

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

WRIT PETITION NO. 6923 OF 2023

Ajij Khan Hayat Khan Pathan

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. Sushant V. Dixit, Advocate for the Petitioner.

Mr. K. B. Jadhavar, AGP for Respondent Nos. 1 to 4.

CORAM : KISHORE C. SANT, J.

DATED : 27th JUNE, 2023.

P. C. :-

. Heard.

2. The petition is filed by the owner of vehicle bearing No. MH-14-FT-3756 against the seizure of vehicle on 08.01.2023 by the Talathi and Circle Officer, Kapurwadi.

3. It is the case of the petitioner that, the petitioner had obtained e-transit pass bearing No. 7817184 for transporting crushed sand and stone by giving the details. When the vehicle was carrying stone it was intercepted and was seized by the Talathi and Circle Officer. It is alleged that, by giving wrong vehicle number the petitioner was carrying the stone. From the record he shows that, it is the mistake of

the authorities in writing the number of the vehicle. As a matter of fact, the petitioner was carrying the crush sand only in his vehicle in respect of which e-transit pass was obtained. He also submits from the record and from the location that, the vehicle was rightly taken on the route. Learned advocate for the petitioner submits that, after seizure no proper procedure is followed. The vehicle is not produced within 48 hours before the authority. It is only after the petitioner issued notice to the Talathi, Circle Inspector, Tahsildar and other revenue authorities so also, the Superintendent of Police, Ahmednagar that the proceeding is started. The notice was given on 15.01.2023 and immediately on receipt of notice the Tahsildar has now issued notice on 16.01.2023 wherein, he proposed the penalty of Rs. 1,19,850/-. He ultimately submits that, he would face the proceeding before the Tahsildar. However, his vehicle is unnecessarily seized for no reason. The petitioner in the meantime had also filed an application under Section 94 of the Code of Criminal Procedure in the Court of learned J.M.F.C., Ahmednagar bearing Criminal Misc. Application No. 94/2023. The said application came to be rejected holding that the scope of Section 94 does not extend to issuance of search warrant in such cases as the action is taken under the Maharashtra Land Revenue Code.

4. Learned A.G.P submits that, the petitioner in such case has to participate in the proceeding before the Tahsildar. In is only notice issued by the Tahsildar which he has to answer. Necessary orders can be passed by the revenue authorities and he prays for rejection of the writ petition.

5. Considering the submissions and the record this Court finds that, no purpose would be served by detaining the vehicle. Prima facie, it is seen that, illegality shown is only that the number of vehicle differs from the number given to the authorities. It is clear that, it was by mistake another number was uploaded on the site as taken by the authorities. It would be in the interest of justice to direct the authorities to release the vehicle No. MH-14-FT-3756 i.e. Tempo on deposit of 50% of the fine amount as stated in notice dated 16.01.2023. This deposit of the amount shall be subject to outcome of the proceeding before the revenue Court. In view of this, the following order is passed.

6. The writ petition is partly allowed.

7. The authorities are directed to release the vehicle of the petitioner i.e. Tempo bearing registration No. MH-14-FT-3756 on deposit of 50% of the amount of fine as proposed by the Tahsildar as

per notice dated 16.01.2023 within a period of two (02) weeks from today subject to outcome of the proceeding before the Tahsildar.

8. With this, the writ petition stands disposed off.
9. Needless to say that, all contentions of the parties are kept open.

(KISHORE C. SANT, J.)

P.S.B.