

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

CRIMINAL WRIT PETITION NO. 830 OF 2022

Govind Shripatrao Suryawanshi

.. Petitioner

Versus

The State of Maharashtra
Through Police Station Purna

.. Respondent

Mr. Panditrao S. Anerao, Advocate for the Petitioner.
Mr. Y. G. Gujarathi, APP for Respondent.

CORAM : KISHORE C. SANT, J.

DATED : 03rd JANUARY, 2023.

P. C. :-

. Heard learned advocate for the petitioner and learned A.P.P. for respondent/State.

2. It is seen that the petitioner is praying for release of vehicle which is seized in connection with the offence bearing Crime No. 258/2021 registered with Police Station, Purna. The vehicle is found to have been used for the purpose of illegal transportation of sand. Earlier also the same vehicle was seized in respect of some other offence of similar kind when the owner of this vehicle was shown to be one Shaikh Wajid Shaikh Ayyub. Now, the petitioner submits that the vehicle is standing in his name as it is transferred by the previous

owner in favour of the present petitioner. He submits that the earlier crime was registered when he was not owner and he was not aware that the vehicle had been used and was seized in connection with some other offence. Both the Courts below have held that in earlier offence bearing Crime No. 208/2020 this vehicle was released on condition that it would not be used in the similar type of offence. There was an order of release of the vehicle on the application that was filed by one Shaikh Wajeed Shaikh Ayyub. It is specifically observed that, it is the same vehicle which is allegedly now transferred in the name of the present petitioner. The same vehicle is again used. While releasing the vehicle on the earlier occasion, there was specific condition that the said vehicle is not to be transferred, mortgaged or no third party interest be created. However, still the vehicle is now transferred in the name of the present petitioner. On that count, the learned Trial Court had rejected the application under Section 457 of the Code of Criminal Procedure and the same is confirmed in Criminal Revision No. 34/2022 and the said order is under challenge in this petition.

3. The learned advocate for the petitioner submits that he was not aware that the vehicle was used on earlier occasion in the similar type of offence. He would abide by the conditions imposed by this Court when the vehicle released. As against this, learned advocate relies

upon the judgment of the Hon'ble Apex Court in a case of **Rajendra Prasad Vs. State of Bihar** reported in **2001 AIR (SC) 168**. He specifically relies on paragraph No. 9 which is reproduced as below :

“9. Undisputedly, in the Registration Certificate the name of the financier has been indicated and the factum that the vehicle was subject to such an agreement was also noted. In the agreement, appellant is described as owner, but respondent No. 2 as hirer. It is noticed that the respondent No. 2 had applied for the release of the vehicle and the High Court had directed the release of vehicle on certain conditions. Undisputedly, those conditions have not been fulfilled. The vehicle is, therefore, lying with the seizing authorities for nearly eight years now. In view of the factual position highlighted above, we direct release of the vehicle in favour of the appellant subject to fulfillment of the conditions which were stipulated for the respondent No. 2.”

4. The Hon'ble Apex Court in that case had considered the fact that the vehicle was lying in the custody of the police for eight years and therefore, released the vehicle.

5. In this case, it is found that the said vehicle is being used frequently for the similar kind of offence within duration of one and half year.

6. The learned A.P.P. submits that this is the *modus operandi* and the documents are created to show the different owner and the different owner is shown and such type of petition is filed. However, it

is the same vehicle and thus, it shows that there is connivance between the parties and it is for the sake of record the ownership documents created.

7. Considering all the above aspects, this Court finds that it would not be proper to direct the release of the vehicle especially when this vehicle was released by order dated 22.01.2021 in the earlier offence and in this offence the said vehicle is found to have been used. Thus, looking to the span less than a year, the vehicle is used in another offence and hence, it would not be proper to release the vehicle. This Court thus finds that there is no merit in the petition and it is failed.

8. The writ petition is dismissed and disposed off.

(KISHORE C. SANT, J.)

PS.B.