

ORDER BELOW EXH.26 IN SPECIAL CASE NO.43/2023

1. By way of present application under Section-457 of the Code of Criminal Procedure the applicant/accused-Nikhil Babasaheb Gaikwad has prayed for return of his Bajaj Pulser Motorcycle bearing registration No.MH-17-CP-6619 which was seized in connection with CR No.I-12/2023 registered with Sonai Police Station for the offence punishable under Section-376(j)(n), 384, 354A, 506 of the Indian Penal Code and U/s.12 of the Protection of Children from Sexual Offences Act.
2. Perused the application and say of prosecution and the informant.
3. Heard learned advocate Shri.G.D.Khiladkar for applicant and learned Spl.P.P. Shri.M.S. Kale for the prosecution and Shri. R. R. Pote for the informant.
4. The learned advocate for the applicant submitted that the applicant/accused is owner of seized motorcycle. He is accused in present crime. The applicant is using said motorcycle for his daily use. The applicant is doing labour work and for going to his work he is in need of said motorcycle. If the same would not be released then it would remain idle at police station, there are chances of deteriorating the vehicle by damage its spare parts which would caused huge loss to the applicant. The applicant is ready to abide by all the terms and conditions which may be imposed by this court including not changing nature of the same and not creating third party rights in the said. Hence, the seized motorcycle may be returned to the applicant on appropriate conditions.

5. The learned Spl.P.P. vehemently opposed the request on the ground that there is possibility of creating third party interest and destruction of the vehicle so as to tampering with the evidence. It has also mentioned that the vehicle was used by the applicant for commission of serious offence under POCSO Act. If the vehicle would be released, it may again used in similar type of offence. Therefore, the application may be rejected.

6. The informant has also opposed the application on similar ground with further apprehension of repeating similar offence.

7. From the record it is clear that the factum of seizure of vehicle has not disputed by the prosecution. The applicant has also produced the documents showing ownership of the vehicle such as verified copy of vehicle particulars issued by the Dy.R.T.O., Shrirampur as well as copy of insurance policy issued by Chola M.S.General Insurance. The prosecution has not disputed those documents. Seizure of vehicle from applicant is also mater of record in the charge-sheet.

8. Time and again it is observed by the Hon'ble Supreme Court that it is always better to return the muddemal property like vehicles on appropriate conditions of production of the same in the court whenever required and on the condition of not changing nature of same otherwise, the vehicle would be damaged by lying idle outside the police station. On this point a reliance can be placed on the observations of the Hon'ble Supreme Court in the case of ***Sunderbhai Ambalal V/s. State of Gujrat, 2003 SC 638***. There is no impediment in returning the vehicle to the accused/applicant.

9. Considering the valuation of the vehicle in my view it would be necessary to direct the applicant to furnish an indemnity bond of Rs.1,00,000/- along with other appropriate conditions while permitting him to take back the vehicle. Considering the above observations it is clear that the vehicle can be returned to the applicant on appropriate conditions. Hence, I pass following order;

ORDER

1. Application is allowed.
2. The vehicle i.e. Babaj Pulser Motorcycle bearing registration No.MH-17-CP-6619 seized by Sonai Police Station in connection with C.R.No.I-12/2023, be returned to the applicant-Nikhil Babasaheb Gaikwad on execution of Indemnity bond of Rs.1,00,000/-, on following conditions:-
 - a) He shall produce the same before the court and police as and when required.
 - b) He shall not dispose off the said vehicle by any means i.e. sale, gift, exchange, etc.
 - c) He shall not change the nature and colour of the said vehicle.
 - d) That, before handing over the vehicle photographs of the vehicle may be taken, so that, the vehicle can be identified by the photographs and the signatures of the applicant/accused be taken on the photographs.
 - e) Investigating officer shall prepare detail panchanama regarding the vehicle before handing over it to the applicant.

Date : 17.05.2023
Place : Newasa

(V.Y.Jadhav)
Special Judge, Newasa
J.O. Code-MH02455