



IN THE COURT OF THE I ADDL. DISTRICT & SESSIONS JUDGE
AT KOLAR

PRESENT

Sri. PAVANESH D.,
I Addl. District Judge & Sessions Judge, Kolar

DATED THIS THE 12TH DAY OF MAY 2022

S.C. No.13/2022

INFORMANT : **The State of Karnataka,**
Represented by
Police Inspector,
Malur Police Station,
Malur.

(Rep. by Smt. *Jothilakshmi*,
Learned Public Prosecutor.)

V/s.

ACCUSED Nos.1 to 5 : **Salman & 4 others.**

APPLICANT IN THE APPLICATION

Shashi Kantha Takur,
S/o Prabhakar Takur, Major,
R/o Pillagumpa Village,
Hosakote Industrial Area,
Hosakote Taluk,
Bengaluru Rural District – 562 114.

Represented by Special Power-of-Attorney holder –
 Sri. S. Avinandan Kumar,
 S/o Shashikanth Takur,
 Aged about 21 years,
 R/o # 51/1,
 Pillagumpa Village,
 Hosakote Industrial Area,
 Hosakote Taluk,
 Bengaluru Rural District – 562 114.

(Rep. by Smt. **V. Nagamani**,
 Advocate.)

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ORDER ON APPLICATION FILED BY THE
APPLICANT UNDER SECTION 451/457 OF
THE CODE OF CRIMINAL PROCEDURE, 1973

This application is filed by the *Applicant – Shashi Kantha Takur, through her Special Power of Attorney Holder – Sri. Avinandan Kumar .S*, who is the de-facto complainant (informant), under Section 451/457 of the Code of Criminal Procedure, 1973, seeking for release of Bajaj Pulsar Motorcycle bearing Regn. No.KA-53/EU-7035 which is seized in this case and subjected to P.F. No.254/2021, to its interim custody.

2. It is submitted that the Applicant is the lawful owner of the said vehicle i.e., Bajaj Pulsar Motorcycle bearing Regn. No.KA-53/EU-7035, which is seized by the Respondent-police and subjected to P.F. The said vehicle is

essential for his day-to-day living and requirements. If the said vehicle is kept in the custody of the police, its condition would get deteriorated and the vehicle would get rusted and become useless. If the said vehicle is not released, the Applicant will be put to much inconvenience, hardship and loss. The Applicant is ready and willing to execute indemnity and surety bonds for the interim release of the said article and abide by any conditions to be imposed by this Court. In this background, the learned counsel for the Applicant has prayed for allowing this application.

3. The learned Public Prosecutor has filed objections and contended that the said vehicle is seized in this case and is required for the Court till the conclusion of trial. The Applicant is likely to change the appearance of the said vehicle and in that event, the prosecution witnesses will not be able to identify the vehicle and give proper evidence. The Applicant is also likely to alienate or transfer the said vehicle to others. There are no justifiable grounds to release the said vehicle at this stage. Hence, he prays for dismissing the application.

4. Heard the learned counsel for the Applicant and the learned Public Prosecutor.

5. The point that arises for consideration is:

Whether the Applicant is entitled to release of Bajaj Pulsar Motorcycle bearing Regn. No.KA-53/EU-7035 to his interim custody under Section 457 of Cr.P.C?

6. The finding on the above point is in the ***‘affirmative’*** for the following:-

∴ R E A S O N S ∴

7. The material on record discloses that based upon the first information lodged by CW1 – Mr. Jahanoor Alam, Malur Police have registered Crime No.353/2021 against 8 unknown persons. After conclusion of investigation, charge sheet is submitted against accused Nos.1 to 5 for the offence punishable under Section 395 of IPC and the said case is registered as S.C. No.13/2022 on the file of this Court.

