

ORDER BELOW EXH. 06 IN SESSIONS CASE NO. 32 OF 2022

The State of Maharashtra	Prosecution
<i>Versus</i>	
Suraj Mehboob Chikode etc. 2	Accused

1. The applicant viz., Shri. Maruti Shankar Shivare has moved the present application u/s. 451 and 457 of the Code of Criminal Procedure for custody of his white colour Hyundai Car of GETZ GLS Model bearing registration No. MH-01-VA-4670 having Chassis No. MALBU51HR6M621598 and Engine No. G4EA5M127065 of model 2006 valued at Rs. 2,00,000/- which came to be seized in C.R. No. 76/2022 registered with Devrukh police station u/s. 302, 201 r.w. 34 and 120-B of the Indian Penal Code.

2. It is the case of applicant that the said four wheeler car has been seized by Devrukh Police Station and is now stationed in the premises of Devrukh Police Station. The said car is of daily use of applicant and it is necessary for his daily use and business. Hence, the applicant has prayed to return the said car. The applicant has produced alongwith this application the documents relating to the said car. As such, the applicant is claiming custody of said car. The investigation of C.R. No. 76/2022 has now been completed and there is no necessity of the said car to police. If the said car is stationed in open area, naturally it would be damaged and the applicant would suffer heavy loss. It is further stated that if the custody of said car is given to him, he would keep the same in the same condition and would not make any change. The applicant is also ready to give suitable bond as per order of the Court. Hence, the applicant prayed to give the custody of abovesaid car.

3. The prosecution strongly objected the application by filing their say vide Exh. 9. It is the say of the prosecution that the abovesaid car is used at the time of committing the offence which is of a serious nature. It is further stated that if the muddemal property Hyundi Car is given in the custody of applicant, he would not produce the same before the Court. Hence, the prosecution prayed as not to give the custody of the abovesaid car and also prayed to reject the application.

4. Heard learned Advocate Shri. V.M.Sutar for the applicant. He argued as per the contentions of the application. Learned A.P.P. Shri. A.A.Phansekar for the prosecution submitted that the head rest of the seat occupied by the deceased at the time of occurrence of murder is found in broken condition and, therefore, it is a substantive piece of evidence. Hence, he strongly objected for handing over the custody of the car in question to the applicant.

5. I reflected over the submissions made on behalf of both the parties. I have gone through the entire record and proceeding of the case. I have also gone through the documents with list Exh. 8 produced on record by and on behalf of applicant. The documents produced on record particularly xerox copy of RC book shows that the vehicle in question stands in the name of applicant and he is registered owner of the said car. The registration validity of the car is upto 17/01/2027. The xerox copy of insurance policy of the car shows that the insurance policy is in the name of applicant and the insurance is valid upto 10th January, 2023. The other documents viz., tax receipt Aadhar card and driving licence of the applicant supports the ownership of the vehicle. It appears

from the copy of FIR of C.R. No. 76/2022 registered at Devrukh Police station, the car is seized in the said crime by the police and it has been kept openly in the premises of Devrukh police station. The chargesheet in the present case is filed. It will take time to dispose of the instant case. According to the applicant, he uses the said car for his business purpose. If the car is kept in police station in the abovesaid condition without any use, there is every possibility of its damage.

6. The learned A.P.P. Shri. A.A.Phansekar while argument submitted that the head rest of the seat occupied by the deceased was found in broken condition. However, perusal of statement of applicant, it reveals that when the applicant saw the car he found that the arm rest of the left seat of driver's seat found in broken condition, hence, he inquired about it with applicant/accused no. 2 and applicant/accused no. 2 told him that the said arm rest was broken and the same was kept in the dicky of the car. From the perusal of muddemal yadi, it reveals that there is no mention of seizure of said arm rest or any panchanama to that effect came to be drawn. The perusal of seizure panchanama of the car shows that there is only mention of receipt of ICICI Bank Visa Credit Card found in the arm rest kept in dicky.

7. In Sundarbhai Ambalal Desai Vs. State of Gujarat, the Hon'ble Apex Court has observed that the power under Section 451 should be exercised expeditiously and judiciously. It would serve various purposes viz.,

(i) Owner of the article would not suffer because of its remaining unused or by its misappropriation;

(ii) Court or the police would not be required to keep the article in safe custody;

(iii) If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

(iv) The jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

8. Keeping within the scope of consideration, the facts and circumstances of the case in hands, it is obvious no purpose would be served by keeping the car without any use till conclusion of the trial. From the copy of R.C. book and insurance policy, it appears that the applicant is the registered owner of the vehicle and there is no dispute in respect of the ownership of the car. The applicant is ready to obey the conditions that may be imposed upon him. The investigation of the case is completed and chargesheet is filed in the Court. The care regarding apprehension of the prosecution with respect to broken arm rest can be taken by giving necessary direction to that effect. Therefore, considering the facts and circumstances of the case, the applicant, being the registered owner of the car in question, is entitled for its custody, of course, on certain conditions. Therefore, for the ends of justice, the custody of the car in question may be handed over to the applicant.

9. In the result, the application deserves to be allowed with certain conditions. Hence, I proceed to pass the following order.

ORDER

1. The application stands allowed.

2. The custody of white colour Hyundai Car of GETZ GLS Model bearing registration No. MH-01-VA-4670 having Chassis No. MALBU51HR6M621598 and Engine No. G4EA5M127065 of model 2006 valued at Rs. 2,00,000/- seized in C.R. No. 76/2022 registered with Devrukh police station u/s. 302, 201 r.w. 34 and 120-B of the Indian Penal Code, be handed over to the applicant on due verification and on his executing an indemnity bond of Rs. 2,00,000/- (Rs. Two Lakh only) on following conditions :

(a) The applicant shall not change the nature, condition, colour of the car and shall not transfer or alienate the car during pendency of the this Sessions Case No. 32/2022.

(b) The applicant shall produce the car before the Court or before the Investigating Officer as and when directed.

(c) The applicant shall not use the said car in any offence.

(d) Before handing over the custody of the car to the applicant, the concerned officer shall snap the photographs of the car and more particularly the broken arm rest and head-rest from all necessary angles with the applicant at the cost of applicant.

(e) The applicant shall produce his identity proof before execution of the bond.

3. Inform the concerned accordingly.

4. Application (Exh. 6) is disposed of accordingly.

(Pronounced in the open Court)

Ratnagiri

Date:- 19/10/2022

(M.Q.S.M.Shaikh)

Sessions Judge, Ratnagiri.

I affirm that the contents of this Pdf file order are same words as per original order.

Sessions Case No. (O. below Exh. 06)	:-	32/2022.
Name of Stenographer	:-	V. B. Joshi.
Court Name	:-	Sessions Court, Ratnagiri.
Date of Decision	:-	19/10/2022
Order signed by P.O. on	:-	19/10/2022
Order Digitally signed on	:-	19/10/2022
Order uploaded on	:-	19/10/202