

4. Objections against grant of custody of animals to butcher/ accused

**IN THE COURT OF LD. JUDICIAL MAGISTRATE,
FIRST CLASS AT _____, DIST: _____**

C.R. NO. OF 200__
APPLICATION NO. OF 200__

Re : Application for handing over the custody of
 muddamal animals.

MAY PLEASE THE HONOURABLE COURT :

1. That in the above case, the applicants of this case, (who in fact are or should be accused of the crime), have filed the application for handing over possession/ custody of the muddamal animal to them on their failing in an attempt to slaughter innocent animals. It is, therefore, respectfully prayed to dismiss/reject the application submitted by the applicants-accused for getting possession/custody of the animal requires to be rejected/dismissed on the following grounds :-
 - (1) As observed and held by the Hon'ble Supreme Court in its recent decision in the case of State of UP v/s Mustakim, 2002(3) GLH (UJ) 8, when an offence under the provisions of the Prevention of Cruelty to Animal Act, 1960 has been committed and when there is an allegation in the complaint that the animals were being taken for slaughtering, in that event, the custody/possession of those animals can not be given to the owner of the said animals.
 - (2) That at present, investigation is going on and the animals are being kept in safe and comfortable condition in the panjarapole. They are not facing any trouble/problem. The applicant is keeping them separately and is providing regular treatment, medicines etc., proper food and the important aspect viz. that the applicant is providing them love and warmth/shelter. No court will give custody of a child to a so-called father (owner of animal) who does not want to take care of the child (animals), but wants to slaughter/kill him.
 - (3) The accused have failed to disclose that they are having any safe place where he can keep these animals and take care and look-after them. Therefore, if custody of these animals, if is handed over to the accused, accused would not be able to keep and maintain them and on handing over the custody, death of such animals is likely to be caused because of they

being kept in open and barren place.

- (4) That the applicants are accused of slaughtering the animals and are also accused of transporting the animals for the purpose of slaughtering them. If the custody of the speechless animals is handed over to the accused, there are all possibilities of slaughtering of those animals within a short time. Further, even if the accused give an undertaking that if required they will produce the animals, there are all possibilities that in future they will produce some altogether different animals before the Court as muddamal, if asked for.
- (5) That Panjarapole of the applicant of this application is a registered Panjarapole registered in the State of Gujarat and the same is one of the infirmaries out of total 284 infirmaries declared by the State of Gujarat in all throughout the State. As per Section-35 of the Prevention of Cruelty to Animals Act, 1960, the State Government can establish infirmaries by a special or general order for treatment and care of the animals. Thus, our Institution is the bona fide Institution who has won the faith of the State Government. As per the provisions of section 35(2) of the Act, if infirmary is set up/ established, then the Magistrates are empowered to order custody of the animal to the infirmary. Accordingly, custody of the animals should be given to our infirmary-institution / (or custody of the animals given to our infirmary-institution should be continued).
- (6) Our Institution is a registered Trust and accounts thereof are being regularly audited and are being submitted to Hon. Charity Commissioner. Copy of the Constitution of our Trust is enclosed herewith. Further, our Institution has been established since the year _____ and till date, in respect of different cases, the Hon'ble Courts have handed over custody of thousands of animals to our Institution which were being transported to slaughter house. In all such cases, our Institution has taken care of those animals in a nice manner and also strictly complied with all the conditions incorporated by the Hon'ble Courts while handing over the custody of those animals.
- (7) If custody of the animals is handed over to our Institution/ is continued with our Institution, we will regularly and in nice manner look after those animals and as and when Hon'ble Court directs, we will give inspection of those animals at regular intervals as directed by the Hon'ble Court, to the so-called owner of the animals in presence of the Advocate.
- (8) That we have made application requesting the Higher Authorities/ Officers to carry out proper investigation in the matter, copy of which is enclosed herewith. It is prayed to treat the grounds stated in the said application as the grounds of this application also. It is, therefore, prayed that till the

investigation in different angles/directions is not over, no orders should be passed on this application.

- (9) That different laws/ enactments have been framed based on Articles 48, 48-A, 51-A(g) of the Constitution of India. Looking to the provisions of those Articles, the action of handing over custody of the animals to the persons involved in slaughtering of animals, would be unconstitutional.
- (10) At the time of hearing of this application, we will produce the photographs demonstrating the very cruel and pitiable position of the large number of animals concerned in different criminal cases, being loaded and dumped in a very narrow space treating them as dead articles.
- (11) Number of decisions by different Courts have been pronounced to the effect that when animals are being caught while transporting to the slaughter house, custody thereof should be given to “Jiv Daya Institutions”. Copies of some such decisions are enclosed herewith.
- (12) In the decision of the Hon’ble Gujarat High Court in the case of Naroda Mahajan Khoda Dhor Panjarapole Trust v/s State of Gujarat, rendered in Special Criminal Application No.1184/2007, it has been observed and held that before passing any order as to the custody of the animals, Panjarapole is required to be heard since the Panjarapole is having locus standi. Hence, the present application is made.
- (13) It is the case of the accused for getting the custody of the muddamal animals that they were not taking /transporting the animals to the slaughter house, but since the time of their forefathers, they are doing business of sale and purchase of the animals for agricultural purpose. In this regard, the so called owner has not produced village form no. 15 under the Gujarat Land Revenue Rules & the licence / registration certificate under PCA (Registration of the Cattle Premises) Rules, and also the licence / permit issued by the Municipal Commissioner under Sections 328, 329 of the Bombay Provincial Municipal Corporation Act.
- (14) In the very recent decision of the Constitutional Bench (7 Judges Bench) of the Hon’ble Supreme Court delivered on 29.03.2006 in the case of **Bharat Gau Seva Sangh v/s State of Gujarat, 2006(2) GLH 2001**, it has been observed and held that there is complete ban/ prohibition on slaughtering of cow and cow progeny in the State of Gujarat. Further, while interpreting Articles 48 and 51-A of the Constitution of India, the Hon’ble Supreme Court has observed that it is the fundamental duty of each and every citizen to have compassion towards living creature. When fundamental rights of any person is required to be interpreted, Directive Principles of State Policy and

Constitutional Duties are required to be taken into consideration. It is necessary that the fundamental duties are interpreted fully in accordance with 42nd Amendment of the Constitution. Government means collection (union) of the citizens and, therefore, though Article 51-A does not specifically impose any fundamental duty on the State, but it is a fact that the fundamental duty of a each citizen, if looked jointly (collectively), is the duty of the State. (Para-57). In the very same decision, in paras 61 & 62, after referring to other judgments, the HOn'ble Supreme Court has held that each State and its citizens are having fundamental duty to show compassion towards living creature.

- (15) The accused were carrying/ transporting the animals in such a situation that the animals have become sick and are like half-dead. They are not in a position to travel and regular medical treatment of those animals is going on.
- (16) If custody of the animals is handed over to the accused persons, their existence would be at risk. If any guardian (father or mother) sells out his child and on registration of police complaint, the Court is not handing over the custody of such child to his father but the custody is being handed over to Juvenile Home or to any Voluntary Organization. In the same manner, since the condition of the speechless animals is like minor child, custody thereof can not be handed over to the accused persons.

We would like to show the photographs of the animals, at the time of transport / unloading indicating cruelty to the animals by the accused and / or so called owner.

In view of above, it is respectfully prayed to reject/dismiss the application for handing over custody of the muddamal animals preferred by the accused persons and further prayed to hand over custody of the muddamal animals to the Panjarapole of the present applicant/ to continue the custody of the animals handed over to the Panjarapole of the present applicant.

PLACE : _____

DATE :