

Misc.Cri.C.53/2020
Swapnil -Vs- State.

ORDER BELOW EXH.1
(Passed on 23rd July, 2020)

This is an application filed under section 457 of the Code of Criminal Procedure, 1973.

2] The application is filed for the release of vehicle i.e. **Ashok Leyland Tipper**, bearing registration no. **MH-40/BL-5690**, **Chassis No.MB1HTDHD0JE3306 & Engine No.JCEZ418753** seized in a crime bearing no.235/2020 in an offence punishable under Section 379 of Indian Penal Code.

3] In short, it is the contention of the applicant that he is the registered owner of the above numbered vehicle. He undertakes to produce the said vehicle before the court as and when required. Lastly, he prayed to release the said vehicle on execution of indemnity bond and he is ready to abide all terms and conditions which is imposed by this court.

4] On this application the say of accused, I.O. and Ld. APP was called. Ld. APP has raised objection to release the seized vehicle. Say of I.O. is at Exh.6. Affidavit of Praful Exh.7.

5] Perused application and the say of learned APP, I.O. and accused. Heard Ld. Counsel for the applicant and Ld. A.P.P. for the State.

6] The applicant has produced on record, verified copy of Certificate of Registration, Insurance Certificate, agreement of Sale and Aadhaar Card, vide list of document Exh.4. I perused the original documents. It shows that, Praful Shantaram Deshmukh is a real owner. The applicant have made an agreement for purchase of above said vehicle towards Praful Deshmukh and in that regard, Praful Deshmukh appeared and filed an affidavit Exh.7 and stated that there is an agreement between him and applicant for sale of alleged vehicle. Further, he stated that he has no objection if the interim custody has been given to the applicant. After perusing agreement of sale vide Exh.4 then it reflects that it is prepared and executed before the notary. Under the Motor Vehicle Act, it is desirable and mandatory, if any vehicle is transferred by way of sale to another person, then it be registered before the concerning R.T.O. within stipulated period. None except the applicant has claimed vehicle till today. If the seized vehicle kept in police station in the same condition then there is every possibility that its utility value may become less.

7] I would like to mention a citation relating to disposal of property which i.e. ***Sunderbhai Ambalal Desai -Vs- State of Gujarath, AIR-2003-SC-638***, held that

“ it is of no use to keep such seized vehicles at the police station 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.”

8] Therefore, on relying on above said ruling I have no hesitation to allow the application. Hence, no purpose would be served by detaining the said vehicle. But, record shows that, the above said vehicle is seized by the police while transporting river sand without royalty. It means prima facie the above said vehicle was used for the purpose of causing loss to the State by lifting and carrying/transporting the sand without proper royalty from the State resources, indirectly loss to the public at large. Therefore, it is a fit case for taking indemnity bond and Bank guarantee for the produce the said vehicle before the Court as and when required. So, in my opinion, present applicant is entitled for interim custody of said vehicle. Hence, I pass the following order.

ORDER

1. The application is allowed.
2. The seized vehicle i.e. **Ashok Leyland Tipper**, bearing registration no. **MH-40/BL-5690**, Chassis **No.MB1HTDHD0JEBB3306** & Engine **No.JCEZ418753** be released in favour of the applicant **Swapnil Shatrughna Raut** on executing an indemnity bond of Rs.20,00,000/- (Rs. Twnty Lakh) and on depositing Cash Security of Rs.25,000/- (Twenty Five Thusand) or on submitting Bank gurantee of like amount on the following terms & conditions :
 - i) That vehicle should be kept as it is and its nature should not be changed in any way.
 - ii) That the same should not be sold or alienated in any other way till the decision of the trial in this crime.

- iii) That the same shall be produced as and when directed by this court during the trial in this crime.
 - iv) That the applicant shall provide the necessary documents in respect of the said seized vehicle to the investigation officer.
 - v) The Investigation Officer to take photographs of the vehicle at the costs of the applicant and get them attested by taking signatures of the applicant thereon.
 - vi) Investigation Officer to prepare detailed panchnama of present condition of vehicle.
 - Vii) Applicant is directed to produce copy of registration of his name of alleged vehicle before the P.S.O. Bhiwapur, within 60 days and I.O. shall be kept in record or tagged with charge sheet if filed.
3. The applicant shall execute the indemnity bond on stamp of Rs.200/- and handover it to the investigation officer of crime no.235/2020 registered by Bhiwapur police station.
4. The I.O. / P.S.O. of Bhiwapur police station is directed to produce indemnity bond, photographs, panchanama and copy of this order along with charge-sheet, if filed.

Issue letter accordingly.

Sd/-
(V. S. Damare)
Judicial Magistrate First Class,
Bhiwapur

Dated:- 23/07/2020.

CERTIFICATE

I affirm that the contents of this P.D.F. File of judgment/order are word to word as per original judgment/order.

Name of Stenographer : **Ravindra W. Vindane,**
to C.J.J.D. & J.M.F.C., Bhiwapur