

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 5952 OF 2024

SHRI. DATTATRYA BHAGWAN KHARAT
VERSUS
STATE OF MAHARASHTRA AND OTHERS

...
Mr. Rugwed R. Kinkar, a/w Mr. Prasad Avhad h/f Mr. Chetan Nagare,
Advocate for Petitioner
Ms. A. A. Takalkar, APP for the Respondent-State

...
CORAM : NITIN B. SURYAWANSHI, J.
DATE : 16th FEBRUARY, 2026

PER COURT :

1. By this petition filed under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, petitioner challenges order dated 15/04/2024 passed by learned Joint Judicial Magistrate First Class, Kavathe Mahankal in Criminal M.A. No.17/2024 and the order dated 13/09/2024 passed by learned Additional Sessions Judge, Sangli, in Criminal Revision Application No.36/2024, thereby refusing to release the Bolero pick-up vehicle of the petitioner.

2. C.R. No.3/2023 is registered against the petitioner and others for offence punishable under Sections 9, 39, 43, 44, 48, 49 and 51 of the Wild Life (Protection) Act, 1972. At the time of incident, Bolero pick-up vehicle bearing registration No.MH-45-AF-2647 and 3 vivo mobile phones were seized by police on 10/08/2023. Petitioner, therefore, moved Criminal M.A. No.17/2024

before the Trial Court seeking release of his Bolero jeep contending that he use the said vehicle for agricultural operation purposes. If the said vehicle is kept with the forest department in idle condition, it will lose it's monetary value. Hence, he prayed for return of the said vehicle on suitable terms and conditions. The application was opposed by the forest department. Trial Court rejected the same by relying on the ratio laid down in case of ***State of Maharashtra Vs. Gajanan Jambhulkar*** reported in ***2002 CRI.L.J. 349*** and ***State of U.P Vs. Laloo Singh*** reported in ***AIR Online 2007 SC 350***. The revisional Court confirmed the said order. Hence, the present petition.

3. Heard learned advocate for petitioner and learned APP for respondent/State.

4. Learned advocate for petitioner by relying on ***Jagjeet Singh Vs. State of Maharashtra***, reported in ***(2013) 2 AIR Bom R 22*** submitted that the impugned orders are unsustainable on the ground of wrong interpretation of provisions by the Courts below.

5. Learned APP, on the other hand, has supported the impugned orders by relying on the affidavit-in-reply filed by respondent Forest Department.

6. In ***Jagjeet Singh*** (supra) the learned Single Judge of this Court has observed thus,

"7. *This issue had again come up before the Hon'ble Supreme*

Court in the recent judgment in the case of Deptt. of Forests v. J.K. Johnson, reported at (2011) 10 SCC 794: AIR 2012 SC 61. The Hon'ble Supreme Court while considering the said issue has said as under,

"28. One thing is clear that the statutory provisions noticed above do not in explicit terms provide for the forfeiture of the seized items by the departmental authorities from a person who is suspected to have committed offence/s against the 1972 Act. Chapter VI-A which has been inserted in the 1972 Act by Act 16 of 2003 that provides for forfeiture of property derived from illegal hunting and trade is entirely different provision and has nothing to do with forfeiture of the property seized from a person accused of commission of offence against the 1972 Act. Insofar as Section 39(1)(d) of the 1972 Act is concerned, it provides that every vehicle, vessel, weapon, trap or tool that has been used for committing an offence and has been seized under the provisions of the Act shall be the property of the State Government and in a certain situation, the property of the Central Government. The key words in Clause (d) of Section 39(1) are, "----- has been used for committing an offence.....". What is the meaning of these words? The kind of absolute vesting of the seized property in the State Government, on mere suspicion of an offence committed against the 1972 Act, could not have been intended by the Parliament. It is not even scarcely disputed that every enactment in the country must be in conformity with our Constitution. In this view, it is not sufficient nor the law-makers intended to make it to deprive a person of the property seized under the 1972 Act, on accusation that such property has been used for committing an offence against the Act. Section 39(1)(d) does not get attracted where the items, suspected to have been used for committing an offence, are seized under the provisions of the Act.

