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|  | CNR NO. MHMM130113682024<br><u>Cri.M.A.No.1989/M/2024</u><br><u>CR. No. 169/2024</u><br><u>Deonar Police Station</u><br>Shahzad Vs. State |
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**COMMON ORDER BELOW EXH.1 & EXH.8 ON APPLICATION FOR  
RETURN OF PROPERTY**

1. The applicant Shri. Shahzad Akil Hussain Tade claimed owner of 62 goats and Motor Vehicle Tempo Reg No. MH-04-JU-7379 seized by Deonar Police in CR.No.169/24 under Sec. 11(1),11(1)(a),11(1)(d),11(1)(h) Prevention of Cruelty to Animal Act, Sec. 83/117 Motor Vehicle Act r/w Sec.119 M. P. Act and sought their interim custody.

2. The Intervener Madhura Gosamvardhan Santha applied vide Exh. 08 through its authorized representative and claimed interim custody of 62 goats by complying with the provision under Rule 3(b) of the Prevention of Cruelty to Animals (care and maintenance of case property animals) Rules 2017. It also sought to direct I.O. to comply with Rule 3(a) and to the owner of the animal and vehicle to pay the requisite amount incurred on goats for daily maintenance.

3. Ld. APP submitted say at Exh. 05 that appropriate order be passed as per the guidelines of the Hon'ble Supreme Court in the case of Sunderbhai Desai vs. the State of Gujrat. Whereas the Investigating Officer filed say vide Exh.04 and mentioned that on 15.10.2024 at 16.40 hours near Bakara gate of Deonar slaughter house a person named Ubed Akil Tade was found cruelly carrying 62 goats in motor vehicle tempo no. MH-04-JU-7379, without provision of fodder, or water. Hence, an offence under Sec.11(1),11(1)(a),11(1)(d),11(1)(h) Prevention of Cruelty to Animal Act, Sec.83/117 Motor Vehicle Act r/w Sec.119 M. P. Act registered against him at Deonar Police Station and goats & Motor Tempo came to be seized. The seized goats are kept in Matoshri Hosai Bandu Adavale Samajik Sanstha, Nankeswadi, Tq- Murbad, Dist- Thane for their care and maintenance. The Investigating Officer did not object to handing over the possession of the seized goats to its purchaser owner and the vehicle to its owner but objected to the release in favor of the applicant.

4. Ld. Counsel for the applicant submitted that the applicant owns the seized goats and vehicle. He is in the business of buying and selling goats. He purchased the said goats and was intercepted by the police while taking them in the vehicle to deliver them to the shopkeeper. The police report did not allege cruelty. Mere overloading of a vehicle with animals does not amount to cruelty. The applicant is the only person entitled to interim custody of the

goats & vehicle. The Intervener claimed his seized goats without having locus-standi, only to get money on the pretext of expenses. In support, the applicant produced Copy of his Adhar card, Copy of his Pan Card, Copy of Registration Certificate of Tempo, Copy of Insurance, Copies of receipts of goats and relied upon the decision in the case of Dhyani Foundation Vs. State of Assam Cri. Rev. P/146/2021.

Per contra, Ld. Counsel for the Intervener invited the attention of this court towards the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules, 2017 produced on record and submitted that in view of Rules, 3, 4, 5, and 8 during the pendency of litigation, the custody of animal will be with Gaushala and the accused/owner will pay for their maintenance and if any vehicle is involved then the vehicle to be held as a security. The prime object of the Intervener organization is the custody of the animals for their welfare, preservation, and protection, the amount of maintenance will only help to take better care and quality of food & medicine to the said animals. Hence, prayed to grant custody of seized goats with daily maintenance at the rate of Rs. 60/- per day per goat and direction to I.O to comply with the mandatory provision of Rule 3 (a) with respect of health inspection, identification and ear tagging of goats. On behalf of the Intervener place reliance upon the decision in the case of Bhartiya Govansh Rakshan Sanvardhan Vs. The State of Maharashtra Cri. App.No. 1054/2017.

5. Having heard both sides. I have gone through the cited decisions,

*The case of Manager, Pinjrapole Deudar was also referred to by the Hon'ble Gauhati High Court in the case of Dhyani Foundation (supra) cited by the applicant. On an overall analysis that 62 cattle were carried in eight vehicles. There is no allegation in FIR that said vehicle were not spacious for carrying seized cattle nor suggest that it causes unnecessary pain and suffering to the cattle, the Hon'ble High Court held that prima facie no cruelty has been inflicted on the cattle at the time of seizure as certified by the said Veterinary Officer and that the private respondents herein being the owners of the cattle cannot be deprived of interim custody of their cattle in view of the proposition laid down by the Hon'ble Supreme Court in the case of Manager, Pinjrapole Deudar.*

*In the case of Bhartiya Govansh Rakshan Sanvardhan (supra) the Hon'ble Bombay High Court held that, it was admitted in that matter, subject goats were already slaughtered and, therefore, the question of granting custody did not remain, but still the Hon'ble High Court gave directions that the mandate of the provisions under Section 102 of the Code of Criminal Procedure and also the provisions of PCA (Care and Maintenance of Case Property Maintenance) Rules, 2017 should be observed.*

In the light of the above, the rival claim of the applicant and the intervener has to be decided in accordance with the provisions of the Code of Criminal Procedure and the provisions of the PCA (Care and Maintenance of Case Property Maintenance) Rules, 2017.

