

ABC 2019 (III) 200 BOM
ACQUITTAL & BAIL CASES
HIGH COURT OF BOMBAY

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(S. S. Shinde, J.)

Criminal Writ Petition No 1900 of 2019

Decided on 2 July 2019

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SHRI. DNYANOBA MADHAV KADAM - Petitioner(s).

Versus

STATE OF MAHARASHTRA - Respondent(s).

Law Covered:- (A) Code of Criminal Procedure, 1973 – Section 451 – Disposal of property – Release of tractor trolley – Insistence by Courts below for furnishing bank guaranty for release – Tractor was not insured – Held, keeping the said vehicle idle for considerable period is of no use – Petitioner is ready to furnish personal bond instead of bank guaranty – Held, on accepting the Suprutnama/Personal bond vehicle was ordered to be release. (Para 8)

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(B) Code of Criminal Procedure, 1973 – Section 451 – Disposal of property – Held, the bank guaranty for alleged loss need not be insisted for releasing vehicle involved in the process. (Para 7)

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Facts:- The petitioner filed the application for return of property i.e. Tractor and trolley. The Trial Court allowed the application but directed to furnish bank guaranty of Rs. 7 Lakh. Thereafter, the petitioner filed the Criminal Revision Application challenging the order of JMFC. However, the learned Appellate Court dismissed the Revision application filed by the petitioner. Hence the present writ petition was filed which was allowed.

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Held:- Learned Magistrate as well as the Sessions Court ought to have kept in view the law laid down by the Hon'ble Supreme Court in the case of Sunderbhai Ambalal Desai V. State of Gujarat, AIR 2003 Supreme Court 638, while dealing with the application filed under section 451 of Code of Criminal Procedure for releasing the vehicle. The Hon'ble Supreme Court in the case of State of Kerala (supra) has also upheld the order passed by the High court holding that, the bank guaranty for alleged loss need not be insisted for releasing vehicle involved in the process. (Para-7)

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It is true that in the present case the said Tractor was not insured, however, keeping the said vehicle idle for considerable period is of no use. In that view of the matter and since the petitioner

- a is ready to furnish personal bond instead of bank guaranty, the impugned order insisting for furnishing bank guaranty of Rs. 7 Lakhs for release of aforesaid vehicle stands quashed and set aside and instead, learned JMFC, Malshiras, on accepting the Suprutnama/ Personal bond of the petitioner shall order to release the vehicle as expeditiously as possible, however, within two weeks from receipt of the order passed by this Court. (Para-8)

Counsel:- For Petitioner(s): Mr. Bhalchandra Shinde, Adv.
For Respondent(s): Mr. N.B. Patil, Adv.

Cases Referred:-

- c 1. *State of Kerala Vs. A.A. Ali, (Para-4)*
2. *Sunderbhai Ambalal Desai V. State of Gujarat, AIR 2003 Supreme Court 638,(Para-7)*

JUDGMENT

- d S. S. SHINDE, J.: - 1. Rule. Rule made returnable with consent of the parties and heard finally.

e 2. By way of this petition, petitioner takes an exception to the order dated 17.02.2018 passed by JMFC, Malshiras, in Criminal Misc. Application No. 63 of 2018 below Exhibit1 and order dated 02.01.2019 passed Additional Sessions Judge, Malshiras in Criminal Revision Application No. 46 of 2018.

f 3. On 19.01.2018, the petitioner has filed the application for return of property i.e. Tractor and trolley. The Trial Court allowed the application but directed to furnish bank guaranty of Rs. 7 Lakh. Thereafter, the petitioner filed the Criminal Revision Application challenging the order of JMFC, Malshiras. On 02.01.2019, the learned Additional Sessions Judge, Malshiras dismissed the Revision application filed by the petitioner. Hence this writ petition.

g 4. Learned counsel appearing for the petitioner submit that, petitioner is ready to furnish personal bond, and the petitioner is not in a position to give bank guaranty of Rs. 7 Lakh for release of vehicle i.e. Tractor. It is submitted that, Hon'ble Supreme Court in the case of State of Kerala Vs. A.A. Ali decided on 14 th August 2018, has taken a view that it is not necessary to furnish bank guaranty for releasing the vehicle.

h 5. On the other hand, learned APP appearing for respondent submits that, learned JMFC has rightly asked the petitioner to furnish bank guaranty of Rs. 7 Lakh for releasing the vehicle.

6. Upon appreciating rival contentions and perusal of the impugned orders passed by JMFC, Malshiras and also Revisional Court, it appears that an onerous condition of furnishing bank guaranty of Rs. 7 Lakh is imposed for releasing of the Tractor (bearing registration No. MH-13 J-6803). a

7. Learned Magistrate as well as the Sessions Court ought to have kept in view the law laid down by the Hon'ble Supreme Court in the case of Sunderbhai Ambalal Desai V. State of Gujarat, AIR 2003 Supreme Court 638, while dealing with the application filed under section 451 of Code of Criminal Procedure for releasing the vehicle. The Hon'ble Supreme Court in the case of State of Kerala (supra) has also upheld the order passed by the High court holding that, the bank guaranty for alleged loss need not be insisted for releasing vehicle involved in the process. b c

8. It is true that in the present case the said Tractor was not insured, however, keeping the said vehicle idle for considerable period is of no use. In that view of the matter and since the petitioner is ready to furnish personal bond instead of bank guaranty, the impugned order insisting for furnishing bank guaranty of Rs. 7 Lakhs for release of aforesaid vehicle stands quashed and set aside and instead, learned JMFC, Malshiras, on accepting the Suprutnama/ Personal bond of the petitioner shall order to release the vehicle as expeditiously as possible, however, within two weeks from receipt of the order passed by this Court. d e

9. With the above observations, writ petition stands disposed of. Rule made absolute in above terms. f

Result:- Petition disposed of.

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