8. It is the case of the prosecution that on 28.10.2021 at around 11:30 p.m., accused Nos.1 to 5 along with juvenile-in-conflict Nos.1 to 4 came in Alto Car bearing Regn. No.DL-03/CZ-6160, Maruthi 800 Car bearing Regn. No.KA-21/M-1084 and Bajaj Pulsar Motorcycle bearing Regn. No.KA-53/EU-7035 armed with long, chopper, dagger & clubs and were waiting near Marasandra Harish Building situated near Flipcart Company, Malur Industrial Area; at that time, CW1 – Mr. Jahanoor Alam came out of his room for attending nature’s call; accused Nos.1 & 2 took CW1 inside his room,

brandished deadly weapons and accused Nos.1 to 5 along with juvenile-in-conflict Nos.1 to 4 threatened CW's.1 to 3 with dire consequences and demand to give their money & mobiles for which they refused; as such, accused No.4 assaulted with butt of the dagger on the knee of CW1; accused No.3 assaulted with long on the right hand of CW3 and also kicked him; accused No.5 assaulted with chopper on the left eye of CW2; accused No.1 snatched mobile phone and cash of ₹.2,000/- from CW1; accused No.2 snatched mobile phone from CW2 and accused No.4 snatched mobile phone from CW3 and thereby committed dacoity; all of them have also assaulted with hands and kicked on the persons of CW's.1 to 3.

9. During investigation of Crime No.353/2021, the Investigating Officer has seized the above said Pulsar Motorcycle which were used by the accused persons while committing the alleged offences under Seizure Mahazar and subjected the same to P.F. No.254/2021 dated 30.10.2021.

10. On a perusal of the material on record, it is noticed that Bajaj Pulsar Motorcycle bearing Regn. No.KA-53/EU-7035 belongs to the Applicant. The Applicant has produced the copies of internet-downloaded Registration Details relating to the said vehicle, Aadhaar Cards of petitioner & his SPA Holder and Insurance Policy relating to the said vehicle issued in favour of the petitioner which is

valid from 30.01.2022 to 29.01.2023 along with the original Special Power of Attorney executed by the Applicant in favour of her Attorney – Sri. S. Avinandan Kumar. The objections filed by the prosecution would indicate that the said vehicle is seized by the Respondent and subjected to P.F. No.254/2021 dated 30.10.2021 in this case. The Applicant has filed this application under Section 457 of Criminal Procedure Code, 1973, seeking for interim custody of the said vehicle. Thus, it is evident that the police seized the said vehicle belonging to the Applicant.

11. The main contention of the Applicant is that, the said vehicle is essential for him for his day-to-day use and living. If the said vehicle is kept in the custody of the police, it would get rusted and would become useless, after deterioration of its condition. The Applicant will be put to hardship and loss due to non-availability of the said article for their use.

12. In a catena of cases, the **Hon'ble Apex Court**, our **Hon'ble High Court** and other Hon'ble High Courts have held that if the vehicles are kept in the police / Court custody, there is every chance or likelihood of the said vehicle getting rusted and may also get spoiled. It is not only a personal loss to the Owner, but it is also loss to the Nation. The constant exposure of the vehicles to the natural elements adversely affects its condition. If the vehicles are stored in the Court or

Police Station without proper protection, the parts of the vehicles would deteriorate and become dysfunctional. Considering all these facts, the **Hon'ble Apex Court** has held in the case of **Sundarbhai Ambalal Desai – V/s - State of Gujarat** reported in **AIR 2003 SC 638**, as under:

“Whatever be the situation, it is of no use to keep a seized vehicle at the Police Station for a long period and the Magistrate should pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicle, if required any point of time. The Court further observed that keeping the seized vehicle at the Police Station for a prolonged period will cause unnecessarily damage and loss of the property. Accepting this view of apex Court, this Court also held in a case of Sulochana Swain and Jaswant Porwal [Supra] that a vehicle seized in connection with a criminal case should be released preferably in favour of the registered owner after obtaining proper bond, security, undertaking etc., in order to save the seized vehicle from waste and damage.”