6. The applicant contends that in the absence of allegations in the FIR, mere overloading of the vehicle with animals does not amount to cruelty, hence seeking its custody as the owner of the seized goats and vehicle. The applicant produced receipts of goats

to claim ownership. In any other offence, the owner of the article is entitled to get the same on being satisfied about the ownership by way of adducing relevant documents, but offence under Section 11 of the Prevention of Cruelty to Animal, Act 1960 is to be decided altogether on different pretext.

So far as the Prevention of Cruelty to Animals Act, 1960, which being a special Act has been enacted to prevent the infliction of unnecessary of pain or suffering on animals to prevent the cruelty to animals. The cruelty has been defined in Section 11 of the Act and provision to Section 11 (d) reads as follows:

Section 11 – Treating animals cruelty –

(1) If any person –

(d) conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering;

Section 11(2) read as follows:

(2) For the purpose of sub-section (1), an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence:

In view of the aforesaid provisions, the owner shall also be liable for commission of an offence if he did not take proper care and supervision of such animals. That being so, one cannot claim the possession of the animals only as owner of the same unless it is proved that he has taken due reasonable care. Moreover, it is evident that there is a clear violation of the requirement of Rule

65(a) of the Transport of Animal Rules, there is no required certificate has been furnished from the qualified Veterinary Surgeon as per Rule 65(a) of the Transport of Animals Rules, 1978. As per Rule 67(a) & 70, First-aid equipment shall accompany the sheep or goats in transit, similarly sufficient food and fodder shall be carried during the journey and a watering facility shall be provided at regular intervals. In the instant case, 62 goats were found cruelly transported in Ashok Lyland Tempo No. MH-04-JU-7379, beyond its capacity, without provision of fodder, water, and first aid kits, in violation of Transport of Animals Rules, 1978. It appears that no proper care was taken by the applicant at the time of transportation of such goats, as mandated under the law and rules. The facts and circumstances of the instant case are different from the case mentioned in the decision of Dhyan Foundation (*supra*) relied by the applicant.

7. Section 3 of the Prevention of Cruelty to Animals Act, 1960, provides that it shall be the duty of every person having the care or charge of any animal to take all reasonable measures to ensure the well-being of such animal and to prevent the infliction upon such animal of unnecessary pain or suffering. Further, Section 35 of the Act provides that for proper care and treatment of animals in respect of which offences under this Act have been committed, such animals can be kept in pinjrapole/Government Pond, etc. with a direction that the cost of transporting and maintaining shall

be payable by the owner of the animal. As it is clear that the goats have been transported in the vehicle in violation of the provisions of the Act, the applicant as the owner is not entitled to custody of seized 62 goats.

On the other hand, the Intervener Organisation is a registered trust, that works in the field of welfare, preservation & protection of animals. It takes the initiative to provide fodder, water, and medical aid to the rescued animals. Apart from the Intervener Organisation, neither Matoshri Hosai Bandu Adavale Samajik Sanstha nor any other claims custody of seized goats. Therefore, giving the interim custody of the seized goats to the Intervener Organisation would be proper and legal.

8. The seized 62 goats are in the custody of Matoshri Hosai Bandu Adavale Samajik Sanstha Nankeswadi, Tq- Murbad, Dist- Thane since 16.10.2024. As per rule 5(1) of the Prevention of Cruelty to Animals (care and Maintenance of case property animals) Rules, 2017, the Magistrate is empowered to determine the sufficient amount to cover reasonable costs incurred and anticipated for transport and maintenance and treatment of the seized animals. The Magistrate is empowered to direct the owner to execute a bond of the determined value with sureties. As per Rule 4(2) of the Prevention of Cruelty to animals (care and maintenance of case property animals) Rules, 2017, Magistrate

shall use the rates specified by the State Board as the minimum specified rates for transport maintenance and treatment of seized cattle.

