



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

CRIMINAL WRIT PETITION NO.253 OF 2024

WITH

CRIMINAL WRIT PETITION NO.254 OF 2024

WITH

CRIMINAL WRIT PETITION NO.339 OF 2024

CRIMINAL WRIT PETITION NO.253 OF 2024

Shri Devkant S/o Shankar Wandhre,
Aged about 23 years, Occupation:
Cultivation, Resident of Valni (C),
Tah: Pauni, Distt. Bhandara.

....PETITIONER

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

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

...RESPONDENT

WITH

CRIMINAL WRIT PETITION NO.254 OF 2024

Shri Ramesh S/o Murlidhar Bawankar,
Aged about 41 Years Occupation: Cultivation,
Resident of Mangli (C), Tab: Pauni, Distt.
Bhandara

....PETITIONER

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

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

...RESPONDENT

WITH

CRIMINAL WRIT PETITION NO.339 OF 2024

Shri Kishor S/o Vithal Bhure,
Aged about 34 years, Occupation:
Cultivation, Resident of Junona, Post:
Walani, Tah: Pauni, Distt. 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 the petitioners.
Shri Sooraj Hulke, Advocate for respondent in Cr.W.P No.253/2024.
Ms Sneha Dhote, Advocate for respondent in Cr.W.P No.254/2024.
Shri H.D. Dubey, Advocate for respondent in Cr.W.P No.339/2024.

CORAM:- M.W. CHANDWANI, J.

DATED :- 07/05/2024.

ORAL JUDGMENT:

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

2. This batch of these writ petitions raise identical issue.
Rather two Writ Petition Nos.253 and 254 of 2024 are arising out
of same crime, therefore these petitions were heard analogously
and I propose to dispose of these petitions by this common
judgment.

3. In Crime No.96 of 2023, tractor i.e. (1) ESCORT
POWER TAC RDX 439 Tractor bearing chasis Nos.T053577701HK
and Engine No.E3649019 and Trolley bearing No.NA000, Colour :
Blue (2) tractor registration No.MH36AG7365, Engine
No.RMG2KGA7135, Chasis No.MBNAS48ABMTN54741, Colour :
Blue, Model : SWARAJ843XM and Trolley RAJ TRAILER, Chasis
No.AL202312817, Engine No. NA000, Colour :Blue have been
seized by the Police Station Officer, Pauni for the offence

punishable under Section 379 of the Indian Penal Code. Likewise, Crime No.450 of 2023 for the similar offences, Tractor registration No.MH36Z4935 and Trolly registration No.MH36AL2431 came to be seized. However, learned trial Court has released the trolly bearing Trolly registration No.MH36AL243. It is alleged in the said crimes that said tractors and trollies were used for stealing sand.

4. The petitioners in all three petitions applied for release of the said vehicles on supratnama, which came to be rejected by the learned Judicial Magistrate First Class, Pauni by the orders impugned mainly on the ground that said tractors and trollies were involved in earlier crimes registered for similar offence.

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

6. Learned counsel for the petitioner vehemently submits that the offence in the present crime is yet to be proved. There are only allegations against the petitioners about using the said vehicles in the crime and the learned Magistrate has jumped to the conclusion that the petitioners 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. No doubt these tractors and trollies were already released in another crime on certain terms and conditions with execution of bond. As of today, there are allegations of commission of crime with the help of the said vehicles only on the basis of first information report. These allegations i.e. using of the tractors in subsequent crimes are required to be proved by the prosecution. If the conditions are breached, it is always open for the learned Magistrate to take action for forfeiture of bond and even he can impose penalty in his discretion in accordance with law. Rather, in Criminal Writ Petition No.253 of 2023 the petitioner was not the owner at the time of the earlier crime, therefore, he cannot be blamed for breaching the earlier bond.

9. It is to be noted here that the trial may not be concluded in near future and 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.

¹ AIR 2003 SC 638

10. In view thereof, the impugned orders dated 09.10.2023 passed by the Judicial Magistrate First Class, Pauni below Exhibit-11 in Miscellaneous Criminal Case No.84 of 2023 and order dated 08.01.2024 passed by the Judicial Magistrate First Class, Pauni below Exhibit-1 in Criminal Miscellaneous Application No.349 of 2023 are hereby quashed and set aside.

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

ORDER

Vehicles seized in Crime No.96 of 2023 tractors i.e.

(1) ESCORT POWERTAC RDX 439 Tractor bearing chasis No.T053577701HK and Engine No.E3649019 and Trolley bearing No.NA000, Colour: Blue (2)Tractor registration No.MH36AG7365, Engine No.RMG2KGA7135, Chasis No.MBNAS48ABMTN54741, Colour : Blue, Model : SWARAJ843XM and Trolley RAJ TRAILER, Chasis No.AL202312817, Engine No. NA000, Colour :Blue, shall be released in favour of petitioners – **Devkant S/o Shankar Wandhre** and **Ramesh S/o Murlidhar Bawankar**, respectively, on execution of bond of Rs.6,00,000/- (Rs. Six Lakhs only) each of them and in Crime No.450 of 2023, Tractor registration

No.MH36Z4935 shall be released on execution of bond of Rs.5,00,000/- (Rs. Five Lakh) by the petitioner – **Kishor S/o Vitthal Bhure**, on the following conditions:

- i. They shall not part with possession of tractor and trolley in any manner without prior permission of the trial Court.
- ii. They shall not change description of the tractor and trolley.
- iii. They shall produce the tractor and trolley 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 trolley and to prepare detailed panchanama before releasing tractor and trolley.

Rule is made absolute in above terms.

JUDGE

Wagh