13. Further, our **Hon'ble High Court**, in the case of **Ganapathy – V/s - State of Karnataka** reported in **ILR 2002 KAR 3751**, has held thus:

“Where the property seized has an evidentiary value it is to be kept intact and to ensure production during trial for the purpose of marking as a material object, the condition of non-alienation is imposed. But with the advance Technology and in the context of changed times, receipt of secondary evidence is permitted in law, movable property of any nature can be subject matter of photography and taking photographs of all features

of the property is not impossible. Mahazar also could be drawn clearly describing the features of property, the subject matter of trial, archaic and onerous conditions act harshly upon the rightful owner.

Section 452 Cr.P.C., while passing the final orders value of the property becomes prime concern for the Court. Bonds and security can be taken from the person in whose favour interim custody is given to safeguard the interest of the person ultimately held entitled to the property. In order to ensure recovery of its value, Trial Court shall take necessary and diligent steps to get the market value of the property assessed. Photographs of the property taken depicting all its features and dimensions before delivery of property to interim custody, the photographs certified by Magistrate, further necessary bonds and security to be taken to ensure prompt recovery of value from person to whom interim custody is given..... Having once given the interim custody to the person who is supposed to be owner of the property, depriving him to effectively use and exercise lawful ownership rights would be unlawful.”

In view of the principles laid down in the aforesaid decisions, it is necessary to pass an Order to release the said vehicle to the interim custody of the Applicant, who is its registered Owner, in order to prevent waste and damage being caused to the vehicle.

14. In the present case, the Applicant is the registered owner of the said vehicle, as could be seen from records produced. There are no rival claimants. The only allegation

made by the prosecution is that the accused persons had come on the said vehicle at the time of committing the offence. Thus, it is apparent that the said vehicle is not directly used for committing the offence. The Applicant has undertaken to produce the said vehicle as and when required by this Court and he is also ready and willing to abide by any conditions. For these reasons, this Court is of the view that, there are valid grounds to release the said vehicle to the interim custody of the Applicant, subject to certain terms and conditions. The apprehension of the prosecution could be met, by imposing suitable conditions.

15. For the reasons stated above, this Court would pass the following:-

ORDER

This application filed by the *Applicant – Shashi Kantha Takur, Represented by his Special Power of Attorney Holder – Sri. Avinandan Kumar .S,* under Section 451/457 of Cr.P.C., is **allowed**.

Bajaj Pulsar Motorcycle bearing Regn. No.KA-53/EU-7035, which is subjected to P.F. No.254/2021, is ordered to be released to the interim custody of the Applicant, subject to following conditions: -

- (i) The Applicant shall execute a personal bond and Indemnity bond for ₹.75,000/- (*rupees seventy-five thousand*) along with one surety for the like sum to the satisfaction of this Court.
- (ii) The Applicant shall produce the photographs of himself and surety along with documents relating to proof of their identity and address.
- (iii) The Investigating Officer is permitted to take photographs of said Bajaj Pulsar Motorcycle from different angles with details of make, manufacturing number / code, at the cost of the Applicant and produce them along with C.D., which shall be duly certified, at the time of the interim custody of the said property being handed over to the Applicant.
- (iv) The Applicant shall produce the original documents relating to the said vehicle before this Court along with its certified/notarized copies for verification.
- (v) The Applicant shall produce the said Motorcycle for inspection, as & when called upon by this Court or the Investigating Officer.
- (vi) The Applicant shall not indulge or use the said Motorcycle for any unlawful or criminal activities or change its physical

appearance / features till
conclusion of trial.

*Dictated to **Judgment Writer** directly on the Computer,
computerized by him, revised, corrected and pronounced by me in
the open Court dated this the **12th day of May, 2022.***

Sd./-

(PAVANESH .D)

I Addl. Sessions Judge, Kolar.

*sd./-**