

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

WRIT PETITION NO. 3433 OF 2020

SHAIKH SHAHEJAD SHAIKH YUSUF
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Mr. Sandeep D. Munde, Advocate for Petitioner
Mr. S.B. Pulkundwar, A.G.P. for Respondent Nos. 1 to 3
...

CORAM : SUNIL P. DESHMUKH &
M.G. SEWLIKAR, JJ.
DATE : 20-08-2020

ORDER :

1. Counsel for petitioner submits that issue involved in present petition is identical to the one involved in writ petition (Stamp) No. 10802 of 2020, wherein police authorities had seized vehicle. He further submits that while no further progress beyond seizure of vehicle had been made, the court had considered that it was inappropriate on the part of the police authorities to retain custody of the vehicle. He submits that in present case as well police have seized vehicle of petitioner and no further progress beyond the same has taken place nor any first information report has been lodged. Till today, the vehicle is in custody of the police authorities.

2. The respondents have not referred to any first information report being lodged. In the circumstances, accepting the statement made on behalf of the petitioner, that no first information report has been lodged, it would not be proper for the police authorities to continue with the custody of the vehicle.

3. Learned counsel for petitioner also draws our attention to that under an order dated 16th August, 2019 without seeking any explanation, considering one sided report penalty has been sought to be imposed without following due procedure of law purportedly invoking Section 48 of the Maharashtra Land Revenue Code. Apart from aforesaid, he submits that noble principles of natural justice have been trampled down in the process. The penalty has been imposed arbitrarily. He states that in view of the exigency, alternate remedy may not be efficacious.

4. On the other hand, learned AGP Mr. Tambe appearing for respondents submits that the authorities have all the powers to take action and to impose fine and penalty for unauthorised use and transport of sand.

5. In view of above, we follow the suit of the order dated 6th July, 2020 passed in writ petition stamp No. 10802 of 2020.

6. In the order dated 6th July 2020, passed in writ petition stamp No. 10802 of 2020, the court has observed that rule of alternate remedy is a rule of self restraint. The petitioner, in the circumstances, can file the appeal.

7. The police authorities shall release the vehicle of the petitioner bearing registration No. MH-04-EY-6424. The petitioner shall deposit an amount of ₹ 50,000/- (Rupees Fifty Thousand) with respondent No. 3 – Tahsildar, Bhokardan, District - Jalna without prejudice to his rights and contentions. Said deposit would be subject to the decision of appeal that may be taken up by the appellate authority, in case the petitioner files an appeal against imposition of fine and penalty by Tahsildar. In case, appeal is not filed by the petitioner within a period of thirty days against the fine and penalty imposed, then the respondent authorities may initiate further course of action against the vehicle of petitioner. The petitioner shall also submit a bond with the police station that the vehicle shall not be alienated or transferred pending the appeal and that the vehicle

shall not be used for any illegal purpose. The deposit of amount is a condition precedent. Upon petitioner's producing the receipt of deposit of amount as directed above, the respondents shall release the vehicle of the petitioner immediately.

8. In the light of above, the writ petition is disposed of.

[M.G. SEWLIKAR]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/