



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

CRIMINAL WRIT PETITION NO.144 OF 2024

Prabhudas alias Prabhakar S/o
Keshav Mahsaye, Aged about 35 years,
Occupation – Agriculturist.
R/o. Warkhed, Tah. Telhara,
District – Akola..

...PETITIONER

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

State of Maharashtra
Through its Police Station Officer,
Police Station, Hiwarkhed, Tah.
Telhara, District – Akola

...RESPONDENT

Shri N.R. Tekade, Advocate for petitioner.
Shri A.M. Kadukar, APP for respondent/State.

CORAM:- M.W. CHANDWANI, J.
DATED : 29.02.2024

ORAL JUDGMENT:

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

2. Tractor bearing registration No.MH-19/P-2919 and
Trolley bearing registration No.MH-30/J-2280 have been seized by
the Police Station, Hiwarkhed 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 Miscellaneous Criminal Application

No.22/2023, which came to be rejected by the learned Judicial Magistrate First Class, Telhara by the impugned order dated 23.02.2023. The petitioner made an unsuccessful attempt before the learned Additional Sessions Judge, Akot by filing Criminal Revision Application No.8/2023, 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 from similar offences.

6. Learned counsel for the petitioner vehemently submits that earlier offence and the offence in the present crime are yet to be proved. There are only allegations against the petitioner about using the said vehicle in those crimes 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, which were used in the earlier crime. In the earlier crime, the petitioner was directed not to use the said vehicles for illegal act or offence. He

supported the orders of trial Court as well as appellate Court and sought rejection of the petition.

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

9. 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.

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 registration No.MH-19/P-2919 and Trolley bearing registration No.MH-30/J-2280 shall be released on

¹ AIR 2003 SC 638

execution of bond of Rs.10,00,000/- (Rs. Ten 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