

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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 29th OF SEPTEMBER, 2023

MISC. CRIMINAL CASE No. 24477 of 2023

BETWEEN:-

**CHOTA S/O JUMMAN KHAN THROUGH POWER
OF ATTORNEY SURAJ KARAN S/O SOMNATH
GURJAR, AGED ABOUT 22 YEARS, OCCUPATION:
AGRICULTURIST GULABPURA, DISTRICT
BHILWARA R/O KANIYA GOGEDA TEHSIL
HURDA, DISTRICT BHILARAWA (RAJASTHAN)**

.....PETITIONER

(BY SHRI SANTOSH KUMAR MEENA, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH
1. DISTRICT MAGISTRATE DISTRICT MANDSAUR
(MADHYA PRADESH)
STATE OF MADHYA PRADESH THROUGH S.H.O.
2. DALODA DALODA DIST. MANDSAUR (MADHYA
PRADESH)**

.....RESPONDENTS

(BY MS. HARSHLATA SONI, G.A.)

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

ORDER

1] This petition has been filed by the petitioner Chota S/o
Jumman Khan through his power of attorney under Section 482 of

Cr.P.C. against the order dated 08/05/2023, passed in CRR No.36/2023 by II Additional Sessions Judge, Mandsaur, District Mandsaur (M.P.) whereby the learned Judge has rejected the criminal revision of the petitioner affirming the order dated 12/04/2023, passed by Judicial Magistrate First Class, Mandsaur in crime No.100/2023, registered at police station Daloda, District Mandsaur whereby the petitioner's application preferred under Section 451/457 of Cr.P.C. for supurdgi of vehicle Ashok Lyland Truck bearing registration No.RJ-06 GB 8813 has been dismissed.

2] The grievance of the petitioner is that he is the owner of the aforesaid truck bearing registration No.RJ-06 GB 8813, which was seized along with 60 bulk litters of country made liquor, 12 cows and 5 progeny cow. Counsel has submitted that the petitioner had applied for supurdgi of the aforesaid vehicle in the Court of Judicial Magistrate, however, the same has been rejected vide order dated 12/04/2023 holding that the confiscation proceeding has been initiated under Section 47(d) of the M.P. Excise Act and the aforesaid order has been affirmed by the revisional Court as aforesaid.

3] Counsel for the petitioner has drawn the attention of this Court to the order dated 26/09/2023 passed by this Court in M.Cr.C. No.35031/2023 in the case of *Mahendra Vs. State of M.P.* wherein, in similar circumstances, the supurdgi of vehicle has been allowed on the ground that the criminal case is still pending.

4] Counsel for the respondent/State, on the other hand, has opposed the prayer and it is submitted that no interference is made

out, however, it is not denied that in the present case, the criminal case is still pending.

5] In view of the same, and also taking note of the order dated 26/09/2023 passed by this Court in M.Cr.C. No.35031/2023 in the case of *Mahendra Vs. State of M.P. (supra)*, this court is of the considered opinion that the aforesaid decision covers the controversy involved in the case at hand. The same reads as under:--

2] The petitioner has filed the present Misc. Criminal Case under Section 482 of Cr.P.C being aggrieved by the impugned order dated 24.4.2023 passed by the II Additional Sessions Judge, Neemuch, District-Neemuch in Cr.R. No. 66/2023 whereby, the learned Judge has rejected the criminal revision of the petitioner and confirmed the order passed by the learned Chief Judicial Magistrate, Neemuch in Criminal Case No. 260/2023 on 26.5.2023 rejecting the application filed by the petitioner for grant of interim custody of the seized vehicle under Sections 451 and 457 of Cr.P.C.

3] Learned counsel for the petitioner has submitted that the petitioner happens to be the owner of the seized vehicle bearing registration no. MP-47-CA-0901, which had been seized by the police on the allegation of transportation of 138.24 bulk liters illicit liquor. Counsel has relied upon the decision rendered by this Court in M.Cr.C.No.13541/2023 dated 5.9.2023 wherein, counsel has also relied upon the other decisions rendered by this Court holding that in case, where the criminal case is still pending, confiscation proceeding can't be initiated, as the confiscation can only take place after the person is convicted. Thus, it is prayed that the impugned order be quashed and the vehicle be released.

4] Learned counsel for the respondent/State, on the other hand, has opposed the prayer. However, it is not denied that there are no other criminal case registered against the petitioner.

5] After considering the submissions made by counsel for both the parties, it is noticed that the vehicle of the petitioner has been seized for the offence under section 34 (2) of M.P. Excise Act on the allegation of transportation of illicit liquor.

6] The Co-ordinate Bench of this Court in case of **Santosh S/o Tulsiram Jaiswal vs. The State of Madhya Pradesh & others**, (Writ Petition No.1037/2016) vide order dated 13.05.2016, while relying upon a decision dated 13.07.2015 rendered by this Court in the case of **Sheikh Kaleem vs. State of M.P.**, (Writ Petition No.1296/2015), has set aside the order of confiscation and has directed the respondents to release the vehicle on the ground that confiscation can only take place after the person is convicted. In the case of **Premdas Vs. State of M.P and others** reported in 2013(1) MPJR SN 10, co-ordinate Bench of this Court has held that vehicle cannot

be confiscated by the department so long, as the criminal case is pending. The judgment rendered by Full Court of this Court in the case of **Madhukar Rao Vs State of M.P.** reported in 2000(1) J.L.J., 304 has been confirmed by Hon'ble Supreme Court in the case of State of M.P Vs. Madhukar Rao reported in 2008(1) J.L.J 427, where it has been held that when criminal case is pending, final order with regard to the forfeiture of the vehicle should not be passed.

7] In view of the aforesaid discussions, the impugned order directing confiscation and forfeiture of the vehicle is unsustainable and it cannot be done until and unless the criminal proceedings are finalized. In the present case, as the criminal proceedings are still pending, action impugned cannot be sustained.

8] As the vehicle in question is in custody of respondent and possibility of vehicle to be destroyed, cannot be ruled out, interest of justice requires that the custody of the vehicle be given to the owner on certain conditions. Therefore, it is directed that seized vehicle bearing registration no. MP-47-CA-0901 be released to the petitioner upon verification of his ownership and on his execution of a personal bond of Rs.2,00,000/- (Rupees Two Lakhs only) with one surety in the like amount to the satisfaction of the trial Court with the following conditions :-

- (i) The vehicle shall be produced before the trial Court or before the District Magistrate as and when directed ;
- (ii) The petitioner shall not alienate or part with the possession of the vehicle during the pendency of the proceeding for confiscation or criminal trial;
- (iii) The external appearance of the vehicle shall not be changed in any manner so as to make it difficult to identify.

9] In light of aforesaid terms and conditions, present M.Cr.C. stands **disposed of** accordingly.

6] On perusal of the aforesaid order, it is found that the case of the petitioner is akin to that of ***Mahendra (supra)***, and as such, it cannot be said that no parity can be claimed by the petitioner as admittedly, the criminal case is still pending against the petitioner.

7] In view of the same, the impugned order dated 08/05/2023 is hereby set aside, the petition stands ***allowed*** and it is directed that upon petitioner's furnishing adequate surety to the satisfaction of the Trial Court, the vehicle in question be given to the petitioner. It is made clear that the vehicle in question shall not be

transferred/disposed of or modified in any manner except with the written permission of the trial court, and shall be produced before the trial Court as and when directed.

Petition stands *disposed of*.

(SUBODH ABHYANKAR)

JUDGE

krjoshi