

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

CRIMINAL WRIT PETITION NO. 1741 OF 2020

Shaikh Aleem s/o Shaikh Akbar

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

.....
Shri. G. R. Syed, Advocate for the petitioners
Shri. B. V. Virdhe, APP for respondent/State
.....

**CORAM : T. V. NALAWADE
AND
B. U. DEBADWAR, JJ.**

DATE : 20th January, 2021

PER COURT : -

1. This Court has already passed an order dated 11.01.2021, in which, this Court has expressed that it is not probable that there was no any proceeding pending before any authority about the JCBs of the petitioner have seized. This Court had directed the petitioner to deposit Rs. 25,000/- as there was no probability as suggested by the petitioner in the present proceeding. After depositing the said amount, this Court then passed order on 15.01.2021 and the learned APP was directed to collect the information in respect of the incident.

2. Today, learned APP produced on record a communication issued by Police Sub-Inspector attached to Waluj Police station,

Aurangabad City. The said communication shows that, on 27.11.2020, the revenue authority and police authority together took action when they found that some persons were committing theft of sand. They had gone to ascertain the theft of electricity but they noticed that, in one land there was sand of 25 to 30 brass and there were two JCBs mentioned in the present proceeding. As the persons there had run away due to noticing the aforesaid incident, further action was taken. Theft of electricity was being done for washing the sand which was stored there and four motors of 7.5 HP each, were used for washing the sand. In the report, it is mentioned that, the sand and the JCBs were taken in the custody after seizing them by revenue authority and they were kept in the campus of Police Station. Nobody like owner of JCBs turned up to claim the custody of JCBs and after that the notice was given by the Addl. Tahsildar, Kanchanwadi, Aurangabad to Jakaula Khan Gulam Insan Khan, the owner of the two JCBs.

3. It is the contention of the present petitioner that, he is the owner of one JCB bearing no. MH-17/BX-4405 and he had taken JCB bearing no. MH-20/CU-5389 under Leave and License Agreement from Alim Akbar Shaikh. These names are not mentioned in the report of police. It is the contention of the petitioner that, no notice of

penalty proceeding was given to him. In any case, there must be record of aforesaid nature with the revenue authority. The order issued by Addl. Tahsildar also shows that, the penalty of Rs. 15.00 lakhs was imposed for such use of two JCBs. It is the contention of police that, if the revenue authority passes an order of releasing the vehicles, the police will release the same.

4. The aforesaid circumstances mentioned in the police report show that, some proceeding was started and in that proceeding, two JCBs are seized and penalty order was passed. In view of these circumstances and as there is no whisper about such proceeding in the present matter, this Court holds that the relief claimed in the present matter to direct the police to release the JCBs of the petitioner, cannot be given.

5. Though there is some record to show that the petitioner is a owner of JCB bearing no. MH-17/BX-4405, at this stage, the amount of Rs. 25,000/- cannot be returned to him. This Court will consider about the return of the amount only when some concrete information is there and that it is the job of the police and the revenue authority to ascertain as to whether the JCBs were given on hire or lease basis by the petitioner to somebody.

6. With the aforesaid observations, the Criminal Writ Petition stands disposed of.

7. If, in future, the State informs that the JCBs were given on lease by the present petitioner to somebody and that somebody was involved in the theft of sand, the amount deposited by the petitioner in this Court will be deposited to the Government. If the State does not find that kind of fault with the petitioner, this Court will return the amount to the petitioner.

[B. U. DEBADWAR]
JUDGE

[T. V. NALAWADE]
JUDGE