

	<u>Reg. Criminal Case No. 10/2024</u>
	State (Through P.S.O. Ghatanji) -vs- Rupesh and another
	CNR No. MHYA-1800-0017-2024

ORDER BELOW EXHIBIT NO.04

1. In the present case, the applicant namely Sau. Pushpa Pralhad Rathod has filed an application filed under Sec. 451 of the Code of Criminal Procedure to handover the custody of seized- **Tractor** bearing its registration No. **MH-29-CB-0631** having its chassis No. **MBNADALBLPNK08402**, and its engine No. **NPK2MBJ0386** kept at Ghatanji Police station, Tq.- Ghatanji, District- Yavatmal, in C.R. No. 841/2023, registered for the offence punishable under Section 379 r/w. section 34 of the Indian Penal Code.

2. It is contention of the applicant that, she is the owner of said tractor. Said muddemal property is kept in the custody of the Ghatanji Police Station. She is in need of said muddemal property, for agricultural purpose. Said muddemal property is kept at open premises of said police station. There is every possibility of damage to parts of his muddemal property. Therefore, prayed to allow the application. Before filing this application this applicant had filed previous application bearing other Misc. Cri. Appl. No. 151/2023 and it was withdrawn on 20-10-2023. Thereafter he had applied before the sub-divisional officer Pandharkawada. Said authority has communicated that he has no jurisdiction. Therefore present application is filed.

3. The Investigating Officer, Ghatanji Police Station, Tq.-Ghatanji, has filed say at Exh. No. 14. It is the contention that, he has seized said muddemal property from the custody of accused. It is further contention that, accused are using said muddemal property for transportation of sand by illegal excavation. Said tractor was used for the same offence which is registered at Police Station Ghatanji, bearing C.R. No. 603/2023. There is possibility of commission of the same offence. Therefore, prayed for rejection of the application.

4. Learned A.P.P. has filed say at overleaf of application itself and raised objection on ground that, said muddemal property is seized from accused while transporting sand illegally. Said property was seized in C.R. No. 603/2023 and returned to the applicant on indemnity bond. The applicant has breached conditions on bond. If the said muddemal property is released on Supratnama, there is every possibility of use of said muddemal property in such type of offence again. Therefore, prayed for rejection of the application.

5. After considering say of the I.O., and Ld. A.P.P. for the State, I have perused the entire application. In support of the application, the applicant has filed the documents such as, photo copy of the F.I.R., Photo copy of Exh. 1 in other Misc. Cri. Appl. No. 151/2023, letter of the S.D.O. Kelapur, photo copy of vehicle particulars, photo copy of insurance policy, photo copy of tax invoice, verified copy of Aadhar Card of applicant and certificate copy of say of the I.O. filed in previous application.

6. I have given thoughtful consideration to the submissions of both sides. I have also minutely gone through the documents enclosed. First of all, as far as documents of title is concerned, the applicant has filed photo copy of vehicle particulars of said Tractor. It shows that, applicant is the registered owner said Tractor. Further, the applicant has affirmed his possession, which is undisputed. The seizure of muddemal property of the applicant is also not disputed by the Investigating Officer.

7. This court has power vide Sec.-451 of the Code of Criminal Procedure in connection with said offence to pass order for interim custody of said muddemal property.

8. Thus, in view of above discussion and ratio laid down by the Hon'ble Apex Court reported in case of **Sunderbhai Vs. State of Gujarat, reported in AIR 2003 Supreme Court 638,** coupled with the fact that, if the muddemal is either kept idle in the police station or in the court, the possibility of damaging, diminishing the value and utility of seized property cannot be ruled out. It is pertinent to note that say of the I.O. discloses that said tractor was seized by the Police in C.R. No. 603/2023 registered at Police Station Ghatanji. As per order passed in other Misc. Cri. Appl. No. 106/2023, dated/- 16-08-2023 said tractor was given in the custody of the applicant. However the applicant has not disclosed said fact before this Court. It becomes clear that the applicant has suppressed material fact from his Court. In **Bhaginath Sakharam Kalam ..Vs.. State of Maharashtra,** Cri. Writ Petition No. 1233/2019, decided on 11.03.2020 the Hon'ble

High Court has held that, *“Further fact which is not in dispute is that, earlier also the said tractor along with trolley belonging to the present petitioner was seized in Crime No.12 of 2018 in similar offence. At that time the said tractor along with trolley was released by the Court on conditions, and definitely one of the condition would be, which is inherent, that he shall not use the said tractor and trolley for commission of any offence much less similar offence. This position has not been denied by the petitioner. Therefore, when it is crystal clear that once again his tractor along with trolley is involved in similar kind of offence then he cannot seek the custody of the said vehicle as of right. The ratio laid down in case of Sunderbhai Ambalal Desai v. State of Gujarat (Supra), will not be helpful to the present petitioner for the simple reason that the point regarding breach of condition by the person claiming the custody of such vehicle in subsequent offence, was not before the Hon'ble Supreme Court at that time.”* Therefore, it becomes clear that the applicant has been using said vehicle for commission of similar offence in connection with sand belong to the Government. Therefore, it is not just and proper to allow the application. Hence, I pass the following order;

ORDER

01) The application is rejected.

02) No order as to costs.

(Pronounced in open Court)

Date:- 05/02/2024.

(A. A. Utpat)
Judicial Magistrate F.C.,
(Court No.1), Ghatanji.