

951 CRIMINAL WRIT PETITION NO.1753 OF 2022

VERSUS

DATE : 04th JANUARY, 2023

1. Heard the learned advocate for the parties.
2. Rule.
3. Rule made returnable forthwith. With the consent of the parties the petition is taken up for final disposal.
4. The owner of the vehicle has come to this court

challenging an order dated 15-09-2022 passed by the learned Additional Sessions Judge, Aurangabad rejecting his revision thereby confirming the order passed by the learned JMFC, Aurangabad refusing the application under Section 457 of the Cr. P. C. The vehicle in question was seized by the authorities since it was found while excavating sand illegally. The offence therefore came to be registered on 31-05-2022 with Chawani Police Station, Aurangabad bearing FIR No. 183/2022. Vehicle No. MH-20-EG-5291 is belonging to Tarachand Wani and JCB bearing No. MH-16-AM-2104 is belonging to present petitioner came to be seized. Both the owners of both the vehicles filed an application before the JMFC for releasing of the vehicles. Both the applications came to be rejected. The petitioner, therefore, filed a criminal revision No. 159/2022. Said revision also came to be rejected. Main ground for rejection of the application and the revision petition is that the revenue authority have passed the order and it is the revenue authority who have strongly opposed the order expressing apprehension of possibility of change of nature of vehicles and that vehicle may be again used for the same purpose. It is further observed that offence is lodged under Section 21 of the Mines and Minerals Act.

5. So far as other vehicle is concerned the owner of that vehicle also filed criminal revision No.156/2022 before the Sessions Court, Aurangabad. However, that revision came to be allowed by order dated 14-07-2022 and vehicle was released on

certain conditions. However, the revision of the present petitioner came to be rejected by order dated 15-09-2022.

6. It is the submission of the learned advocate for the petitioner that if revenue authorities wants to take action against the vehicle, they have independent powers under the MLR Code. Further, he submits that the offence is registered against Lalchand who happens to be brother of the present petitioner. There is no notice issued to the present petitioner but the same is issued to Lalchand and on that count also confiscation of the vehicle is illegal. He placed reliance upon the order passed by this court in Criminal Writ Petition No. 1516/2018 dated 21-01-2019 wherein this court has observed that revenue authorities have independent powers. They can proceed as per MLR Code for that purpose rejection the application under Section 457 of the Cr. P. C. It is also observed that keeping the vehicle idle is not in the interest of justice of any party and vehicle can be released by imposing suitable conditions.

7. Learned APP vehemently opposed the writ petition saying that this is a modes operendi of the persons to use the vehicle of some other persons for illegal excavation of sand. He further submits that the revenue authority have also passed an order imposing penalty of Rs.7,50,000/- on the JCB. The interest of the State needs to be considered. He submits that if the

vehicle is released, there are chances that same would be used again for similar type of offences. If the vehicle is released, the nature of vehicle may be changed. It is also necessary that vehicle is produced as and when required for the purpose of trial.

8. Considering the above submissions, this court finds that revenue authority can certainly take action by using their powers under MLR Code and for that purpose application under Section 457 need not be rejected. A care can be taken by imposing certain conditions on the owner of the vehicle while passing order under Section 457. Considering the submissions this court finds that it would be appropriate in the interest of justice by directing release of vehicle by setting aside the judgment and order passed by the learned Additional Sessions Judge, Aurangabad in criminal revision application No.159/20252 by imposing condition. Hence, the following order:

ORDER

a] The vehicle bearing registration No. MH 20 16AM2104, Model No. 2008, Chasis No.126149, Engine No. 4H2263/0800040 be released on furnishing PR bond of Rs.5,00,000/- [Rupees Five Lakhs] by the petitioner.

(5)

criwp1753.22

b] The petitioner shall file undertaking within a period of one week mentioning following points; that the JCB will be produced as and when ordered by the court for the purpose of trial; he shall not create any third party interest on the vehicle; he shall not change nature of the vehicle, the vehicle will not be used in any illegal activity.

c] If any of the conditions breached by the petitioner, this order shall be liable to be cancelled.

d] The criminal writ petition stands allowed subject to above conditions and filing of affidavit.

[KISHORE C. SANT, J.]

VishalK/criwp1753.22