It seems to us that it is implicit in Section 39(1)(d) that for this provision to come into play there has to be a categorical finding by the competent court of law about the use of seized items such as vehicle, weapon, etc. for commission of the offence. There is merit in the submission of the learned counsel for the respondent Nos. 1 to 3 that if the construction put upon Section 39(1)(d) by Mr. R. Sundervardhan is accepted, the expression 'has been used for committing an offence' occurring therein has to be read as, 'is suspected to have been used for committing an offence'. In our view, this cannot be done.

29. Section 51(2) of the 1972 Act, provides for forfeiture of the property on conviction; It says, inter-alia, that when any person is convicted of an offence against the Act, the court

trying the offence may order that any captive animal, wild animal, etc. in respect of which the offence has been committed and any vehicle, vessel or weapon etc. used in the commission of the said offence be forfeited to the State Government.

31. In Madhukar Rao (AIR 2008 Supp SC 1410: 2008 AIR SCW 787), albeit, the question was little different but this Court considered the ambit and scope of Section 39(1)(d). That matter reached this Court from a Full Bench decision of the Madhya Pradesh High Court. The question before the Full Bench was whether as a result of deletion of sub-section (2) of Section 50 withdrawing power of interim release, there existed any power with the authorities under the 1972 Act or the Code to release the vehicle used in the course of alleged commission of offence under the Act. The Full Bench of the High Court held that any property including vehicle seized on accusation or suspicion of commission of offence under the 1972 Act, can be released by the Magistrate pending trial in accordance with Section 50(4) read with Section 451 of the Code. The Full Bench also held that mere seizure of any property including vehicle on the charge of commission of offence would not make the property to be of the State Government under Section 39(1)(d) of the 1972 Act. Against the decision of the Full Bench, the State of Madhya Pradesh preferred special leave petition in which leave was granted. This Court extensively considered the statutory provisions and approved the view of the Full Bench of the High Court that deletion of subsection (2) and its replacement by subsection (3A) in Section 50 of the 1972 Act had no effect on the powers of the Court to release the seized vehicle during the pendency of trial under the provisions of the Code. While dealing with Section 39(1)(d), this Court also approved the view of the Full Bench of the High Court that Section 39(1)(d) would come into play only after a Court of competent jurisdiction found that accusation and allegations made against the accused were true and recorded the finding that the seized article was, as a matter of fact, used in the commission of offence. This Court said:

"... 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..."

32. We are in complete agreement with the view of this Court in Madhukar Rao (AIR 2008 Supp SC 1410 : 2008 AIR SCW 787) that on the basis of seizure and mere accusations/allegations, Section 39(1)(d) of the 1972 Act cannot be allowed to operate and if it is so done, it would be hit by the constitutional

provisions."

8. As such it is clear that there is no bar on the powers of Magistrate to consider the application for return of vehicle under the Code of Criminal Procedure. Obviously the application has to be considered on merits. The rejection of the application on the ground that the property seized by the competent officer under the Wild Life (Protection) Act, 1972 had become Government property was, in my view, not correct. Though the learned Additional Sessions Judge has not clearly indicated that he rejected the application because the property had become a Government property, however he was definitely influenced by the provisions of Section 39(1)(d) of the Wild Life (Protection) Act, 1972 and has, therefore, taken erroneous decision by rejecting the revision application."

7. In the light of the above observations, it is clear that the trial Court and the appellate Court are not justified in holding that the seized property becomes the property of the Government when the same is used for commission of offence under the Wild Life (Protection) Act, 1972 and therefore, it cannot be released.

8. In the result, the writ petition is allowed. Order dated 15/04/2024 passed by learned Joint Judicial Magistrate First Class, Kavathe Mahankal in Criminal M.A. No.17/2024 and the order dated 13/09/2024 passed by learned Additional Sessions Judge, Sangli, in Criminal Revision Application No.36/2024, are hereby quashed and set aside. The matter is remitted back to the Trial Court for consideration of the application of petitioner afresh on merits, keeping in mind the aforesaid observations made by this Court.

(NITIN B. SURYAWANSHI, J.)