

ORDER BELOW APPLICATION (EXHIBIT 21) IN
SESSION CASE NO. 14/2022
(STATE VS. SACHIN)
(PASSED ON : 13/02/2023)

Nature of the Application.

1. This is an application filed by the applicant-Sachin Tukaram Ghodake (for short 'applicant') seeking custody of Tata Ace bearing registration No. MH-12/EQ-5079 (for short the 'vehicle') seized in crime register No. 1368/2021, registered at Sangola police station.

Contents in the Application.

2. The applicant has contended that he is owner of the vehicle. The vehicle is used for his personal work. If the vehicle is kept in the police station he will suffer irreparable loss. Further, if the vehicle is kept unused it will cause damage to its tires, tubes, engine and other parts. He is ready to abide by the conditions imposed. It is not necessary to keep the vehicle in the police station.

3. On these grounds the applicant has prayed to grant the application.

Contents in the Say of Additional Public Prosecutor.

4. The Additional Public Prosecutor (for short 'A.P.P.') has filed say (Exhibit 28).

5. The A.P.P. has strongly objected the application. He has contended that the vehicle is seized in serious crime and is an important piece of evidence. If the vehicle is handed over to the applicant he will misuse it and will change its colour, identity and nature.

6. On these grounds the A.P.P. has prayed to reject the application.

The Argument.

7. I have heard Shri. V. S. Bendgude, advocate for the applicant and Shri. S. V. Wangikar, A.P.P. for the prosecution, at length.

8. They argued in consonance with their contentions in their application and say.

9. In order to avoid repetition I will deal with their arguments at the time of discussing the points taken for consideration.

Points and Findings.

10. Upon hearing the following points arise for my consideration and I record my findings thereon as under for the reasons to follow :-

	Points	Findings
1)	Can the vehicle, be given in the custody of the applicant, as prayed for ?	Yes.
2)	What order ?	Application granted. As per final order

Relevant Statutory Provision Under Sections 451 and 457 of the Code of Criminal Procedure.

11. Before proceeding to discuss the merits of the application, for better appreciation, let me reproduce the relevant statutory provision under Sections 451 and 457 of the Code of Criminal Procedure (for short 'Cr.P.C.').

12. Section 451 of the Cr.P.C. reads as follows :-

451. Order for custody and disposal of property pending trial in certain cases.--

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 think necessary, order it to be sold or otherwise disposed of.

Explanation – For the purposes of this Section, "property" includes -

- (a) property of any kind or document which is produced before the court or which is in its custody.
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

13. Section 457 of the Cr.P.C. reads as follows :-

457. Procedure by police upon seizure of property :-

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal 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, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

14. The power under Sections 451 and 457 of the Cr.P.C. should be exercised expeditiously and judiciously during inquiry or trial keeping in mind various purposes namely :-

- (a) the owner of the article would not suffer because of its remaining unused or by its misappropriation;
- (b) the court or police would not be required to keep the article in safe custody; and
- (c) if proper Supurtnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence should also be recorded describing the nature of the property in detail.

Reasons As to Point Nos. 1 and 2.

15. The applicant has produced registration certificate (Exhibit 23/1) of the vehicle standing in his name.

16. Thus, after going through the contentions in the application, there cannot be any dispute that the vehicle is owned by the applicant and he is its registered owner. Therefore, in view of scope of Section 457 of the Cr.P.C., I am of the considered view that the applicant is entitled to receive custody of the vehicle.

17. No other person except the applicant has appeared seeking custody of the vehicle. Therefore, in view of scope of Section 457 of the Cr.P.C., I am of the firm opinion that the applicant is entitled to receive custody of the vehicle.

18. Above all, the vehicle which has been seized by police is lying, definitely, in open place at the Police Station where no one takes care of it. Its condition will deteriorate and at the end of the trial if an order relating to release of the vehicle would be passed, the same would not be beneficial to the applicant. The vehicle being kept in open place at the police Station will be subjected to vagaries of nature and will damage day by day.

19. Further, it is well known that if any vehicle is kept unused there is possibility of becoming it junk and it also causes problems in the

proper functioning of the vehicle.

20. Under such circumstances, what is required during pendency of the trial, to make adequate arrangement so as to maintain the seized vehicle in proper condition and ensure its production, if necessary, during the trial as and when required.

21. In short, taking into consideration the aforesaid facts, in the interest of justice and in view of my discussion supra, I am inclined to grant the application by imposing conditions, as per final order.

22. Accordingly, I answer point No. 1 in the affirmative, and point No. 2 as application is granted, as per final order.

23. In the result, I pass the following order.

ORDER

1.	The application is granted.
2.	The custody of the vehicle Tata Ace bearing registration No. MH-12/EQ-5079 seized in Crime Register No. 1368/2021, registered at Sangola Police Station be handed over to the applicant- Sachin Tukaram Ghodake on his executing Suprutnama bond in the sum of Rs. 5,00,000/- (Rs. Five Lakh only) subject to following conditions :-
(i)	The applicant should not use the vehicle on road without paying all the necessary government dues such as road tax, etc., if any.
(ii)	The applicant should not use the vehicle on road without insuring.
(iii)	The applicant should not transfer, alienate and create any third party interest in the vehicle in any manner.
(iv)	The applicant should not change the colour, nature and appearance of the vehicle and keep it as it is so as to be identifiable.
(v)	The applicant should produce two colour photographs of the vehicle, which will disclose its full identity.

	(vi)	The applicant should not use the vehicle for any illegal purpose or in any other offence.
	(vii)	The applicant should produce the vehicle before the Court as and when required or ordered to do so.
3.	The applicant is directed to furnish Suprutnama bond in the concerned police station.	
4.	The applicant is left to bear his own cost.	

(Pronounced in Open Court).

Date : 13/02/2023.

(M.B.Lambe),
Additional Sessions Judge,
Pandharpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : M. B. Lambe,
District Judge – 1 &
Addl. Sessions Judge, Pandharpur.
- (c) Order signed by P.O. on : 13/02/2023
- (d) Order uploaded on : 14/02/2023