

ORDER BELOW EXH.15
IN R.C.C. No.224/2023

1. This is an application filed by applicant/accused No.1 namely Ajay Bhimrao Survase under Section 451 of Criminal Procedure Code, to release the seized property i.e. Autorickshaw bearing Registration Certificate No. MH14CU1496, Engine No.AZZWEB14801 ("muddemal" in short) on supurtnama.

2. It is submitted by the applicant Ajay Bhimrao Survase that, Railway Protection Force (henceforth R.P.F. for short), Chinchvad has seized and detained the said Muddemal in Crime No.10/2023 for the offence punishable under Section 3(a) Railway Property (Unlawful Possession) Act, 1966 and Sec.147 of Railway Act, 1989 (henceforth "Railway Act" for short). The said Muddemal is lying with R.P.F. Station, Chinchvad having no facility to keep it in good condition. Therefore, he prays for releasing it on supurtnama.

3. Heard learned A.P.P. and learned advocate for the applicant. The Ld. A.P.P. submitted that the property i.e. the Muddemal is seized for offence punishable under Section 3(a) Railway Property (Unlawful Possession) Act, 1966 and Sec.147 of Railway Act, 1989 by R.P.F. who is not a Police. Further, he submitted that Section 451 of Cr.P.C. is applicable only if any inquiry or trial is going on before the Criminal Court and when property is produced before the court. Hence, he prayed that the said application be rejected. Inquiry Officer in his say has not taken any objection in giving the interim custody of the muddemal to the applicant.

4. Ld. Advocate for applicant submitted that, the applicant is the owner of said Muddemal. He submitted that, applicant is in need of the said muddemal for his daily business and if the said muddemal is not returned to

the applicant he might suffer irreparable loss. Hence, he prayed to return the same to the applicant. Further, the Ld. Advocate of applicant has placed on record Registration Certificate, copy of insurance of the said muddemal. Therefore, he prayed that the muddemal be returned to applicant.

5. Perused the Say of Inquiry Officer (Hereinafter I.O. for short) and Ld. A.P.P. The applicant submitted that, he was arrested by R.P.F., Chinchvad in C.R. No.10/2023 for offence punishable under Section 3(a) Railway Property (Unlawful Possession) Act, 1966 and Sec.147 of Railway Act, 1989. The applicant further submitted that, he is the owner of said Muddemal. He has produced on record the copy of Aadhar Card of himself, Registration Certificate, copy of insurance and his affidavit. For the aforesaid reasons the applicant prayed that, the said muddemal be released on proper conditions.

6. I have perused the application and say. Heard both the sides. Under Section 451 of Cr.P.C., when any property is produced before any Criminal Court during any inquiry or trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

7. Section 451 of Cr.P.C. empowers the court to order sell or otherwise disposition of property after recording such evidence as the court things necessary. However, the court can use this power only when it is expedient to do so. In present case, applicant was arrested in connection with offence punishable under Section 3(a) Railway Property (Unlawful Possession) Act, 1966, Sec.147 of Railway Act, 1989 and the above

muddemal was seized from him. According to the documents produced on record, it is very clear that the applicant is the owner of the muddemal. The muddemal has been seized by R.P.F. in the offence. Hence, the applicant seems to be prima facie the owner of above muddemal. Besides, the inquiry officer has taken formal objection for releasing the said muddemal. Therefore, no purpose would be served by keeping the seized muddemal in the custody of R.P.F. Chinchvad.

8. The applicant is in need of said muddemal for his business. Besides, suitable conditions can be imposed on the applicant for securing the production of said muddemal at any time during the trial. Hence, under Section 451 of Cr.P.C. it is expedient to release the said muddemal and returned it to its owner i.e. applicant. The applicant has submitted the Registration Certificate issued in his father's name. His father died on 02/05/2021, he has filed death certificate of his father. His mother filed affidavit, he is a only son of deceased Bhimrao Govardhan Survase. Applicant has filed copy of insurance of the said muddemal in support of his ownership over the said muddemal. This means that the said muddemal is at present owned and used by the applicant as a legal heir of deceased Bhimrao. As far as, the objections relating to the said muddemal of Ld. A.P.P. is concerned those can be addressed by releasing the said muddemal on supurtnama and proper conditions. Hence, I pass the following order.

ORDER

1. Application is allowed.
2. Interim custody of the property i.e. Autorickshaw bearing Registration Certificate No.MH14CU1496, Engine No. AZZWE B 14801 be released and hand over to the applicant on following terms and conditions :-

(a) Applicant shall undertake not to use the aforesaid muddemal for illegal purpose.

(b) Applicant shall not dispose off, alienate, encumber, create third party interest, modify or change the nature of muddemal beyond recognition or part with the possession of aforesaid muddemal pending trial.

(c) Applicant shall furnish photographs of the aforesaid muddemal displaying colour and said photographs should be attested or countersigned by applicant and inquiry officer at the cost of applicant.

(d) Before handing over the possession of aforesaid muddemal detail panchanama be prepared.

(e) Applicant shall execute indemnity bond of Rs.2,00,000/- and if he fails to obey the conditions imposed he will be liable to pay penalty of Rs.2,00,000/-.

3. Applicant is directed not to commit similar type of offence.
4. Concern Clerk to issue letter to the R.P.F. Chinchvad on execution of indemnity bond for the applicant.

Pune
Date :09/11/2023

Sd/-xx
(P.A. Waghmare)
Judicial Magistrate First Class,
Railway Court, Pune.

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same word for word as per Original Order.

Name of the Steno	:	Malesh Maroti Chintale (Stenographer Grade III)
Name of the Court	:	P.A. Waghmare Judicial Magistrate First Class Railway Court, Pune.
Date of Order	:	09/11/2023
Order Signed by P.O. on	:	09/11/2023
Order uploaded on	:	10/11/2023