



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.94 OF 2024

Shri Vaibhav S/o Rambhau Moharkar,
Aged about 25 years, Occupation – Cultivation,
Resident of Junona, Tahsil Pauni,
District Bhandara.

...PETITIONER

...V E R S U S...

State of Maharashtra,
Through Police Station Officer,
Police Station, Pauni,
Tahsil Pauni, District Bhandara.

...RESPONDENT

Shri Raju Kadu, Advocate for petitioner.
Shri C.A. Lokhande, APP for respondent/State.

CORAM: M.W. CHANDWANI, J.
DATED : 12.03.2024

ORAL JUDGMENT:

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

2. Tractor bearing chasis No.MBNAS49AFKTB35560,
Engine No.RJJ2KGA6826 and Trolley bearing registration No.MH-
36/G-2267 have been seized by the Police Station, Pauni for the
offence punishable under section 379 of the Indian Penal Code. It
is alleged that the said tractor and trolley were used in transporting
the stolen sand.

3. The petitioner had applied for release of the said vehicles on supratnama vide Regular Criminal Case No.99/2023, which came to be rejected by the learned Judicial Magistrate First Class, Pauni by the impugned order dated 20.11.2023, against which the present petition is filed.

4. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondent/State.

5. Perusal of impugned order shows that the temporary custody of tractor and trolley has been refused mainly on the ground that the said tractor and trolley were involved in other Crime No.81/2023 registered for similar offences.

6. Learned counsel for the petitioner vehemently submits that the offence in the present crime are yet to be proved. There are only allegations against the petitioner about using the said vehicle in the crime and the learned Magistrate has jumped to the conclusion that the petitioner acted contrary to the order passed by the Court in the earlier crime.

7. Per contra, learned APP objected the petition on the ground that the same vehicles were used in the crime and supported the order of trial Court.

8. In my view, as of today, there are allegations of commission of crime with the help of said vehicle are 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 said vehicles in idle condition for indefinite period as held in *Sunderbhai Ambalal Desai Vs. State of Gujarat*¹.

9. In view thereof, the impugned order dated 20.11.2023 passed by the Judicial Magistrate First Class, Pauni below Exhibit-11 in Regular Criminal Case No.99/2023 is hereby quashed and set aside.

10. 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.

11. For the aforesaid reasons, I proceed to pass the following order:

ORDER

Tractor bearing chasis No.MBNAS49AFKTB35560,
Engine No.RJJ2KGA6826 and Trolley bearing registration

¹ AIR 2003 SC 638

No.MH-36/G-2267 shall be released on execution of bond of Rs.5,00,000/- (Rs. Five Lakh) with following conditions.

- i. He shall not part with possession of tractor and trolly in any manner without prior permission of the trial Court.
- ii. He shall not change description of the tractor and trolly.
- iii. He shall produce the tractor and trolly before the trial Court at any time as may be required by the trial Court.
- iv. The investigating officer to take photographs of the tractor and trolly and to prepare detailed panchanama before releasing tractor and trolly.

Rule is made absolute in above terms.

JUDGE

Wagh