The Secretary of the Animal Welfare Board of India issued a notification dated 03/05/2018, by which it is directed that every state board to specify the costs of maintenance care and transport within 3 months of commencement of those rules. As per the said direction, the Maharashtra State Board has not issued rules or that are not placed on record by the parties. Hence, the notification issued by the Secretary of the Animal Welfare Board of India dated 03/05/2018 needs to be followed and those rates are as under:

| Class of Animal              | Purpose                                                                 | Suggested Minimum rates   |
|------------------------------|-------------------------------------------------------------------------|---------------------------|
|                              | Health examination, identification, colour and photography, ear tagging | Rs. 200 Per animals.      |
| Dog and pets (small animals) | Body weight up to 10 Kgs                                                | Rs. 15 per day per Animal |
|                              | Body weight up to 10 to 25 Kgs                                          | Rs. 30 per day per Animal |
|                              | Body weight up to 25 to 40 Kgs                                          | Rs. 50 per day per Animal |
|                              | Body weight more than 40 Kgs.                                           | Rs. 60 per day per Animal |

In the instant matter, in all 62 goats are seized. As per a report called from Matoshri Hosaii Bandu Adavale Samajik Sanstha, out of which, 61 goats weigh in between 10 to 25 Kgs, and 1 goat weighs 29 Kgs. In view of the above notification, it is necessary to calculate the total amount of expenses relating to the maintenance and health inspection of the seized goats, which as under.

| Purpose                                                                 | Suggested Minimum rate     | Calculation                   |
|-------------------------------------------------------------------------|----------------------------|-------------------------------|
| Health examination, identification, colour and photography, ear tagging | Rs. 200 per animal         | 200 x 62 goats<br>=12400      |
| For weight up to 10 to 25 Kgs                                           | Rs. 30 per day per animal  | 30X 27 days X 61 goats=49,410 |
| For weight up to 25 to 40 Kgs                                           | Rs. 50 per day per animal  | 50 X 27 days X 1goat = 1,350  |
|                                                                         | <b>Total amount of Rs.</b> | <b>63,160</b>                 |

The seized goats are in Matoshri Hosaii Bandu Adavale Samajik Sanstha, since 16.10.24. The Matoshri Hosaii Sanstha is thereby entitled to the costs of maintenance. In view of Rule 5(1) and 5(5) of the Rules, 2017, the accused, owner of goats and vehicle are jointly and severally liable for the costs of transport, treatment and care of the animal. The accused (Ubed Akil Tade), and the owner of the goats & vehicle (Shahzad Akil Hussain Tade) are jointly and severally liable to pay Rs.63,160/- to Matoshri Hosaii Bandu Adavale Samajik Sanstha and are also liable to pay

the amount of Rs. 30/- per day for 61 goats and Rs.50 per day for 1 goat, till the conclusion of the trial.

9. As per Rule 3 of the Prevention of Cruelty to Animals (care and maintenance of case property animals) Rules, 2017, the Investigating Officer is duty bound to follow the procedure mentioned under Rule 3. In such cases, I.O. shall ensure the health inspection, identification and marking of the seized cattle through the jurisdictional Veterinary Officer deployed at the Government Veterinary Hospital of the area. Since the lodging of the FIR, the I.O. has not filed any compliance report before this Court.

10. With regards to the custody of the vehicle is concerned, as per Section 5(4) of the Prevention of Cruelty to Animals (care and maintenance of case property animals) Rules, 2017, it is necessary to direct the vehicle, which has been involved in an offence, to be held as a security for the purpose of costs and maintenance of the animal. As per plain language, the provision is mandatory. However, holding a vehicle as security does not necessarily mean being kept in physical custody. The security can be created even if it is in the possession of other people.

11. The applicant is claiming the interim custody of seized Tempo No. MH-04-JU-7379. He has filed on record R C book and Insurance paper of the seized vehicle. The seized vehicle is insured. Documents on record show that the applicant is the

registered owner of the seized vehicle. The objection raised by the intervener can be cured by imposing certain conditions while handing over the interim custody to the applicant. It will not be appropriate to keep the seized vehicle at police station for long time in view of Judgment on the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai Vs. State of Gujarat*. In the case of *Sattar Nisar Kureshi Vs. State of Maharashtra* in Criminal Writ Petition No.936 of 2018, the Hon'ble Bombay High Court held that "Even if it is assumed for a while that it was used earlier for transporting the bullocks for being slaughtered, there is no provision in the Act for confiscation of such vehicle." Therefore, the applicant being the owner of the seized vehicle is entitled to the interim custody of the seized vehicle in question subject to certain conditions including the condition of Rule 5(4) of the Rules, 2017.

