

Order below exh. 79 in S.T. No. 110/2021
CNR MHAko1-001903-2021
State Vs. Sagar & others.

1] The applicant Sanjay Agrawal has prayed for provisional return of motorcycle bearing No. MH-30-AY-6638 as well as cash amount of ₹ 1,48,000/-, seized by the MIDC, Akola police in Cr. No. 427/2020. A charge has already been framed against the accused and the matter is fixed for recording evidence.

2] It is a case of the prosecution that one Gopal Agrawal used to handle the stone crusher belonging to the present applicant Sanjay Agrawal. One day, while Gopal Agrawal was returning home from the crusher on the motorcycle belonging to the crusher owner (the applicant) and was also carrying a cash amount of ₹ 1,50,000/-, he was shot dead by robbers and the cash amount was robbed. It has been alleged that the accused have committed the alleged offence. The police claim that out of the robbed amount, an amount of ₹ 1,48,000/- has been recovered at the instance of the accused, during their police custody.

3] The applicant (owner of the crusher & the motorcycle) has prayed for provisional return of the motorcycle as well as the seized cash amount. It has been stated that the motorcycle will get deteriorated if it is kept unused in the premises of the police station for a further uncertain period. The applicant needs the motorcycle as well as the seized cash amount for the purpose of running his business.

4] The application has been resisted by the ld. APP on the ground that the property is an important piece of evidence, which can not be compromised by handing over the same to the applicant. The accused no. 1, 2 & 5 have strongly objected the application. As per the accused no. 1 & 5, the amount has been recovered from different accused persons and that description of the stolen notes is not found in the FIR. The accused no. 3 and 4, have however refused to file say to the application.

5] The I.O. has given his no objection for provisional return of the motorcycle. He has no objection to provisionally return the cash amount, depending upon the say of the legal heirs of deceased Gopal, from whom the cash was allegedly robbed.

6] The wife of deceased Gopal Agrawal (Bhavna Gopal Agrawal) has filed an affidavit stating her no objection for handing over the cash amount to the applicant.

7] Heard all the concerned. Perused the registration certificate, tax receipt as well as insurance papers of the motorcycle. It is clear that the motorcycle belongs to the applicant. The FIR shows that the motorcycle belongs to the applicant, who is also owner of the stone crusher. The FIR supports the claim of the applicant that the robbed cash amount belonged to the applicant. The affidavit filed by the wife of deceased Gopal Agrawal also supports the claim of the applicant. The objection raised by the accused

no.1, 5 & 6 is vague. There is no good reason why the property should be kept idle at the police station for a further uncertain period. The ld. APP has no answer to the situation that the motorcycle will get deteriorated with passage of time, if kept unused. I think the objection raised by the ld. APP is unreasonable and can not be acted upon. As regard identification of the currency notes, claimed to have been recovered at the instance of the accused, appropriate conditions can be imposed while returning the same. Also, no body else has sought return of the property. Considering all these aspects, I am convinced to provisionally return the property to the applicant in the following terms.

ORDER

- 1] The application is hereby allowed.
- 2] The motorcycle bearing no. MH-30-AY-6638 as well as the cash amount of ₹ 1,48,000/- (One Lakh Forty Eight Thousand only) seized by the MIDC Akola police in Cr. No. 427/2020 (S.T. No. 110/2021) be provisionally returned to the applicant Sanjay Chhitarmal Agrawal upon his furnishing an indemnity bond for ₹ 2,00,000/- (Two Lakhs only) on the following conditions :-
 - (a) The applicant shall produce the motorcycle as well as an amount of ₹ 1,48,000/- before the court, as and when required.
 - (b) The applicant shall not dispose of the motorcycle in any manner until final decision of the case;

(c) The applicant shall not carry out any material alteration in the motorcycle, until final decision of the case.

(d) The in-charge of the MIDC Akola police station shall, before handing over the cash amount to the applicant, draw a memorandum noting down registration numbers of the currency notes that are to be returned to the applicant.

For doing so, a date shall be fixed for drawing such memorandum, which shall be notified to the accused in advance, so that the memorandum could be drawn in presence of the accused. Presence or absence of the accused persons during the memorandum, shall be noted in the memorandum.

The accused to note the orders.

Dt. 01.07.2022.

(Vivek B. Gavhane)
Addl. Sessions Judge, Akola.

Certificate

I hereby certify that the contents of this PDF File are same word for word as per original order.

Name of Steno : A.J. Dharamkar.
Court's name : Dist. Judge- 4 & ASJ, Akola.
Date of dictation : 01.07.2022.
Signed by Presiding Officer on : 02.07.2022.
Uploaded on : 04.07.2022.