

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.594 OF 2018

Shri Anandrao Sahebrao Rupanwar ... Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.Sachin Deokar i/b S. Das for the Applicant

Mr.A.R. Patil, APP, for the Respondent – State

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: MARCH 18, 2019**

P.C.:

1. This application is moved under section 457 of the Code of Criminal Procedure for return of the seized property i.e., JCB vehicle, in C.R. No.46 of 2018 registered with Natepute police station, Taluka Malshiraj, District Solapur, wherein the accused is prosecuted under section 379 r/w section 34 of the Indian Penal Code.

2. Learned Counsel for the applicant/accused has submitted that the Revision application of the applicant/accused for the return of his vehicle was dismissed by the learned Sessions Judge by order dated 17.4.2018 thereby confirming the order of the learned

Judicial Magistrate First Class, Malshiras of rejecting the application for returning the vehicle. Learned Counsel for the applicant submits that the learned Judicial Magistrate First Class and the learned Sessions Judge have rejected the applications on the ground that the vehicle was initially seized by the Talathi and then, they were taken in custody by Tehsildar and, therefore, it is of Revenue Authority's custody of the vehicle.

3. Learned Prosecutor submits to the orders of this Court and prays that if the vehicle is released, a bond of sufficient amount is to be taken against the vehicle.

4. Perused the orders of the learned Magistrate and the learned Sessions Judge. It appears from the record that this vehicle was seized by Talathi on the night intervening 12th and 13th of February, 2018 when the applicant/accused was involved in the illegal sand excavation and has committed theft of sand. Though the vehicle was seized by Talathi while taking action under the Maharashtra Land Revenue Code, subsequently, it was handed over to the Tehsildar. Finally, on 14.2.2018, the vehicle was taken in custody by police station under panchanama.

5. The learned Counsel for the applicant submits that the vehicle is lying in the police station. It is submitted by the learned Counsel for the applicant that the applicant is a farmer and he requires the vehicle for his agricultural work and business. He is also ready to undertake that he shall not dispose of the said vehicle. It is further to be noted that the police have registered this offence at C.R. No.46 of 2018 at Natepute police station under section 379 r/w section 34 of the Indian Penal Code.

6. In view of this fact, the property i.e., the vehicle, appear to be the property seized in C.R. No.46 of 2018 and the vehicle is in custody of the police station. Therefore, I am inclined to allow this application. Accordingly, the vehicle i.e., JCB bearing No.MH 45 F 7031, bearing Chassis No.12AQ.05-7-760-1652 and Engine No.4H-2607/0700431, belonging to the applicant is hereby released on the following conditions:

- i) The owner of the JCB shall execute a bond of Rs.10,00,000/- (Rupees Ten Lakhs only) against the said JCB;

ii) The applicant shall furnish an undertaking that he shall not sell, transfer or dispose of the vehicle to any other persons in any manner especially, without permission of this Court.

iii) In case there is any damage, accident or theft in respect of the vehicle, the same shall be communicated to this Court.

iv) The applicant shall not thereafter indulge into any criminal activity especially like theft of sand or any other excavation with the vehicle.

v) Breach of any of the above conditions will amount to seizure of the vehicle again.

7. The Criminal Application is disposed of accordingly.

(MRIDULA BHATKAR, J.)