

Order below exh. 90 in Sessions Case No. 218/2017.

Applicant – Surekha Sitaram Gunjal has moved this application and prayed to release Bolero jeep bearing registration No. MH-17-AJ-6943, Chasis No. MA1PS2GPKC6H52835 and Engine No. GPC4H29571. The applicant claims that she is the registered owner of the vehicle in question. If the vehicle is kept idle in the precinct of police station, certainly, the rust will corrode it and she requires the vehicle in question for her business purpose.

2] Prosecution has filed say to this application. The prosecution has stiff opposition to the application on the grounds that as per the provisions of NDPS Act, though the applicant is registered owner of the vehicle, is not entitle to get the vehicle in question. At the time of conclusion of the trial, the vehicle in question can be confiscated to the government, therefore, applicant is not entitle to get the vehicle in question. The vehicle was used for commission of the offence.

3] A perusal of the papers produced on record would show that it is not in dispute that the police officers were on petrolling duty at about 6.25 a.m. on 17/6/2017 near hotel Sunny Palace on Ahmednagar – Aurangabad road. They noticed and suspected the two cars which were approaching Ahmednagar. They had given signals to cars to stop, however, the drivers of the cars did not stop and rashly moved towards Ahmednagar city. The police party chased the cars and accosted the cars. The accused were found in possession of Ganja weighing 337.50 kg worth Rs.50,62,500/- and 306 kg. Worth Rs.45,90,000/- in both the vehicles.

4] A perusal of documents produced on record by applicant would show that she is registered owner of Bolero jeep in question. It

has been held by the Hon'ble High Court, Bombay, bench at Aurangabad in a case **Anil Navnath Marathe Vs. State of Maharashtra and another, 2011(2) Mh.L.J. 903**, that -

11. I have perused the order passed by learned Adhoc Additional Sessions Judge-1, Aurangabad dated 26th January, 2010, by which petitioner was released on bail in connection with offence under N.D.P.S. Act, 1985, as well as perused impugned order dated 20th March, 2010 passed by same Judge by whom application for interim custody of Mahindra Max Jeep bearing No.MH-12-EF-5860 was rejected, and I have also considered submissions advanced by learned counsel for the parties anxiously, as well as gave thoughtful consideration to the observations made in the above referred cases cited by learned counsel for petitioner and I am inclined to accept the submissions advanced by learned counsel for petitioner, since, sub-section 3 of Section 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 stipulates that any article or vehicle used for the purpose of commission of an offence under the said Act is liable for confiscation, meaning thereby that the said article or vehicle must be before the Court at the time of trial. Moreover, Section 61 of the said Act pertains to confiscation of goods used for concealing illicit drugs or substances. Section 62 pertains to confiscation of sale proceeds of illicit drugs or substance and further Section 63 pertains to procedure in making confiscations. However, learned A.P.P. could not point out any prohibitive provision under N.D.P.S. Act which prevents the grant of interim custody of vehicle to owner allegedly used for commission of offence, during pendency of trial. Admittedly, in the instance case, N.D.P.S. (Special) Case No. 2/2010 is pending and same is not likely to be taken up for hearing in near future, and therefore, since the petitioner who claims to be the owner of vehicle in question is entitled for interim custody of the said vehicle during pendency of the said trial but certainly on certain terms and conditions as mentioned herein below.

12. Besides that, it is also material to note that if the vehicle in question is allowed to remain at police station without any care and allowed to be subjected to rain and sun, its condition will deteriorate and there is every possibility of

damage to Engine, Battary, Tube, Tyre and interior decoration of the said vehicle as well as it's parts, and therefore also, it is necessary to grant interim custody of the said vehicle in question i.e. Mahindra Max Jeep bearing No.MH-12-EF-5860 to petitioner to avoid the such eventualities. In the circumstances, the present petition deserves to be allowed subject to imposing certain conditions upon petitioner as mentioned herein below.

13. In the result, the present Petition is allowed and it is directed that trial Court shall examine the documents produced by petitioner and on its satisfaction that petitioner is the owner of Mahindra Max Jeep bearing No.MH-12-EF-5860, shall release the said Mahindra Max Jeep in question bearing registration No.MH-12-EF-5860 in favour of petitioner by way of interim custody, subject to condition that petitioner furnishes bond of Rs. 4,00,000/- as per usual terms and conditions towards security, to the satisfaction of trial Court, with specific condition that the said vehicle in question shall be produced by petitioner before trial Court at the time of trial and also as and when required and directed by the trial Court to do so, and also on the following conditions:-

(a) The petitioner shall not sale, transfer, mortgage or dispose of the aforesaid vehicle in any manner whatsoever and/or shall not make any change in its body, colour and chassis and engine number and chassis number be furnished before trial Court with an undertaking that no damage shall be caused or no part of the vehicle be substituted;

(b) The petitioner shall also file an undertaking before trial Court that the vehicle in question shall not be used for commission of any offence.

(c) Before giving interim custody of the vehicle in question to petitioner, coloured photographs of cabinet size from different angles clearly indicating registration number and other particulars of the vehicle shall be kept on file, and expenses for the photographs shall be borne by petitioner herein.

(d) It is made clear that in case of any allegation regarding involvement of said vehicle in any criminal activity or in transportation of any objectionable articles, the order as to interim release of the said vehicle shall stand vacated automatically and the trial Court shall have due authority to take necessary steps for seizure of the said vehicle.

5] In the present case also, trial is not likely to be taken up for hearing in near future. If the vehicle is kept idle in the precinct of police station, certainly rust will corrode it. If the vehicle is remained unattended, the vehicle will become junk day by day. Therefore, I am of the view that the vehicle can be released to its registered owner by imposing stringent conditions. Hence, I proceed to pass the following order :-

Order

- a) Application (exh.90) is allowed.
- b) The vehicle i.e. Bolero jeep bearing registration No. MH-17-AJ-6943, Chasis No. MA1PS2GPKC6H52835 and Engine No. GPC4H29571 be released to applicant – Surekha Sitaram Gunjal, the registered owner on her furnishing bond of Rs.5,00,000/-, as per usual terms and conditions towards security.
- c) The applicant – Surekha Gunjal shall produce the vehicle in question before the Court as and when required by the court and directed by the court.
- d) Applicant shall not sale, transfer, mortgage or dispose of the vehicle in any manner whatsoever and/or shall not change its body, colour, chasis number and engine number and shall not cause damage to the body of the vehicle.
- e) Applicant shall not use the vehicle for commission of any offence.
- f) Before giving interim custody of the vehicle in question to the applicant, colour photograph of vehicle of different angles, clearly indicating registration number and other particulars of the vehicle shall be kept on the file and the expenses of the photographs shall be borne by the applicant.

g) In case of any allegations regarding involvement of the vehicle in any criminal activities or any transportation of any objectionable articles, the order of the interim relief shall stand vacated automatically.

Date :- 25/3/2019.

[S. R. Jagtap]
Additional Sessions Judge,
Ahmednagar.