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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.393 OF 2024

Gajanan Rajbhau Kharabe
Age - 26 years, Occ - Agri
R/o village Pardi, Taluka - Manvat
District Parbhani

PETITIONER

VERSUS

The State of Maharashtra
Through Police Inspector
Police Station Manvat, Taluka - Manvat
District - Parbhani

RESPONDENT

.....
Mr. Avinash N. Barhate Patil, Advocate for the petitioner
Mr. S. R. Yadav Lonikar, APP for respondent - State
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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 18th APRIL, 2024

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally.
2. This petition, filed under Articles 226 and 227 of the Constitution of India read with section 457 of the Criminal Procedure Code, challenges judgment and order dated 2nd December, 2023 passed by learned Additional Sessions Judge, Parbhani in Criminal Revision No. 67 of 2023, confirming judgment and order dated 5th August, 2023 passed by learned Judicial Magistrate, First Class, Manvat in Criminal M.A. No. 94 of 2023.

3. Petitioner is owner of John Deere Tractor, model No. 5104 HD, bearing registration No. MH-21 AD-1215 and green coloured trailer. Petitioner was caught red handed while illegally transporting sand. Hence, Crime No. 0314 of 2021 was registered with Manvat Police Station, District - Parbhani under section 379 read with 34 of Indian Penal Code and under section 130, 1/181 of the Motor Vehicles Act. Petitioner is arrayed as accused No.3 and tractor and trolley owned by petitioner were seized in the said crime.

4. Petitioner applied under section 457 of the Criminal Procedure Code and sought return of tractor and trolley, by placing reliance on decision in ***“Sunderbhai Ambalal Desai V/s State of Gujrat”AIR 2003 SC 638***. Learned Judicial Magistrate First Class, Manvat, allowed the application filed by petitioner, by order dated 13th May, 2021, by imposing certain conditions. Clause “g” of the said order reads thus :

“(g) applicant shall not use the vehicle in similar type of offence.”

5. After executing bond, tractor and trolley were given in custody of petitioner.

6. On 8th July, 2023, at 23.00 hours, petitioner was again found illegally transporting sand in said tractor and trolley.

Accordingly, the tractor and trolley are seized in Crime No. 217 of 2023 registered with Manvat Police Station, District – Parbhani under section 379 read with 34 of the Indian Penal Code and under section 48 (7) (8) of Minor Mineral Act.

7. In this crime, petitioner filed application under section 457 of Criminal Procedure Code, seeking custody of tractor and trolley. The application is rejected by Trial Court and the said order is confirmed by Revisional Court in Criminal Revision No. 67 of 2023. Hence, the petition.

8. Heard learned advocate for petitioner and learned APP for the State. Perused the memo of petition, documents annexed along with it and the impugned orders.

9. Learned advocate for petitioner submits that petitioner is ready to file an undertaking that he will not use tractor and trolley again for illegal purposes and he is ready to pay fine. Petitioner may be given custody of tractor and trolley, otherwise the tractor will be rendered useless after completion of trial. In support of his submissions, learned advocate for petitioner has relied on orders passed by learned Single Judge at Principal Seat in Criminal Writ Petition Nos.3117 of 2021 and 3397 of 2021.

10. Learned APP, by producing record, strenuously opposed the

petition contending that petitioner has breached condition imposed on him by Trial Court at earlier point of time and has indulged in similar offence and, therefore, he is not entitled for any relief. In support of his submissions, learned APP has placed reliance on orders passed by learned Single Judge of this Court in Criminal Writ Petition No. 830 of 2022 and 1321 of 2022.

11. It is a matter of record that while releasing tractor and trolley in favour of petitioner vide order dated 13th May, 2021, Trial Court has imposed specific condition on petitioner that petitioner shall not use the vehicle in similar type of offence. It is pertinent to note here that at the time of release of tractor and trolley, in the year 2021, the trolley was not registered. It further appears from record that till date the trolley is not registered. At the time of commission of present crime, petitioner has scored registration number of tractor so as to conceal identity of the tractor. Investigating agency has obtained registration details of tractor on the basis of Engine number of the tractor. It is, therefore, clear that petitioner has breached the condition imposed on him by Trial Court while giving custody of tractor and trolley to petitioner in Crime No. 0314 of 2021. In similar facts, this Court, in Criminal Writ Petition Nos. 830 of 2022 and 1321 of 2022, has taken a view that in view of repeated indulgence of petitioner in similar kind of offences and breach of the condition

imposed on petitioner, he is not entitled for release of vehicle in his favour. I concur with the said view. Petitioner seems to be habitual offender and he is using tractor and trolley for similar type of activities, by committing breach of conditions imposed on him. The petitioner is, therefore, not entitled to seek relief from this Court.

12. Reliance placed by learned advocate for petitioner in the decisions of this Court at Principal Seat, is misplaced and misconceived, as, in those decisions, this Court did not consider circumstances that condition was breached or vehicle was repeatedly used for commission of similar offence.

13. There is no merit in the petition filed by petitioner and no case is made out by petitioner to interfere in extraordinary writ jurisdiction. Criminal Writ Petition is, therefore, dismissed, Rule is discharged.

**[NITIN B. SURYAWANSHI]
JUDGE**