

IN THE COURT OF METROPOLITAN MAGISTRATE,
36th COURT MUMBAI CENTRAL, MUMBAI.

C. C. NO. :- 149/Misc/2023.

C. R. NO. :- 10/2023

Railway Protection Force :- Andheri.

Sujata Balu Jadhav.

.... Applicant.

V/s.

The Sr. Inspector of Police,

(Andheri Railway Protection Force, Mumbai).

.... Respondent.

ORDER BELOW EXH.-01

This is an application moved by the applicant Mrs. Sujata Balu Jadhav, R/o., Virar, Thane, under Section 457 of The Code of Criminal Procedure thereby seeking the interim custody of Rickshaw i.e. MH-47-D-8114 in connection with C. R. No. 10/2023, registered for the offence punishable under Section 3 UP RP of I.R.A.

2. Applicant request to release the property on the ground that, she is in need of Rickshaw urgently for her personal use. She undertakes that she will produce the said article as and when required by this Court and therefore, she requests to release its custody in her favour. The applicant is ready and willing to abide by any terms and condition imposes by this court.

3. The Ld. P.P. filed his say and objected the application.

4. Heard.

5. Under section 457 of the Code of Criminal Procedure only the entitlement of possession of seized article has to be considered by the Magistrate. It is the contention of the present applicant that, she is the registered owner of the seized property. To substantiate her contention she has produced on the record the Copy of R. C. book of said Rickshaw and copy of her Aadhar Card. These documents shows her lawful entitlement over the property. As per the law, the copy of R.C. book is the valid proof of title of the said Rickshaw. As per the said R.C. book the applicant is the owner of said Rickshaw.

6. In the case titled ***Sunderbhai Desai V/s. State of Gujrat A.I.R 2003 SC.638***, the Hon'ble Apex Court has held that, once the ownership of the applicant over article is ascertained, the power under Section 451 of the Code of Criminal Procedure should be exercised by the Magistrate expeditiously and judiciously so that the owner of the article would not suffer because of its remaining unused or by its misappropriation. It is further observed that, 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. It is also held that, if necessary, evidence could also be recorded describing the nature of the property in detail.

7. Therefore, so far as the question of requirement of the said Rickshaw for its identification purpose at the trial is concerned, in my view if the photographs of the said Rikshaw

showing its clear registration number are taken and the same are kept on the record, the said photographs may be used at the trial to prove the identity of the said Rickshaw and there is no need of its actual production before the Court. Furthermore, as observed by the Hon'ble Supreme Court in the case *supra* the identity of the seized articles can be also proved by the witness by giving its detailed description in his evidence. Therefore, withholding the custody of said article for the reason that, the same would be required for its identification purpose at the trial would be unjustifiable ground at law.

8. In view of the above, the application therefore needs to be allowed. Hence, the order :-

ORDER

1. The custody of seized Rickshaw i.e. MH-47-D-8114, seized by Andheri Railway Protection Force, Mumbai, in connection with C.R No. 10/2023, registered for the offence punishable under Section 03 UP RP of I.R.A. be given to the applicant on further following conditions :-

(a) Applicant shall execute indemnity bond of ₹ 1,50,000/- (One Lakh and Fifty thousand).

(b) That she shall produce the said Rickshaw, as and when required by the E.O. or the Court.

(c) That she shall not change the nature of the said

Rickshaw, or alienate the same in any way without the permission of Court.

- (d) That the E.O. shall take the photographs of the said Rickshaw, showing its clear registration number and prepare the panchanama at the time of releasing the said Rickshaw.
- (e) That the said photographs shall be countersigned by the applicant.
- (f) The E.O. shall prepared detailed panchnama of said Rickshaw before handing it over to the applicant. The E.O. shall submit the copy of panchnama in the charge sheet.
- (g) Inform the E.O. accordingly.

Sd/-

(B. K. Gawande)

Metropolitan Magistrate,

36th Court, Mumbai Central, Mumbai.

Date : 20/10/2023.

ASS.