

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

922 CRIMINAL WRIT PETITION NO.593 OF 2022

MURLIDHAR SHIVAJI BELE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. M.K. Bhosale, Advocate for the petitioner

Mr. A.M. Phule, APP for respondent Nos.1 and 2

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 28th JUNE, 2022

PER COURT :

1 Present writ petition challenges the Judgment and order dated 18.02.2022 passed by the learned Additional Sessions Judge, Gangakhed, Dist. Parbhani to the extent of asking the petitioner to give bank guarantee of 50% valuation of the truck bearing registration No.MH 26-H-8114.

2 Heard learned Advocate Mr. M.K. Bhosale for the petitioner and learned APP Mr. A.M. Phule for respondent Nos.1 and 2.

3 The vehicle of the petitioner has been seized in connection with Crime No.280/2020 registered with Gangakhed Police Station, Dist.

Parbhani, for the offence punishable under Section 468, 471 read with Section 34 of the Indian Penal Code, 1860, under Section 3, 7 of the Essential Commodities Act, 1955 and under Section 194 of the Motor Vehicles Act, 1988.

4 The present petitioner is the accused No.2 in that case. He is the owner and driver of the truck. He had filed application before District Magistrate, Parbhani on 12.11.2020 for release of his truck. It appears that, that application was allowed. The learned District Magistrate, Parbhani passed the order of releasing the vehicle upon furnishing bank guarantee of 50% valuation of the vehicle. That order was challenged by the petitioner by filing Criminal Appeal No.6/2021 before learned Additional Sessions Judge, Gangakhed, Dist. Parbhani. That appeal came to be dismissed on 18.02.2022. Hence, this petition.

5 Perusal of the order passed by the District Magistrate would show that while imposing the condition of bank guarantee it was considered by the learned District Magistrate that since the grains those were being transported were from the public distribution system and also the fact that on the date the order was passed there was report from the laboratory that the said rice and wheat are not worth consuming. The First Appellate Court

considered that the vehicle should not be used in similar offence and, therefore, the condition for furnishing bank guarantee was rightly imposed. The said assurance could have been taken by some other methods also.

6 The learned Advocate for the petitioner submits that due to the financial condition the bank guarantee has not been furnished by the petitioner since it is to the extent of 50% of the valuation of the truck, which comes to Rs.3,50,000/- and odd.

7 Perusal of the First Information Report would show that the role of the petitioner was limited to the transportation and the fact that appears prima facie is that the petitioner was not carrying necessary documents about the grains when the truck was intercepted. When it is only fact that the truck should not be used again for similar offence, the option of deposit of certain amount could have also been considered by the authorities below. Taking into consideration the role attributed to the petitioner, the condition that has been imposed regarding bank guarantee of 50% value of the truck appears to be harsh and, therefore, it deserves to be modified. Asking the petitioner to deposit amount of Rs.75,000/- (Rupees Seventy Five Thousand only) would serve the purpose. It is also to be noted that the case would have been now before either Civil Judge Senior Division and Additional Chief Judicial

Magistrate, Gangakhed or Judicial Magistrate First Class, Gangakhed and, therefore, it would be appropriate to ask the petitioner to deposit amount of Rs.75,000/- (Rupees Seventy Five Thousand only) with Civil Judge Senior Division and Additional Chief Judicial Magistrate, Gangakhed, Dist. Parbhani and upon the compliance of the deposit of the amount and showing the receipt to the concerned authority along with the copy of this order, the vehicle deserves to be then released. The amount to be deposited by the petitioner on or before 15.07.2022. The writ petition stands disposed of accordingly.

(Smt. Vibha Kankanwadi, J.)

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