

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

WRIT PETITION NO.7981 OF 2019

**VIKAS NARAYAN BOTHE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for the Petitioner : Shri N. B. Patekar
AGP for Respondent Nos. 1 and 2 : Shri S. P.Tiwari

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 02nd JULY, 2019.

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PER COURT :

1. The petitioner/original plaintiff is aggrieved by the order of the Trial Court dated 05/04/2019 rejecting application Exhibit 5 seeking temporary relief in RCS No. 31/2019 and by the judgment dated 28/05/2019 delivered by the Appellate Court dismissing his MCA No. 57/2019.

2. I have heard the learned Advocate for the petitioner for quite some time.

3. Issue is that the dumper truck owned by the petitioner was seized and confiscated after it was noticed that the said

vehicle was illegally carrying three brass of sand. The petitioner contended that he had a permit for carrying two brass of sand. He had also stated that one Mr. Sanjay Ramdas Mhase had purchased the sand in government auction. However, he could not produce relevant documents. He termed the panchanama as being a fictitious document. He alleged that the panchanama was without signatures of the panchas.

4. I find from the impugned order that the petitioner has been imposed with a penalty of Rs. 2,55,200/-. The Trial Court has, therefore, refused to release the truck. The Appellate Court noted the factors on a *prima-facie* appreciation and concluded that the Miscellaneous Appeal does not deserve to be entertained.

5. After this matter was heard for some time, the learned Advocate for the petitioner sought a pass over to take instructions. After lunch, when the matter was called out, he submits on instructions that the learned Division Bench of this Court has passed an order in a group of petitions wherein

some tractor owners were directed to pay Rs. 1,00,000/- and an additional amount of Rs. 50,000/- with the concerned authorities. Issue was of illegal excavation of sand.

6. Considering the above and keeping in view that the vehicle involved in this matter is a dumper truck and was apprehended carrying three brass of sand, if the petitioner deposits an amount of Rs. 2,50,000/- with the District Collector, Ahmednagar, his truck could be released with conditions.

7. The learned AGP appearing on behalf of the State submits that the District Collector has the right to impose certain conditions and the petitioner will have to execute a bond in terms thereof in order to vouch obedience to such conditions.

8. The petitioner is agreeable to deposit the amount and is also agreeable to be bound by the conditions that the District Collector would impose for releasing the truck as it would then be put to use.

9. In view of the above, this petition is partly allowed with the following directions :

(a) The petitioner shall deposit an amount of Rs. 2,50,000/- (Rs. Two Lakh Fifty Thousand only) with the District Collector, Ahmednagar.

(b) Only after he deposits the amount and tenders an application for releasing of his vehicle dumper truck bearing No. MH16-Q-7821, the District Collector would impose certain conditions on the petitioner for using the said truck for his business purposes.

(c) The petitioner shall execute a bond in terms of the said conditions declaring his unequivocal obedience to the said conditions and thereafter the authorities would release the said truck.

(d) Needless to state, in case of breach of any of the conditions of the bond, the respondent authorities would have every right to re-possess the said vehicle.

(RAVINDRA V. GHUGE, J.)

shp/-