12. In view of the matter, passed the following order.

### **ORDER**

|    |                                                                                                                                                                                                       |
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| 1) | The application of applicant Exh.01 is hereby rejected to extent of seeking custody of seized 62 goats and partly allowed for grant of interim custody of seized Ashok Lyland Tempo No. MH04-JU-7379. |
| 2) | The Application of the Intervener Exh.08 is hereby allowed.                                                                                                                                           |
| 3) | The interim custody of seized vehicle bearing registration No. MH-04-JU-7379, be handed over to the applicant Shahzad                                                                                 |

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|    | Akil Hussain Tade, on execution of supurtnama bond of Rs. 2,25,000/-(in words Rs.Two lacs and Twenty-Five Thousand only) on following conditions;                                                                        |     |                                                                                                                                                                                                                                                            |
|    |                                                                                                                                                                                                                          | i   | The applicant shall produce said vehicle as and when required by the appropriate authority or by the Court.                                                                                                                                                |
|    |                                                                                                                                                                                                                          | ii  | The applicant shall not transfer said vehicle by way of sale, exchange, gift etc. to any other person till the final disposal of the case arising out of Crime No.169/2024 registered with Devonar Police Station.                                         |
|    |                                                                                                                                                                                                                          | iii | The applicant is also directed not to change the nature of the vehicle till final disposal of the above said case.                                                                                                                                         |
|    |                                                                                                                                                                                                                          | iv  | The applicant is further directed not to use said vehicle in any kind of such offence.                                                                                                                                                                     |
|    |                                                                                                                                                                                                                          | v.  | The investigating officer shall conduct detailed panchnama and take coloured photographs of the seized vehicle at the costs of the applicant and obtain his signature thereon, before releasing the same and he shall file the same in the concerned case. |
| 4) | The interim custody of seized 62 goats is given to the Intervener Madhura Gosamvardhan Santha, for proper care and maintenance, till final disposal of case culminating from CR.No. 169/2024 registered with Deonar P.S. |     |                                                                                                                                                                                                                                                            |
| 5) | The seized goats are presently in custody of Matoshri Hosaii Bandu Adavale Samajik Sanstha Nankeswadi,Tq- Murbad, Dist- Thane since 16.10.2024. In view of Rule 5(1) and 5(5)                                            |     |                                                                                                                                                                                                                                                            |

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|    | <p>of the Rules, 2017, the accused and owner of goats &amp; the vehicle are jointly and severally liable for the costs of transport, treatment and care of the animal. The Accused (Ubed Akil Tade) and owner (Shahzad Akil Hussain Tade) are jointly and severally directed to pay Rs.63,160/- towards maintenance and health inspection of seized 62 goats to Matoshri Hosai Samajik Sanstha, within 03 days of this order. This amount of maintenance is for the period from date of custody i.e. 16.10.2024 till today i.e.12.11.2024. and they shall jointly &amp; severally continue to pay in future the amount of Rs.30/-per day per goat for 61 goats &amp; Rs. 50 per day for 1 goat till final conclusion of the trial to the Intervener Madhura Gosamvardhan Santha. They are also hereby directed that they shall execute the bond to that effect with solvent surety of Rs.15,000/- each within three days from the date of this order.</p> |
| 6) | <p>In case of failure to pay the amount of Rs.63,160/- as directed above, the said amount be recovered as the arrears of land revenue vide Rule 5(8) of the Rules, 2017.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 7) | <p>The amount if any paid by the owner to Matoshri Hosai Bandu Adavale Samajik Sanstha earlier, it is to be deducted from the total amount.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 8) | <p>Madhura Gosamvardhan Santha. to undertake expense of transport of seized goats from Matoshri Hosai Samajik Sanstha to their Gaushala.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

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| 9)  | In case accused & owner of goats and vehicle failed to execute the bond under Rule 5 (1) of the Rules, 2107 as directed by this Court, the vehicle Ashok Lyland Tempo bearing No. MH-04-JU-7379 shall be held as a security in view of Rule 5 (4) of the Rules, 2017.                                                                                                                                                                                               |
| 10) | The investigating officer shall take steps as per Rule 3(a) of Rules 2017 to ensure health inspection, identification and marking of the seized goats through the jurisdictional Veterinary Officer deployed at Government Veterinary Hospital of the area and such marking may be done by ear tagging or by chipping by advanced technology. The investigating officer is directed to submit compliance report along with photographs in the Court in that behalf. |
| 11) | The investigating officer is further directed that in view of Section 102 of the Code of Criminal Procedure, he shall take a bond from Madhura Gosamvardhan Santha as to make sure that 62 goats are handed over to the said trust and will be produced before the Magistrate/ Court if needed and for the orders of its proper disposal.                                                                                                                           |
| 12) | The arrangement of custody of seized cattle is intermediate.                                                                                                                                                                                                                                                                                                                                                                                                        |

Date: 12.11.2024

(Dipak R. Deshmukh)  
Judicial Magistrate (First Class)  
45<sup>th</sup> Court, Kurla, Mumbai.