, the request made by the intervenor for stay to the effect and operation of the present order is hereby rejected.

[MEHROZ K. PATHAN, J.]