

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

CRIMINAL WRIT PETITION NO. 3 OF 2022

SANDIP ASHOK NEVHARE

VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Petitioners : Mr. Sanket Palnitkar h/f Mr. Sharma Govind M.

APP for Respondent/State : Smt. D. S. Jape

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CORAM : KISHORE C. SANT, J.**DATE : 25th NOVEMBER 2022.****Per Court :**

1. It is submitted that this petition is filed challenging the order dated 14.08.2021 passed by the learned Additional Sessions Judge, Aurangabad in Criminal Revision Application No.104/2021, thereby dismissing the Revision of the Petitioner. The Revision was filed challenging the order passed in the application filed under the provision of Section 457 of the Code of Criminal Procedure (Cr.P.C.) for release of the vehicle. The same came to be rejected vide order dated 08.07.2021 passed by the learned Judicial Magistrate First Class ('JMFC')

for short), Sillod. The vehicle in question is a Trolley bearing Chasis No. PTK-234/2014 seized by the Sillod (Rural) Police Station in Crime No. 82/2021. It is alleged that this Trolley was attached to a Tractor, bearing registration no. MH20 CR-2396 being used for excavating and transporting the sand illegally. Vide order dated 08.07.2021, learned JMFC, Sillod had released the Tractor. However the Trolley was not released, stating that there is a possibility that it may be again used in similar kind of offences.

2. The Revisional Court rejected the Revision, endorsing the view of the learned JMFC. It is further observed that the Trolley was being used without registering the same with the Regional Transport Office (RTO) authority. It is seen that the Trolley is already seized in another offence in the year 2014 and the same is now released by the police in Crime No.82/2021. It is submitted that in the same crime, two Trolleys and two Tractors were seized. Learned Advocate for the Petitioner produced on record the order passed by this Court in Criminal Writ Petition No.1441/2021 dated 02.02.2022, wherein, Trolley of another accused is released on condition imposed by the learned Magistrate.

3. Learned APP points out that this Petitioner has sold the Trolley in 2014 itself, to one Vishnu Raut. She has also produced a photocopy of the sale certificate and the agreement for sale of trolley. She further submits that even now tractor is not registered and if the same is now released. There is every possibility that the same will be used for commission of similar type of offences. She states that the Petitioner is a habitual offender as there are earlier crimes registered against him in similar offences. Therefore, there is also a possibility of using trolley for commission of similar kind of offences.

4. Looking to the order passed by this Court, the facts were similar in that case also i.e. there is also a Trolley was not registered. This Court was pleased to direct to restore the possession to the Petitioner as interim reason for the purpose of registration. The Petitioner was directed thereafter to place on record registration certification before the Court of learned JMFC. The learned JMFC was directed to then pass suitable order by imposing conditions to restore the possession. In view of this, following order is passed.

ORDER

- (i) The Writ Petition is partly allowed.
- (ii) The impugned order dated 14.08.2021 passed by the learned Additional Sessions Judge, Aurangabad in Criminal Revision Application No. 104/2021 is set aside.
- (iii) The Petitioner be given custody of the Trolley bearing Chasis No. PTK-234/2014, which is seized in connection with offence in Crime No. 82/2021 only for the purpose of registration and Registration be done within two weeks. After registration is done, the trolley be again produced in the custody of the Police. The Petitioner shall thereafter, again move the trial Court for suitable orders and the same to be considered by the trial Court on its own merit.
- (iv) The Criminal Writ Petition is disposed off.

[KISHORE C. SANT, J.]

Najeb.