

MHKO130004892023



R.C.C. No./62/2023
Shri. Shivaji Babu Lokare Vs. State of Maharashtra.

ORDER BELOW EXH. 24.

1] Present application is filed by applicant **Shivaji Babu Lokare** for return of muddemal property i.e. 03 live cartridges on which it is written in english as SHAIKTIMAN 12 EXPRESS, worth Rs. 390/- The said muddemal is seized by Murgud police station in CR No. 195/2022 for the offence punishable under Section 30 of the Indian Arms Act & 34 of the Indian Penal Code.

2] It is contended that applicant is registered owner of the aforesaid muddemal. The application is supported by affidavit of applicant and necessary documents.

3] Accordingly say of learned A.P.P. & Investigating Officer was called. Learned A.P.P. has filed say and submitted that, prosecution has objection to hand over the custody of the seized property to applicant.

4] The Investigating Officer filed his say and submitted that prosecution has objection to hand over the custody of the seized property to applicant.

5] Applicant had filed following documents:-

- i] Verified copy of the license of seized muddemal i.e. gun.
- ii] Verified copy of applicant's Adhar Card.

6] Heard both the sides. Perused the record and documents. From the documents, it appears that the applicant is to be the registered owner & license holder of the seized property i.e. 12 bore DBBL gun along with 03 live cartridges bearing Registration No. DBBL8730B/2, which is seized by Murgud Police Station. The said seized muddemal i.e. is 12 bore DBBL gun is already temporarily released to the applicant. Moreover, the 03 live cartridges are not claimed by the applicant at the time of previous application. Nobody has claimed the seized muddemal except the applicant. No purpose would be served in keeping the seized muddemal lying in the police station. The possibility of the damage of the property can not be ruled out if kept lying idle in the police station.

7] The learned advocate for the accused/applicant relied upon citation of Hon'ble Bombay High Court in **Badrinath Rajaram Sable Vs. The State of Maharashtra, ALL MR (Cri) 5039**. I have carefully gone through the above cited case. It is observed that;

Revolver claimed to be returned for renewal of license and its maintenance and servicing. Investigation in matter has been completed and charge sheet has been filed in court. There is no necessity to keep said revolver with investigating agency. Also as per Sec. 451 owner of article would not suffer because of remaining

unused or by its misappropriation. And court or police would not be required to keep article in safe custody if proper panchnama before handing over possession of article is prepared.

8] Considering the aims and object of the said Sec. 451 and 457 of the Code of Criminal Procedure, it is incumbent that the powers under Sec. 451 should be exercised judiciously, since it would serve various purpose such as owner of the article would not suffer because of remaining unused or by its misappropriation. The court or the police would not be required the article in the safe custody if proper panchnama before handing over of possession of article is prepared that can be used in evidence instead of its production before the court during the trial.

9] Hence, considering the said legal position, the 03 live cartridges in question is required to be returned back to the applicant herein, more particularly, for the purpose of renewal of license, and secondly, for the purpose of its maintenance and servicing, and also for the proper custody thereof with the applicant, who claims to be the owner and license holder thereof.

10] As the applicant has prima-facie shown his ownership & license of the seized property, he is entitled for the possession of the same. As far as the apprehension raised by the prosecution, it is just and proper to impose conditions while temporarily releasing the muddemal. Therefore, applicant being lawful owner,

possessor/claimant of the muddemal in question, the said may be released temporarily in his favour till the conclusion of trial, by imposing certain conditions. In view of the directions of the Hon'ble Supreme Court in the matter of ***Sunderbhai Ambalal Desai V/s. State of Gujrat (A.I.R. 2003 Supreme Court 638)*** & above cited supra and the aforesaid reasons, in the interest of justice, I proceed to pass the following order:-

ORDER

- 1] The application is allowed.
- 2] The seized property i.e. 03 live cartridges which was seized by Murgud police station in C.R. No. 195/2022 be released temporarily till the conclusion of the trial in favour of applicant on furnishing indemnity bond of Rs. 5000/- (Rupees Five Thousand only).
- 3] The P.S.O. Police Station, Murgud is directed to hand over said muddemal to the applicant – Shivaji Bapu Lokare which is seized in the C.R. No. 195/2022.
- 4] The applicant shall produce the said muddemal, as and when directed by the court and he shall undertake that :-
 - i) He shall not change the nature of the said property;
 - ii) He shall not alienate/sell the said property;
 - iii) He shall maintain and preserve the property in all respects.
- 5] The applicant shall surrender the said 03 live cartridges before

the court as and when required.

- 6] The applicant shall produce the said 03 live cartridges before the investigating officer as and when required for the inspection purpose.
- 7] Investigating Officer to prepare the detail panchnama while handing over the said muddemal to the applicant and file panchnama in the charge-sheet.
- 8] Investigating Officer is directed to take photograph of the said muddemal and submit it along with charge-sheet. Photographs of aforesaid muddemal are attested/countersigned by the applicant to whom the custody is handed over.
- 9] Copy be forwarded to Murgud Police Station for information and necessary action.
- 10] The application is disposed of accordingly.

Place : Kagal.
Date : 16/05/2025

(Pranita S. Patil)
Judicial Magistrate First Class, 1st Court
Kagal.