



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 71 OF 2024

PETITIONER:

Saurabh S/o Rajendra Jibhakate,
Aged about 21 years,
Occupation : Business,
R/o Gandhi Ward, Walani,
Tehsil - Paoni, District Bhandara.

V E R S U S

RESPONDENT :

State of Maharashtra,
Through Police Station Officer,
Police Station Paoni,
District Bhandara.

Shri T. H. Bewali, Advocate for petitioner.

Shri N. B. Jawade, Additional Public Prosecutor for respondent-sole.

CORAM: M. W. CHANDWANI, J.

DATE : 06/02/2024.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of learned counsel appearing for the parties.

2. JCB vehicle bearing No.MH-36-AG-7327 has been
seized by Police Station Paoni in connection with Crime
No.67/2023 for offence punishable under Section 379 of the
Indian Penal Code. It is alleged that the said JCB vehicle was used
in transporting the stolen sand.

3. The petitioner had applied for release of JCB machine
on Supratnama vide Misc. Criminal Application No.82/2023 which

came to be rejected by the learned Judicial Magistrate First Class, Paoni by impugned order dated 13/03/2023. The matter was carried in Criminal Revision Application No.11/2023 which came to be rejected by learned Sessions Judge, Bhandara vide its impugned order dated 22/05/2023. After filing of charge sheet, the petitioner again made unsuccessful attempt before the learned Judicial Magistrate First Class. The learned Judicial Magistrate First Class by its order dated 25/05/2023 again rejected the application for releasing the JCB machine. The learned Sessions Judge, Bhandara also rejected the subsequent revision application by order dated 22/11/2023. Against the orders impugned, the present petition came to be filed.

4. Perusal of the impugned order goes to show that the temporary custody of the JCB vehicle has been refused mainly on the ground that the said JCB machine was involved in earlier Crime No.321/2022 for the similar offence.

5. Learned counsel for the petitioner submitted that the offence is yet to be proved in the present crime. The learned Magistrate has jumped to the conclusion that JCB machine has been used for the commission of crime.

6. Per contra, learned APP objected the application on the ground that the same JCB machine has been used in the present crime, which was used in the earlier crime. According to him, the learned Trial Court as well as learned Revisional Court have rightly rejected the claim of the petitioner and sought rejection of the petition. According to him, the material fact has been suppressed by the petitioner regarding releasing the JCB machine in earlier crime and sought rejection of the petition.

7. In my view, there are allegations of commission of crime with the help of JCB machine which was allegedly involved in earlier crime, only on the basis of First Information Report. These are simply allegations, which are required to be proved by the prosecution. The trial will take considerable time, till then, it is not desirable to keep the JCB vehicle in idle condition for indefinite period.

8. In view thereof, the orders impugned of learned Judicial Magistrate First Class as well as learned Revisional Court do not stand and are set aside. It is always open for the learned Magistrate to take action for alleged forfeiture of the bond and if he finds that the condition of the bond is breached, he can impose penalty in his discretion in accordance with law.

9. For the abovesaid reasons, I proceed to pass the following order :-

ORDER

JCB machine bearing No.MH-36-AG-7327 shall be released on execution of bond of Rs.20,00,000/- (Rs. Twenty Lakhs) with following conditions :-

- i] He shall not part with possession of the JCB in any manner without prior permission of the Trial Court.
- ii] He shall not change description of the JCB.
- iii] He shall produce the JCB before the Trial Court at any time as may be required by the Trial Court.
- iv] The Investigating Officer to take photographs of the JCB machine and to prepare detail panchnama before releasing the JCB vehicle.

10. Rule is made accordingly.

[M. W. CHANDWANI, J.]