

MHND260007012022



Order Below Exh. 01

This is an application under section 457 of Code of Criminal Procedure claiming interim custody of Bajaj Pulsar motorcycle bearing Registration No. MH 26 BY 9903. As per the applicant, said bike having Chassis no. is MD2A13EX4MCE309002 and Engine no. DKXCME13717. The bike is seized in crime bearing no. 112/2022 Police Station, Ardhapur. As per the applicant, he is the registered owner of the bike. If the bike is kept in the custody of the police it may cause damage. Hence, prayed to allowed the application.

2. As the bike is under the custody of police this court called say of investigation officer and Assistant Public Prosecutor. The investigating officer filed say below Exh. 06, as per him the bike is seized on 18.08.2022, conducted spot Panchnama and recovery Panchnama as well. As per investigating officer, the custody of the bike can not be delivered to the applicant. Hence opposed to allow this application.

3. Ld. Assistant Public Prosecutor filed his say, opposing the delivery of bike to the applicant. As per the say of Assistant Public Prosecutor the seized article is necessary at the time of trial for identification purpose. He contended that, the seized article is one of essential part of the evidence it is needed by prosecution at the time of trial. He further contended that, if the custody of the bike is delivered to the applicant, he will create third party interest by means of sale, transfer or alter or change its nature. Finally he prayed to reject the application.

4. Read application, say of investigating officer and say of Ld. Assistant Public Prosecutor. Heard Learned counsel for the applicant and the Assistant Public Prosecutor at length. Learned counsel for the applicant argued that, the report under section 173(3) of Code of Criminal Procedure has not yet filed. Hence this court can consider the application. If the report under section 173(3) of Code of Criminal Procedure would have been filed by the prosecution than he had to file the application before the court of Sessions. Further he argued that, there is no dispute as to the ownership of the bike. He produced the verified copy of Registration Certificate below list of document Exh 4.

5. On perusal of record, it show that the applicant is seeking custody of bike bearing Registration No. MH 26 BY 9903 which has Chassis No. MD2A13EX4MCE309002 and Engine No. is DKXCME13717. The applicant filed affidavit along with the application, two documents along with list of document below Exh. 08. Copy of First Information Report in crime bearing no. 112/2022 is filed as per application below Exh. 07.

6. On perusal of documents it shows that, bike is registered in the name of the applicant. Copy of Registration Certificate is at Exh-12 which shows the name of the applicant as registered owner. document no. 02 of list of document Exh. 04. On perusal of which it shows that, said bike is insured with Bajaj Alianz General Insurance Company for the period of 06.09.2021 to 05/09/2026. Certified copy of First Information Report is at Exh 7. On perusal of which it shows that, as per the information given by accused namely Nagesh @ Kirtik Lale Resident of Mendhala, present applicant was arrested by the Police and seized bike from the possession of this applicant.

7. If seized bike is kept under the custody of police, the applicant will suffer inconvenience and if the bike is laying in open premises it may cause damage. Further the applicant undertakes before this court that he will abide by all the conditions impose by this court.

8. On perusal of say of investigating officer, it shows that, Panchnama of the bike has been conducted. Investigation is substantially completed. Though There is objection of investigating officer to deliver the possession of seized bike and objection of Assistant Public Prosecutor with regard to delivery of the custody that, the applicant may change nature of bike, can be cured out by imposing certain conditions on him as he undertakes before this court to abide by the conditions while delevering interim custody of the bike.

9. The authority which is entrusted to the court under Section 457 CrPC has to be exercised for valid reasons keeping in view the class and nature of the property and the material before the court. certainly if the bike is kept stalled, it may cause damaged. As there is no dispute or doubt that the property which was seized from the custody of the applicant belongs to him.

10. Under section 457 (1) deals with if the property seized is not produced before the court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof. The document filed by the applicant alongwith the application. The custody of the property seized can be delivered to him by imposing certain conditions. Considering all above aspects of the matter I pass following order:-

ORDER

1.	The application is allowed.
2.	The interim custody of bike having Registration No. MH 26 BY 9903, Chassis No. MD2A13EX4MCE309002 and Engine No. DKXCME13717, Seized in Crime bearing No. 112/2022 of police station, Ardhapur be delivered to the applicant on executing indemnity bond of Rs. 1,00,000/- (One Lakh only) on following conditions:-
(I)	The applicant shall not create any third party interest over said bike.
(II)	The applicant shall not change the nature of seized bike and he shall produce the same as and when require during interrogation and trial.
3.	The investigating officer of crime No. 112/2022 is directed to take photo copies of Registration certificate and the Photographs of the bike and relevant documents of seized bike.
4.	The Investigating Officer is further directed to produce documents like photo copies of Registration Certificate, photographs of the bike and indemnity bond of the applicant along with the report under section 173(2) of CrPC.
5.	Application is disposed off in above terms.
6.	No order as to costs. Inform to the Police Station, Ardhapur accordingly.

Place : Ardhapur.

(Q.R. Syed)

Dt. 17/11/2022

Judicial Magistrate First Class,
Ardhpuar.

CERTIFICATE

I affirm that the contents of this [P.D.F.](#) file order are same, word to word, as per the original order.

Name of the Jr. Clerk: S.S. Kale

Court of : Jt. Civil Judge Junior Division, & JMFC, Ardhapur Dist. Nanded.

Date of pronouncement of Judgment/Order : 17.11.2022

Judgment/Order signed by the Presiding Officer : 17.11.2022

Judgment/Order uploaded on : 18.11.2022