


MHBU070013112020 	S.C.C. No. 731/2020
	State -vs- Sandip
	CNR NO : MHBU070013112020

ORDER BELOW EXH.3

(Passed on 14.12.2020)

This is an application filed by the applicant to release Motor-cycle Splendor Pro of Hero Company bearing registration no. MH-28-AD-9289, having Chassis No. MBLHA10ASCHL47260, Engine No. HA10ELCHL23998, seized by Police Station Shegaon Rural, in crime no. 227/2020.

2. As per the contention of the applicant he is the owner of the seized motor-cycle, which is seized in Crime No. 0227/2020. He is ready to abide by the terms and conditions that may be imposed on him and ready to furnish bond as per the direction.

3. Perused the say of learned A.P.P. filed below Ex. 3 and say of I.O. filed at Ex. 6. I.O. has submitted his no objection if seized motorcycle released in favour of applicant on imposing certain conditions. However, A.P.P. has submitted that the property claimed by the applicant is liable to be forfeited under the provisions of Maharashtra Prohibition Act and in light of the judgment of Hon'ble Supreme Court of India in the case of *Mustafa -vs- State of U.P., Civil Appeal No. 6438/2019, decided on 20th August, 2019.*

4. I consider submissions of both sides. The applicant has filed verified copies of certificate of registration, his driving license, no objection certificate, Form No. 35 of seized motor-cycle. It shows from the certificate of registration that seized motor-cycle is in the name of applicant. It also shows that said vehicle is hypothecated with HDFC Bank Limited, Aurangabad. The applicant has also filed letter issued by said bank at Ex. 8 about having its no objection to release the seized motor-cycle in favour of applicant.

5. Learned APP has relied on the judgment of *Mustafa cited supra* and submitted that the seized vehicle is liable to be forfeited in view of the provisions of Maharashtra Prohibition Act. Per contra, advocate for accused has submitted that this Court has every power to release the said vehicle in favour of the applicant on supratnama. I consider submissions of both advocates. In the case of *Mustafa cited supra*, Hon'ble Supreme Court of India has considered “*the powers of the Collector in respect of confiscation of the vehicle in violation of Section 60 and 72 of the United Provinces Excise Act. In this case, the FIR was lodged under those provisions and the vehicle was confiscated by the Collector after initiation of confiscation proceeding under section 72 of the Excise Act. In the said case, Hon'ble Supreme Court of India has observed that the Collector has every power and jurisdiction to confiscate the vehicle and he may ordered the sell and distribution of sell proceeds in view of the provisions of Section 72 of the Excise Act.*”

6. However, in the present matter, the seized vehicle came to be seized under the provisions of section 65(a)(e) of the Maharashtra

Prohibition Act. Police have not levelled the offences punishable under the provisions of Excise Act. Moreover, the reply of I.O. doesn't show in respect of pendency of confiscation proceeding before the Collector. I.O. has not opposed this application. Therefore, the case of Mustafa is not helpful to the prosecution. Thus, with due respect it is not applicable to the present matter.

7. From the documents on record, it is clear that, the applicant is entitled to get the temporary custody of seized motor-cycle. The possibility of the damage to the seized motor-cycle cannot be ruled out, if keep lying in the police station. Moreover, it has been observed by Hon'ble Supreme Court of India in case of ***Sundarbhai Desai -vs- State of Gujrath, AIR 2003 S.C. 638*** observed that *there is no use to keep such a seized vehicle at the police station for long period. It is for the Magistrate to pass appropriate order immediately by taking appropriate bond and guarantee as well as security for return of the said vehicle, if required at any point of time.*

8. Thus, in light of the legal position laid down in case of Sundarbhai cited supra, I think it would be proper to release the vehicle in favour of the applicant. It would not cause any serious prejudice to the prosecution. As the investigation of crime is completed which resulted into filing of present charge-sheet. Hence, I have no hesitation to hand over the temporary custody of the seized motor-cycle to the applicant on conditions. Hence, in the result I pass following order.

ORDER

1. Application is allowed.
2. Motor-cycle Splendor Pro of Hero Company bearing registration no. MH-28-AD-9289, having Chassis No. MBLHA10ASCHL47260, Engine No. HA10ELCHL23998, seized by Police Station Shegaon Rural, in crime no. 227/2020, be released in favour of applicant namely Sandip Wasudeo Paturkar, r/o. Tivhan Kd., Tq. Shegaon, Dist. Buldana, on execution of Supurtnama bond of Rs. 50,000/- (Rs. Fifty Thousand only).
3. Applicant is directed not to create third party interest in the said motor-cycle, not change its identity till final decision of the case.
4. He shall produce the same as and when required at the time of trial in the court.
5. PSO, P.S. Shegaon Rural is directed to obtain two photographs from different angles of the said motor-cycle at the costs of applicant and produce the same with charge-sheet.
6. Issue letter accordingly to PSO, P.S., Shegaon Rural along-with certified copy of this order, after compliance of conditions of bond by the applicant.

(Dictated and pronounced in open Court)

Date : 14.12.2020.

(V.V.Kulkarni)
Judicial Magistrate First Class,
1st Court, Shegaon.

Certificate

I affirm that the contents of this PDF file order is correct word to word as per the original order.

Name of Steno : A.I.Shastri.

Name of Court : C.J.J.D. & JMFC Court, Shegaon

Date : 15.12.2020.