

**IN THE HIGH COURT OF MADHYA PRADESH AT INDORE**

1	Case No.	M.Cr.C.No.57283 of 2021
2	Parties Name	Raees Vs. State of Madhya Pradesh
3	Date of Order	26 <sup>th</sup> July, 2022
4	Bench constituted of	Hon'ble Shri Justice Anil Verma
5	Order delivered by	Hon'ble Shri Justice Anil Verma
6	Whether approved for reporting	Yes
7	Name of counsels for parties	Shri Pourush Ranka Advocate for the petitioner.  Shri Vismit Panot, Panel Lawyer for the respondent/State.
8	Law laid down	If offence under Section 4,6,9 of Madhya Pradesh Govansh Vadh Pratished Adhiniyam, 2004 has been registered, where a specific restriction is not made in the Act, jurisdiction of Judicial Magistrate cannot be deemed to be ousted to release the seized property on interim custody during the pendency of the investigation or trial.
9	Significant paragraph numbers	7 to 11

**(ANIL VERMA)**  
**JUDGE**

**IN THE HIGH COURT OF MADHYA PRADESH**  
**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE ANIL VERMA**

**ON THE 26<sup>th</sup> OF JULY, 2022**

**MISC. CRIMINAL CASE No. 57283 of 2021**

**Between:-**

**RAEES S/O WAHID SUNNI, AGED ABOUT 45  
YEARS, OCCUPATION: AGRICULTURE R/O  
VILLAGE MULTANPURA, TEHSIL AND  
DISTT. MANDSAUR (MADHYA PRADESH)**

**.....PETITIONER**

**(BY SHRI POURUSH RANKA, ADVOCATE)**

**AND**

- 1. THE STATE OF MADHYA PRADESH  
THROUGH P.S. Y D NAGAR MANDSAUR  
(MADHYA PRADESH)**

**.....RESPONDENT**

**(BY SHRI VISMIT PANOT, PANEL LAWYER)**

.....  
*This application coming on for admission this day, the court  
passed the following:*

**ORDER**

The petitioner has challenged the impugned order dated 29.10.2021 passed by the IInd Additional Sessions Judge, Mandsaur in Criminal Revision No.23/2021, whereby the revision of the petitioner for releasing the seized vehicle on interim custody was dismissed.

2. The brief facts of the case are that on 29.08.2021 police got discreet information from the informer regarding illegal transportation of cattles. Police party reached on the spot and intercepted the pickup vehicle

bearing registration No.MP-14-GC-1911 and found that seven cattles being transported in very cruel manner, therefore, police seized the vehicle on the spot along with the cattles and FIR was also registered against the owner of the vehicle/present petitioner which was seized in connection with Crime No. 471/2021 registered at P.S. Y.D.Nagar, Mandsaur for the offences under Section 4, 6, 9 of M.P. Gowansh Vadh Pratishedh Adhiniyam, 2004 (for short "Act of 2004") and Sections 6(a), 6(b), 1, 10, 11 of M.P.Krashak Pashu Parishan Adhiniyam and Sections 3/181, 146/196 of Motor Vehicles Act.

3. During the pendency of the investigation, the petitioner had preferred an application under Sections 451 and 457 of Cr.P.C. for release of the seized vehicle. The said application was rejected by the trial Court vide order dated 02.09.2021 on the ground that the seized vehicle can be used again by the petitioner and confiscation proceeding are likely to be initiated therefore, vehicle cannot be released. Thereafter, a Criminal Revision was preferred against the order of JMFC, but the said revision was also dismissed by the IInd Additional Sessions Judge, Mandsaur vide order dated 29.10.2021 giving reference to the order of JMFC and also taking note of the fact that petitioner misused the seized vehicle, therefore, vehicle cannot be released on interim custody.

4. Learned counsel for the petitioner has contended that the seized vehicle is lying in the open area in the police station and there is no proper arrangement for its care, therefore, his vehicle will be damaged. He further submits that the petitioner has never been convicted for any offence of similar nature, trial of both the matters are still pending, Collector Mandsaur has not given any intimation to the concerned Magistrate regarding initiation of confiscation proceedings of the aforesaid vehicle, therefore, the courts below have committed an error in rejecting the petitioner's application filed under Sections 451 & 457 of

Cr.P.C. for the interim custody of the vehicle. He has also submitted that the petitioner is registered owner of the vehicle in question.

5. Per contra, learned PL for the respondent/State opposes the prayer by contending that the vehicle in question was again used for illegal transportation of the cattles, therefore, no ground is available to handover the said vehicle to the present petitioner.

