

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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CRIMINAL PETITION No.2591 of 2015

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') by the petitioner, who is owner of the lorry bearing registration No.AP 24W 4546, aggrieved of the order dated 17.03.2015 passed by the 2nd respondent-Deputy Commissioner of Prohibition and Excise, Nalgonda, directing the petitioner to submit bank guarantee for Rs.5,15,000/- or by submitting the fixed deposit receipt for the said sum for release of the said lorry, which was transporting black jaggery, and seized in connection with COR No.1441/2014-15 under Section 34(e) of the A.P.Excise Act, 1968, requesting to modify the order by directing the petitioner to furnish third party surety as was granted by the Deputy Commissioner of Prohibition and Excise, Warangal District in Crime No.140/2015/PE/B4.

2. The facts would reveal that the accused-Vankudothu Murali has been purchasing black jaggery and alum which were used to manufacture illicit liquor and dumping the same in his rented room and selling the same to needy persons at high rate and deriving profit thereon. In conducting such business, on 18.11.2014, he purchased 17 tonnes of black jaggery at Chinna Gottikal village of Chittoor District and brought the same to Suryapet in the lorry bearing registration No.AP 24W 4546, which is sought to be released now, and sold out 130 bags of jaggery to needy persons at their shop in PSR Centre, Suryapet and the rest was brought to his rented house located at Jammigadda, Suryapet, and while unloading the jaggery bags, he was caught by the police. Later, the lorry was also inspected and found 90 bags of jaggery each weighing 50 kgs and 120 jaggery bags in rented house and 30 bags of alum which were purchased earlier were also available in the said room and that lead to confession of the accused and seizure made under the panchanama and the lorry was brought to the police and there F.I.R. was also issued. When the petitioner approached the concerned authority, the 2nd respondent herein while

releasing the lorry, imposed condition directing the petitioner to submit a fixed deposit receipt or bank guarantee for Rs.5,15,000/- for interim release of the lorry alone. The said order has been challenged in the instant petition.

3. Heard both sides.

4. During the course of arguments, the learned counsel for the petitioner submits that the concerned authority in Warangal Division passed order directing third party surety, and, therefore, requests to direct to furnish third party surety in place of submitting bank guarantee or fixed deposit receipts as ordered by the concerned Deputy Commissioner of Prohibition and Excise, Warangal Division. Copy of said order is filed in the material papers. It is submitted by the learned counsel that basing on the said order, yet another application was moved before the 2nd respondent requesting to modify the condition, but the same was not disposed of and it is still pending. It is also his submission that this Court can exercise the power under Section 482 of the Code to accede to the request and sought to grant relief.

5. Despite adjourning the matter twice, no instructions have been received by the learned Additional Public Prosecutor as to disposal or otherwise of the said request made by the petitioner. The 2nd respondent exercised its discretion under the facts and circumstances occurring in the instant case and given such a direction to furnish security by way of fixed deposit receipts or bank guarantee. However, when an application is filed for modification before him, he is duty bound to dispose of the same. Therefore, it is desirable to give a direction to the 2nd respondent to dispose of the said application, in case such an application is still pending.

6. Since the learned counsel for the petitioner even supplied the date of such application as 18.03.2015, the 2nd respondent is directed to dispose of the request made by the petitioner dated 18.03.2015 within fifteen days from the date of receipt of the order in accordance with law. However, it is open to the petitioner to approach this Court, in case the application referred to above is already disposed of or even if he gets aggrieved by the order that would be passed.

7. With the above direction and observation, the criminal petition is disposed of.

8. As a sequel thereto, miscellaneous petitions, if any pending in this petition, shall stand closed.

A. SHANKAR NARAYANA, J

20th April, 2015

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