

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.190 OF 2021

Tarachand Pundlik Patil,
Age : 60 years, Occu. Business,
R/o Near Shivdham Mandir,
Nimkhedi, Post Pimprala,
Taluka and District Jalgaon

APPLICANT

VERSUS

The State of Maharashtra,
through Bazar Peth Police Station,
Bhusawal, District Jalgaon

RESPONDENT

Mr. Kishor C. Sant, Advocate for the applicant
Smt. R.P. Gaur, A.P.P. for the respondent/State

CORAM : MANGESH S. PATIL, J.

DATE : 11.02.2021

ORDER :

Heard.

2. Issue notice. The learned A.P.P. waives service of notice.
3. With the consent of the learned Advocate for the applicant and the learned A.P.P., the application is heard finally.
4. The request of the applicant for release of a truck, allegedly used in a crime, by resorting to the provisions of Section 457 of the Code

of Criminal Procedure, has been allowed by the learned Magistrate with the following condition in clause (5) :

“The present order shall be without prejudice the powers of Executive Magistrate to proceed pursuant to the provisions of Sec.48 of Maharashtra Land Revenue Code and Mines and Minerals Act & the vehicle shall not be returned until he exhausts the power in that regard.”

5. The applicant is aggrieved by the last line of the above condition, which prohibits the vehicle to be returned until the power under Section 48 of the Maharashtra Land Revenue Code and Mines and Minerals Act is exhausted by the concerned Authority.

6. There cannot be any dispute that the Magistrate does have a power under Section 457 of the Code of Criminal Procedure to pass appropriate order in respect of return of property. There also cannot be any dispute that the revenue authorities also do have powers under Section 48 of the Maharashtra Land Revenue Code and the Mines and Minerals Act in respect of the vehicles used in illegal transportation of mines and minerals.

7. But then, the problem here is that the learned Magistrate, while passing the order under Section 457 of Cr. P.C., has restrained his own order till the time revenue authorities exhaust powers vested in them. In my considered view, the first portion of the condition takes care of the anxiety being entertained by the learned Magistrate. His powers under Section 457

of Cr. P.C. would certainly be without prejudice to the powers of the revenue authorities. However, the impugned rider that the order shall not come into effect till the revenue authorities exhaust the powers is uncalled for and illegal. There are no fetters on the power of the Magistrate in passing the orders in respect of the return of properties seized during the course of investigation of a crime. No such condition, which is in the nature of contingent fact, could have been put.

8. The application is allowed. The following portion of the impugned condition No. (5) is quashed and set aside.

“& the vehicle shall not be returned until he exhausts the power in that regard.”

[MANGESH S. PATIL]
JUDGE

