



ORDER BELOW EXH. NO. 1 IN MISC. CRI.APPLN. NO.159/2022
CNR.No. MH-SI-06-000896-2022

1] This is an application under section 457 of the Criminal Procedure Code, 1973 (in short "Cr.P.C.") for the return of seized vehicle Honda Motorcycle and Scooter Ltd. Company Activa 6G LED Motorcycle in colour Rebel Red Metallic-2 bearing registration No. MH-07-AP-7762, chassis No. ME4JF918KMG048667 and engine No. JF91EG5049001.

2] The applicant contended that he is the registered owner of this vehicle seized in Crime No. C-47/2022 registered for the offences punishable under section 65 (a), (e) of the Maharashtra Prohibition Act, 1949 by the State Excise Department, Insuli, Taluka- Sawantwadi, District- Sindhudurg and it is lying therein. It is likely to cause damage thereby. As he is in need of this vehicle for the purpose of daily use, prayer is made for the return of same by showing readiness to abide by the conditions imposed if any.

3] Upon that application, say of investigating officer and Ld. Spl. A.P.P. are called for. I.O. strongly objected the delivery of the seized vehicle to the applicant on the ground of possibility of the use of this vehicle for carrying liquor again. He also insisted to direct the applicant to furnish a bank guarantee and a cash surety each of 50% of the market value of the vehicle in case if the vehicle is to be delivered to the applicant as per the judgment of the Hon'ble Bombay High Court in Criminal Application No. 670/2002, 671/2002 and 1096/2002. Ld. Spl. A.P.P. objected return seized vehicle on the ground of use of this vehicle in the commission of the alleged crime and possibility of it's use again in similar or any other offence.

4] Heard Ld. Counsel Shri. S.S.Suki for the applicant and Ld. Spl. A.P.P. Sou. V.V.Rawool.

5] Perused certified copy of the FIR, verified copy of the Aadhar Card of the applicant, verified copy of Certificate of Registration and Photo copy of Insurance Policy. It transpires that the applicant is the registered owner of the seized vehicle. Right now the scope of inquiry of this application is limited to the extent of whether to grant delivery of possession of seized vehicle to the applicant temporarily or not. The judgment cited by I.O. are of the year 2002. However, the Hon'ble Apex Court has laid down certain guidelines in respect of return of seized property under section 451 and 457 of Cr.P.C. in **Sunderbhai Ambalal Desai Vs. State of Gujrat** reported in **2003 SCC (Cri) 1943** and **General Insurance Council and others Vs. State of Aadhra Pradesh and others** reported in **(2010) 6 SCC page no. 768**. In view of these guidelines if facts of this case are considered, it appears from say of I.O. that the

vehicle is not required at this juncture for investigation purpose. In that case no purpose would be served in detaining and keeping the vehicle in idle state lying in the police station. Moreover, if it is left lying at police station, it would be exposed to sun and rain for a long time thereby deteriorating the conditions of the vehicle. Similarly, the possibility of damage to the property cannot be ruled out if kept lying in the police station. Moreover, no useful purpose would be served by detaining it for a long time. The trial would not be concluded in near future. Being the owner the applicant is entitled for possession of seized vehicle temporarily till conclusion of trial. So far as apprehension of the prosecution is concerned, conditions may be imposed in that regard. In the result, I pass the following order.

-: :- ORDER -: :-

1. The application is allowed.
2. The Inspector, State Excise Department, Insuli, Taluka-Sawantwadi, District-Sindhudurg is hereby directed to deliver seized vehicle Honda Motorcycle and Scooter Ltd. Company Activa 6G LED Motorcycle in colour Rebel Red Metallic-2 bearing registration No. MH-07-AP-7762, chassis No. ME4JF918KMG048667 and engine No. JF91EG5049001 to the applicant after preparing detail panchanama.
3. The applicant to submit Supurdnama of Rs.90,000/-.
4. The applicant is directed not sell, transfer or change the nature of vehicle till the disposal of case.
5. The applicant to produce the vehicle in the Court as and when directed.
6. The applicant to submit two colour photographs of the vehicle showing two side of the vehicle at his costs.
7. The applicant shall not use the vehicle himself or allow any other person in similar or any other offence.
8. The Inspector of State Excise Department, Insuli, Taluka-Sawantwadi, District- Sindhudurg is hereby directed to allow the applicant to get photographs of the seized vehicle for being submitted in this proceedings.
9. Original supurdnama be kept along-with charge-sheet if filed in the Crime No.C-47/2022 registered with the State Excise Department, Insuli, Taluka-Sawantwadi, District- Sindhudurg.
10. Issue release letter along with copy of this order and copy of the Supurdnama submitted by the applicant accordingly.

Date: 12/10/2022.

(R.R.Bedagkar)
I/c. Judicial Magistrate First Class,
Sawantwadi.