

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

CRIMINAL WRIT PETITION NO. 1816 OF 2022

Nilkant s/o Shriram Suryawanshi

Age : 32 years, Occu.: Agri.

R/o. Daryapur, Tq. &amp; Dist. Nanded.

**...Petitioner****Versus**

The State of Maharashtra,

Through Police Station Chudawa,

Tq. Purna, Dist. Parbhani.

**...Respondent**

...

Advocate for Petitioner : Mr. Anerao Panditrao S.

APP for Respondent/State : Mr. P. N. Kutti

...

**CORAM : KISHORE C. SANT, J.****DATE : 5<sup>th</sup> APRIL 2023.****ORDER :**

1. Heard the learned Advocates for the respective parties at length.

By consent of the parties, taken up for final disposal.

2. By this petition, the petitioner is assailing the order dated 18.07.2022 passed by the learned Sessions Judge, Parbhani in Criminal Revision No. 32/2022, rejecting his Revision Application. By way of Revision, he had challenged the order passed by the learned Judicial

Magistrate First Class, Purna refusing the application under Section 457 of the Code of Criminal Procedure and refusing to hand over the vehicle of the petitioner on the ground that the said vehicle was used on earlier occasion for similar type of offence. The learned Sessions Judge has considered the judgments cited before him and has passed the judgment. The learned Sessions Judge has also considered the judgment in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat**, reported in (2003) AIR SC 638.

3. The learned Advocate for the petitioner relied upon the judgment in the case of **Yankappa s/o Basappa and Anr. Vs. State of Karnataka** passed by the Karnataka High Court in Criminal Petition No.200746/2017 dated 31.07.2017, which is in almost similar set of facts.

4. The learned APP submits that this vehicle is often being used for the similar type of offences. On the earlier occasion, this vehicle was seized and was released. He further submits that however even after release, the said vehicle is again used for illegal activities and prays rejection of the petition.

5. After hearing both the parties, this Court finds that it is admitted position that the vehicle in question is found to have been used in the illegal activities of carrying of sand illegally, though it was earlier seized and released by the Court. It is clear from the record that the petitioner is using the said vehicle again and again for the illegal purpose. From the judgment of the Karnataka High Court, this Court finds that there is no ratio as such laid down and the Court can use its discretion looking to the facts of the case. Certainly when the vehicles are used for illegal purposes again and again in such cases, releasing of the vehicle would ultimately facilitate the use of the said vehicle again for illegal purpose. In such circumstances, this Court finds that no case is made out to allow the petition. Hence the following order.

### **ORDER**

- (i) The Writ Petition stands dismissed and is accordingly disposed off.

**[ KISHORE C. SANT, J.]**

*Najeeb.*