

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10687 OF 2022

Sachin Vishram Porje

... Petitioner

Versus

The State of Maharashtra and Anr.

... Respondents

Mr. Deepak Pote a/w Mr. Shrirang Katneshwarkar for the Petitioner.
Ms. Kavita Solunke AGP for the Respondent-State.

**CORAM: R. D. DHANUKA AND
M.M.SATHAYE JJ.**

DATE : 22nd DECEMBER 2022

PC. :-

1. Rule. The learned AGP waives service for Respondent Nos. 1 and 2. Rule made returnable forthwith. Heard finally by consent of both sides.

2. By this Petition filed under Article 226 of the Constitution of the India, the Petitioners seeks writ in the nature of certiorari to quash and set aside Order dt. 24.06.2022 passed by Respondent No. 2 (Tahasildar, Baglan, District Nashik) to forthwith release the vehicles of the Petitioner bearing registration no. MH-15-AB-5155 and MH-15-EG-4755.

3. It is case of the Petitioner that he is engaged in business of supplying building material like sand, cement etc. For supplying the said material, Petitioner used two trucks on contract basis bearing registration Nos. MH-15-AB-5155 and MH-15-EG-4755. It is submitted that on 25.05.2022, when the Petitioner's vehicles were transporting sand from village Nizare, State of Gujarat to the State of Maharashtra, when the trucks reached at Pimplegaon, it were intercepted by the mines and mineral squad. The said vehicles were seized by drawing panchanama. On 30.05.2022 and 03.06.2022 a notices were issued by Respondent No. 2 asking why penalty should not be imposed. Petitioner replied to the aforesaid notices on 09.06.2022 and 10.6.2022 respectively. Then by order dated 24.06.2022, Respondent No. 2 directed Petitioner to pay penalty of Rs.2,00,662/- and Rs. 1,22,017/- The order dated 24.06.2022 passed by Respondent No. 2 is challenged in this petition.

4. Learned Counsel for the Petitioner submitted that Petitioner can not be penalised, as done under the impugned Order and for this submission, he invited our attention to a Judgment dt. 07.04.2022 delivered by Nagpur Bench of this Court in a batch of petitions, with lead Writ Petition No. 2078 of 2021 in case of **M/s Shree Rajesh**

Pathak Vs. State of Maharashtra and others and subsequent Orders dt. 26.04.2022 delivered by Aurangabad Bench of this Court in Writ Petition No. 4397 of 2022 in case of **Vishal Babasaheb Dube @ Dhube Vs. State of Maharashtra and Another** and Order dt. 29.11.2022 passed in Writ Petition No. 9369 of 2022 in case of **Bhausahab R. Jadhav Vs. State of Maharashtra.**

5. Ms. Solunke learned AGP for the State could not distinguish the facts of this case from the aforesaid judgments taking consistent view and also could not dispute that recovery sought by Respondents from the Petitioner is ultimately recovery based on 10% royalty under circular dt. 5th February, 2021 which is held bad in law by this Court.

6. In our view, facts of this case are similar and therefore the impugned orders and the action on the part of the Respondents to detain vehicles of the Petitioner, cannot be sustained. We accordingly pass the following order.

ORDER

(i) Writ Petition is allowed in terms of prayer clause (b).

- (ii) Respondents are directed to release the two vehicles of Petitioner bearing registration No. MH-15-AB-5155 and MH-15-EG-4755, within one week from the date of communication of this Order.
- (iii) Rule is made absolute in the aforesaid terms. No order as to costs.
- (iv) All concerned to act on an authenticated copy of this order.

[M.M.SATHAYE,J.]

[R. D. DHANUKA, J.]