

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.20025 of 2016

Ms.Gowri Srikanth,
Manager,
Hyundai Motor India Limited,
NP-54, Developed Plot,
Thiru.Vi.Ka.Industrial Estate,
Ekkattuthangal,
Chennai - 600 032.

..... Petitioner
Vs

The State, Rep. by
the Sub-Inspector of Police (Crime),
Nanthambakkam Police Station,
Chennai - 600 069. Respondent

Prayer:- Criminal Original Petition has been filed under Section 439 (1) (b) Cr.P.C., to modify the order dated 20.08.2016 made in Crl. MP. No.3884/2016 on the file of the Judicial Magistrate at Alandur in condition No.1 by the Hon'ble Judicial Magistrate at Alandur as "The petitioner shall execute a bond for Rs.80,00,000/-"instead of the petitioner shall execute a bond for Rs.80,00,000/- along with one surety for the like sum".

For Petitioner : M/s.B.Sriramulu
Senior Counsel
for Mr.U.Karunakaran

For Respondent : Mr.C.Emalias,
Addl. Public Prosecutor

ORDER

This Criminal Original Petition has been filed to modify condition No.1 of the order dated 20.08.2016 made in Crl. MP. No.3884/2016 on the file of the Judicial Magistrate at Alandur, as "The petitioner shall execute a bond for Rs.80,00,000/-"instead of "the petitioner shall execute a bond for Rs.80,00,000/- along with one surety for a like sum".

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. On a complaint lodged by one Manoharan, Security Guard of Hyundai Motor India Limited, Manapakkam, the respondent police registered a case in Crime No.1079/2016, dated 08.06.2016, for offences under Sections 394, 395 and 397 IPC against unknown accused.

4. It is the case of the de-facto complainant that while he was on security duty, on 08.06.2016, dacoits struck the showroom and after entering the showroom, took away seven new vehicles in the showroom. The police acted with alacrity and recovered all the seven vehicles and some of the accused have also been arrested and they are in custody.

5. While so, the Hyundai Motor India Limited., filed an application in CrI.M.P. No.3884/2016 in Crime No.1079/2016, under Section 451 Cr.P.C. before the Judicial Magistrate, Alandur for interim custody of the seized vehicles belonging to the said Company. The learned Judicial Magistrate, by an order dated 20.08.2016, has returned the vehicles on the following conditions:-

"5. In the result, the interim custody of the said vehicles which are ordered in favour of the petitioner on the following conditions :-

1. The petitioner shall execute a bond for Rs.80,00,000/- along with one surety for the like sum.
2. The petitioner shall also produce a photograph of the vehicles.
3. The petitioner shall file an affidavit of undertaking stating that a) she will not alienate, encumber, or change the physical features of the said properties, and b) she will produce the said properties as and when required.

Accordingly this petition is allowed."

aggrieved by which, the petitioner is before this Court.

6. Mr. Sriramulu, learned Senior counsel appearing for the petitioner submitted that all the seven vehicles were unregistered vehicles kept in the stockyard and the condition imposed by the learned Magistrate to furnish a bond for Rs.80,00,000/- (Rupees eighty lakhs only) and also to keep the

vehicles intact is too onerous.

7. The learned Additional Public Prosecutor fairly admitted that the conditions are indeed onerous and agreed with the submission of Mr.Sriramulu.

8. In a case of this nature, where the victim has lost certain properties and seeks for return of the properties, if onerous conditions are imposed, people may loose faith in the efficacy of the judicial system. The victim cannot be directed to keep the custody of the property for an indefinite period until the trial in the case culminates. It is common knowledge that the trial of this case will take years to culminate and till then, if the victim is directed to keep the property intact, it would lead to incongruous result. At the same time, the prosecution will also have to prove the offences against the offenders, for which, corpus delicti is necessary.

9.This court has to evolve a pragmatic solution to meet the ends of justice and satisfy the requirements of the State as well as the need of the victim. It is not necessary that those cars should be marked during the trial in order to prove that there was dacoity and that those cars were taken away by dacoits. The police can take steps to have the 164 Cr.PC statement of the petitioner recorded to show that he had filed the present application before the trial Court and the High Court and took custody of the Cars. The photographs attested by the learned Magistrate can also be marked during the trial, in order to show that the subject cars were taken away by the accused and were recovered and returned to the Company.

10.In view of the above, the aforesaid condition imposed by the Judicial Magistrate, Alandur, is hereby modified as follows :-

(i) The cars shall be returned to Hyundai Motors India Private Limited., on the company executing a bond for Rs.10,00,000/- without sureties to the satisfaction of the learned Judicial Magistrate, Alandur. The police shall take photographs of the vehicles in the presence of the learned Magistrate and the petitioner and the photographs taken shall be certified by the learned Magistrate on the reverse with due certification under section 65-B of the Indian Evidence Act.

(ii) The Learned Magistrate is directed to return the cars to Hyundai Motor India Limited unconditionally and after taking delivery of the same, the police shall take steps to record 164 Cr.P.C statement of Gowri Srikanth, Manager to the effect that the company had taken legal steps to take custody of the vehicles and the vehicles have been returned to the company. The learned Magistrate shall also prepare a panchanama showing

the Chassis Number and Engine Number of each vehicle and note down the description of each vehicle in the presence of the Police and Gowri Srikanth, the Manager of the Company. The said panchanama can be proved during the trial through the prosecution witnesses. A copy of this order can also be marked as an exhibit before the trial Court to prove the fact that this Court has ordered the unconditional release of the vehicles.

In the result, the criminal original petition is ordered in the above terms.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi2/sms

To

1. The Sub-Inspector of Police (Crime),
Nanthambakkam Police Station,
Chennai - 600 069.
2. The Judicial Magistrate at Alandur
3. The Public Prosecutor,
High Court, Madras - 104.

+1 cc to Mr.U.Karunakaran Advocate sr 49939

Cr1.OP No. 20025 of 2016

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