6. After hearing the rival submissions advanced by learned counsel for the parties and to advert such contention, the relevant provision of the Act of 2004 is required to be seen.

7. As per Section 11(5) of the Adhiniyam, 2004, it is clear that in case of any violation of Section 4, 5, 6-A and 6-B, the Police Authorities is empowered to seize the vehicle or cow progeny and beef. The District Magistrate is having power to confiscate the same in a manner prescribed under Rules 5 and 6 of the Rules of 2012, which deals, confiscation, and appeal are relevant, however, it is reproduced as under:-

**Rule 4. Confiscation by District Magistrate.--**

In case of any violation of Section 4, 5, 6, 6-A and 6-B, the police shall be empowered to seize the vehicles, cow progeny and beef as per the provisions of Section 100 of Criminal Procedure Code, 1973 (No.2 of 1974) in following manner:-

- (i) He shall take possession of the vehicle.
- (ii) He shall intimate the Veterinary Department to take in custody of the cow-progeny and beef.
- (iii) The beef of cow-progeny shall be disposed of by the Department by such procedure as he deems fit.

**Rule 6. Manner of Appeal.--** Any person aggrieved by an order of confiscation under sub-section (5) of Section 11 of the Act, may prefer an appeal in writing to the Divisional Commissioner within thirty days of the date of knowledge of such order. Every appeal shall

be made under sub-section (1) of Section 11-A of the Act.

8. After perusal of the aforesaid, it is apparent that in the Act of 2004 no procedure has been prescribed for the proceedings of confiscation and no rules have been framed under the said Act. On perusal of the aforesaid provisions, it is evident that there is no provision to restrict the jurisdiction of the Judicial Magistrate First Class to release the seized property on interim custody during the pendency of investigation or trial. Where a specific restriction is not made in the provision of the Act, jurisdiction of the Judicial Magistrate cannot be deemed to be ousted.

9. The Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat, AIR 2003 SC 638** has held as under:-

"The powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes namely:

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.

2. Court or the police would not be required to keep the article in safe custody.

3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail: and

4. The jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles."

10. Both the courts below have rejected the application of the petitioner for interim custody of the vehicle on the basis that confiscation proceedings are to be initiated but it is noteworthy that trial of both the offences are pending and the petitioner has not been convicted by any

court for any offences under the Act of 2004, therefore, this is not a sufficient ground to dismiss the application for interim custody of the vehicle. The jurisdiction of the Judicial Magistrate First Class is not ousted from releasing the said vehicle on interim custody as there is no rider in the Act to restrict the power of the Judicial Magistrate to release the seized vehicle on interim custody.

11. In the case of **Mukhtar Husain Vs. State of M.P. [2019(II) MPWN 44]** it has been held that :-

"13. The observation made by the Revisional Court is not proper that the JMFC has no competence to determine whether the Collector has any power to confiscate the vehicle or not. When a specific question was raised before the JMFC as well as before the Revisional Court about competency of the Collector for initiating the confiscation proceeding of the vehicle, it was the duty of the Court to determine as to whether that power is vested with the Collector or not but without dealing with the said question, rejecting the application for release of vehicle only on the ground that the confiscation proceeding is proposed by the Collector, the request of release of vehicle should not have been turned down. Therefore, in my opinion the order passed by the JMFC as well as the Revisional Court are not sustainable in the eyes of the law, therefore, they are set aside. The application submitted by the petitioner for release of the vehicle bearing registration No.UP90-T-2766 is allowed and the respondents are directed to release the seized vehicle of the petitioner bearing registration No.UP90-T-2766 on his furnishing adequate security as directed by the Trial Court. The petitioner is also directed that during the pendency of the trial, he shall not sell or dispose of

the vehicle and shall produce before the Court as and when so directed by the Trial Court."

12. On the above analysis, it is concluded that the impugned order dated 29.10.2021 passed by the IInd Additional Sessions Judge, Mandsaur and order dated 02.09.2021 passed by the Judicial Magistrate First Class, Mandsaur are contrary to the law, therefore, both the orders are hereby set aside and the application of the petitioner for release of vehicle bearing Registration No.MP-14-GC-1911 is allowed and respondents are directed to release the said vehicle of the petitioner bearing Registration No.MP-14-GC-1911 on his furnishing adequate security, as directed by the trial Court.

13. The petitioner is also directed that during the pendency of trial, he shall not sale or dispose of the vehicle and shall produce it before the court as and when so directed by the trial Court.

Accordingly, this petition is allowed and disposed off on the above terms.

Certified copy as per rules.

**(ANIL VERMA)**  
**JUDGE**

RJ