

ORDER BELOW EXH. 47 IN SESSIONS CASE NO.155/2023

1. In the instant application, the applicant company has prayed for interim custody of the Tractor of Mahindra & Mahindra company bearing No. MH-21-BQ-5184.

2. Mr. M.N. Gore, ld. counsel for the applicant submitted that the applicant is a registered finance company. Respondent no. 2 demanded a loan for purchasing the tractor. Respondent no.2 took the loan of Rs. 5,75,000/- for purchasing the tractor. Out of the said amount, he purchased the tractor of Mahindra & Mahindra company bearing No. MH-21-BQ-5184. Respondent no. 2 assured to repay the loan within 60 months. He assured to pay monthly installment of Rs. 84,000/-. Respondent no. 2 initially paid installments properly. Thereafter, he didn't pay the amount. Till 25/12/2023, the amount of Rs.5,96,965/- is in arrears. The said tractor is hypothecated with the applicant company. Applicant has full authority over the said tractor. Respondent no. 2 has not deliberately repaid the amount. He will not repay the amount in future. Custody of the tractor be handed over to the applicant for sale of the tractor in order to recover the loan amount of respondent.

3. Respondent no. 2 appeared in the matter and filed say (Exh.70). According to respondent no.2, he took loan from applicant

company for purchase of the tractor. Due to unsound financial condition, he failed to pay the installments of the loan. He is not having sufficient income to repay the loan amount. He has no objection for handover the tractor to applicant company. Accused no. 2 and other accused also gave no objection for allowing the application.

4. Applicant produced the copy of loan application (Exh.83/1). It shows that respondent no. 2 applied for a loan to the applicant company. Said papers also show that the amount of Rs.5,75,000/- was given to respondent no. 2 for purchase of the tractor. He assured to repay the loan amount within 60 months. The loan agreement also shows that the said tractor is hypothecated with the applicant company. Vehicle particulars (Exh.83/3) shows that the tractor stands in the name of respondent no.2. The agreement of hypothecation has been mentioned on the vehicle particulars. Applicant has also produced the insurance certificate (Exh.92/1) to show that the tractor is insured.

5. Mr. Gore, the ld. counsel for the applicant placed reliance on the decision of Hon'ble Bombay High Court in the case of **Tata Motors Finance Ltd. Vs. The state of Maharashtra & Anr. 2018 ALL MR (Cri) 636**, wherein the hypothecated tractor was seized in a criminal case.

The trial court granted the custody of the tractor with the condition that not to sell the vehicle. The Hon'ble High Court removed the restrictions of sale of traction.

6. In the present case, the ld. counsel for the applicant placed reliance on the aforesaid decision and prayed that custody of the vehicle be handed over the applicant.

7. Per contra, Mr. D.N. Kolhe, ld. APP for the State submitted that offence is serious. The vehicle will be required for trial. Hence, he prayed to reject the application.

8. It is needless to say that the vehicle needs to be kept in motion, otherwise it sustains damage by the force of nature. Hence, I think it proper to hand over the interim custody of the tractor bearing No. MH-21-BQ-5184 to the applicant company. However, vehicle will be required for trial. Vehicle is involved in the offence under section 302 of the IPC. Hence, the ratio laid down in the case of Tata Motors Finance (supra) is not applicable to the facts and circumstances of the present case. In the result, I pass the following order.

ORDER

1. The application is allowed.
2. The PI./I.O. of Police Station Bhokardan is directed to handover the interim custody of Tractor bearing No.MH-21-BQ-5184 to the applicant company which is seized by

Police Station Badnapur in C.R. No.1/2023 on the following conditions-

- (a) Applicant company to give Indemnity Bond of Rs.6,00,000/- (Rs.Six Lakh only) towards the concerned Investigating Officer.
 - (b) Four photos of the tractor shall be taken at the cost of the applicant and also to take appropriate receipt from the photographer.
 - (c) I.O. shall prepare panchnama in detail while delivering the tractor to the applicant.
 - (d) Applicant shall not to transfer, alienate or change the nature of the tractor.
 - (e) Applicant shall produce the said tractor as and when required by this court or higher court.
 - (f) I.O. shall file all the aforesaid documents alongwith the charge-sheet.
3. Issue intimation to the concerned Police Station accordingly.

Date: 24/06/2024

(S. R. Tamboli)
Addl. Sessions Judge,
Jalna.

Certificate

I affirm that, the content of this PDF file are word to word as per the original order.

Name of Steno : D.M.Gaikwad

Name of Court :- Addl. Sessions Judge, Jalna.

Date :- 01/07/2024.

Sd/-
(D.M. Gaikwad)
Steno