

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 10 OF 2016

Gorakh s/o Vijay Gaikwad,
Age: 35 years, Occ: Agri. & Business,
R/o. Sanvatsar, Tq. Kopargaon. ...Petitioner

versus

The State of Maharashtra & anr ...Respondents

.....
Mr. A.D. Shinde, Advocate for applicant
Mr. A.R. Kale, A.P.P. for respondents
.....

CORAM : N.W. SAMBRE, J.

DATE : 5th APRIL, 2016

ORAL ORDER :

The applicant has moved an application under Section 451 read with Section 457 for release of J.C.B. bearing Registration No. MH-17AV-8706, tractor bearing Registration No. MH-16F-2549 and trolley bearing Registration No. MH-17-AF-235 which were seized by Kopargaon City Police Station in Crime No. I-195 of 2015 for the offence punishable under Section 379, 109 read with Section 34 of the Indian Penal Code i.e. withdrawing and transporting sand illegally.

2. The learned Magistrate refused to release the above referred JCB, Tractor and Trolley by an order dated 30/11/2015

passed below Exhibit-1 in Criminal Misc. Application No. 605 of 2015, which order was assailed in Criminal Revision No. 58 of 2015, which also came to be rejected on 14/12/2015 by learned 2nd Additional Sessions Judge, Kopergaon on the ground that the petitioner has failed to deposit the amount of penalty as was ordered by the revenue authorities.

3. The petitioner has now filed affidavit stating that he has paid penalty amount i.e. Rs. 1,40,000/- and Rs. 35,000/-. He has placed on record the documents i.e. receipts to that effect alongwith the affidavit.

4. Learned Counsel for the petitioner submits that the above referred vehicles, as are mentioned in paragraph-1 of this order, are not involved in similar type of offence. The said statement is accepted.

5. In view thereof, in my opinion, it will be appropriate to set aside both the orders i.e. the order dated 14/12/2015 passed by the 2nd Additional Sessions Judge, Kopergaon in Criminal Revision No. 58 of 2015 and order dated 30/11/2015 passed by learned Judicial Magistrate, First Class, Kopergaon in Criminal Misc. Application No. 605 of 2015 below Exhibit-1. Accordingly, above referred both the

orders are set aside.

6. It is ordered that the learned Magistrate to pass appropriate order for release of the vehicles involved in the Crime No. I-195 of 2015 registered with Kopargaon City Police Station, District Ahmednagar, on such terms and conditions as he deems fit, in view of above referred observations.

7. The writ petition stands allowed in above terms.

[N.W. SAMBRE, J.]