



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Writ Petition No. 80 Of 2025

Balasaheb s/o Raosaheb Sapkal,
Age : 39 years, Occupation-Business,
R/o. At Post Shingawe, Taluka and
Dist. Ahmednagar.

.. Petitioner

Versus

The State of Maharashtra,
Through Police Inspector,
M.I.D.C. Police Station, Ahmednagar,
Taluka and District Ahmednagar.

.. Respondent

- * Mr. A.B. Kharosekar, Advocate for the Petitioner.
- * Mr. S.M. Ganachari, APP for Respondent/State.

CORAM : SHAILESH P. BRAHME, J.

DATE : 15th APRIL 2025

PER COURT :

. Heard both sides finally at the admission stage, considering exigency in the matter.

2. Petitioner is aggrieved by condition of payment of royalty of Rs.3,60,400/- imposed while granting custody of the vehicle to him vide order dated 11.03.2024 passed in Miscellaneous Criminal Application No.52/2024 by Additional Chief Judicial Magistrate, Ahmednagar.

3. Petitioner is the owner of Dumper having registration no. MH-06-

AQ-0198 which is involved in illegal excavation and transportation of sand for which offence bearing C.R. No.44/2024 has been registered with M.I.D.C. Police Station, Ahmednagar. He is not shown to be accused in the offence in question. The driver of the vehicle is shown to be the accused who is alleged to have been transporting sand without any permission. Petitioner submitted Miscellaneous Criminal Application No.52/2024 for custody of the vehicle. By order dated 11.03.2024, application was allowed subject to payment of royalty of Rs.3,60,400/- and furnishing bond/supurnama of Rs.15,00,000/- alongwith other conditions.

4. Learned Counsel for the Petitioner Mr. Kharosekar submits that condition of payment of penalty/royalty is onerous and unsustainable in view of judgment of the coordinate bench dated 22.01.2021 in Criminal Writ Petition No.35/2021 in case of **Pravin s/o Eknath Solanke Vs. State of Maharashtra** as well as order dated 07.03.2022 passed by another coordinate bench in Criminal Writ Petition No.3397/2021 in case of **Moula s/o Rajebhai Baluragi Vs. State of Maharashtra**.

5. Learned APP supports the impugned order. He would submit that the investigation is underway. The vehicle in question is involved in a serious offence and the Petitioner is bound to pay royalty.

6. It is matter of record that no action has been taken under Section 48 of Maharashtra Land Revenue Code. The Competent Revenue Authority has not imposed any penalty as contemplated by Section 48 of MLR Code. A useful reference can be made to the observations of the

coordinate bench in the judgment cited by the Petitioner in case of Pravin s/o Eknath Solanke (supra). The relevant extract is follows :

“10. The question that needs to be addressed is as to if the Magistrate while exercising the powers under Section 457 of the Code of Criminal Procedure could have imposed the impugned condition. In my considered view, a Magistrate shall not treat the powers conferred upon the Revenue Authorities under the MLRC putting any fetters on his powers exercisable under Section 457 of the Code of Criminal Procedure. Needless to state the Revenue Authorities may invoke the provision and the powers under the MLRC and pass appropriate orders and take suitable steps for its enforcement. The Magistrate while passing the order under Section 457 shall not carry any impression of their being any impediment in exercising his powers. The law may take its own course. However, putting a condition makes the order contingent upon the exercise or otherwise of the powers by the Revenue Authorities. No such condition therefore can be legally put which would prevent operation of an order passed by a Magistrate under Section 457 of the Code of Criminal Procedure.”

7. This Court has been consistent in its view while dealing with the onerous condition imposed while releasing the vehicle. One of such a judgments is of Criminal Writ Petition No.3397/2021 in the matter of Moula Rajebhai Baluragi (supra). Mr. Kharosekar, learned Counsel for the Petitioner is right in relying upon the judgments. The condition impugned is unsustainable and liable to be quashed. Hence I pass following order :

ORDER

- (i) The Criminal Writ Petition is allowed in terms of prayer clause ‘B’ and ‘C’.
- (ii) No order as to costs.

[SHAILESH P BRAHME]
JUDGE

Majed..