

(2019) 07 BOM CK 0004

In the Bombay High Court

Case No : Criminal Application No. 197 Of 2019

Dnyaneshwar @ Mauli Ananda Rasal

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 02-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 109, 143, 147, 148, 149, 201, 212, 465, 468
Arms Act, 1959 — Section 3, 4, 25, 27

Citation : (2019) 07 BOM CK 0004

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : Nitin Shejpal, Akshata Desai, A. R. Patil

Final Decision : Allowed

Judgement

1. Rule. Rule made returnable with consent of the parties and heard finally.

2. This application is filed aggrieved by the order dated 3rd July 2018 passed by the learned Special Judge under M.C.O.C. Act 1999 for District

Nashik below Exhibit 37 in M.C.O.C. Special Case No. 02 of 2017 thereby rejecting the application filed by the appellant praying for return of

property viz. Scorpio Jeep bearing NO. MH-12 JZ-3954 owned by the appellant.

3. The applicant abovenamed along with others is prosecuted at the instance of Parner Police Station vide C.R. No. 19 of 2017 and charged with

commission of offences punishable under Sections 143, 147, 148, 149, 109, 212, 465, 468, 201 of the Indian Penal Code and Sections 3/25, 4/25, 27 of

the Indian Arms Act. The applicant was shown arrested on 22nd January 2017 and other co-accused were also arrested in the said crime. On 17th

May 2017 the concerned Investigating Officer seized Mahindra Scorpio vehicle

owned by the applicant Accused No. 2 under Panchnama. Upon completion of investigation, charge sheet was filed and case of the applicant is pending before the learned Special Judge. The applicant preferred application for return of the aforesaid vehicle as the investigation is over and vehicle is lying in open space. The learned Special Judge rejected the said application on the ground that the applicant is in custody. Hence this application.

4. Learned counsel appearing for the applicant submits that Additional Sessions Judge Nashik ought to have released the vehicle keeping in view the judgment of Hon'ble Supreme Court in the case of *Sunderbhai Ambalal Desai V. State of Gujarat*, AIR 2003 Supreme Court 638, and unreported judgment of Hon'ble Supreme Court in the case of *State of Kerala Vs. A.A. Ali* decided on 14th August 2018. It is submitted that, there is no use in keeping the vehicle idle. The applicant is ready to abide by the conditions imposed by the concerned Court in case of release of vehicle.

5. On the other hand, learned APP appearing for the State submits that vehicle in question is used in the serious crime and therefore, Sessions Court has rightly rejected the prayer of release of vehicle.

6. Upon appreciating rival contentions and perusal of the material placed on record, so also, reasons assigned in the para 5 of the impugned judgment, this Court is of the opinion that, Additional Sessions Judge, Nashik has failed to exercise jurisdiction vested in it. The Sessions Court has observed in

Para 5 of the impugned judgment that the Hon'ble Apex Court in case of *Sunderbhai Desai (supra)* held that owner of the property is best entitled for release of vehicle on supurdnama and the same principle has been reiterated in the case of *Nagaram Vs. State of Rajasthan* Petition No. 422/2014

decided on 17/07/2017, however, rejected the prayer of the applicant to release the vehicle. One of the consideration for not releasing the vehicle was

that the accused is involved in serious offences and accused is behind the bars. The impugned order is passed on 3rd July 2018, eleven months period

has been lapsed of passing the impugned order. This Court is of the opinion that, the order passed by the Additional Sessions Judge Nashik,

thereby rejecting the application for releasing the vehicle needs to be interfered with, since there is no use of keeping the said vehicle idle. Therefore,

keeping in view the judgment of Hon'ble Supreme Court in the case of

Sunderbhai Desai (supra) and also in the case of State of Kerala (supra), the ends of justice would be met in case Additional Sessions Judge is directed to reconsider the prayer of the applicant for release of aforesaid vehicle.

7. In the light of the above, the impugned order is quashed & set aside. The application filed by the applicant below Exhibit 37 is restored to its

original file. The Additional Sessions Judge, is directed to consider the said application afresh and pass appropriate orders for release of vehicle,

however, on terms and conditions as the Sessions Court deem it appropriate in the facts of the present case. The Sessions Court to take appropriate

decision as expeditiously as possible, however, within two weeks from the receipt of the order passed by this Court.

8. Criminal application is accordingly allowed. Rule is made absolute in the above terms.

9. Parties to act upon an authenticated copy of this order.