

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL NO.1409 OF 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Heard Sri P.Pravin Kumar, learned counsel for the appellant and the learned Government Pleader for Excise and, with their consent, the Writ Appeal is disposed of at the stage of admission.

The appellant herein filed the Writ Petition seeking a mandamus to declare the action of the Deputy Commissioner, Prohibition & Excise Department, in issuing notice dated 29.06.2017 directing the petitioner to furnish a bank guarantee for grant of interim custody of the Auto Rickshaw bearing No.TS-03-UB-4462. On the ground that the said stipulation is onerous, and is incapable of compliance, he invoked the jurisdiction of this Court.

By the order under appeal, the learned Single Judge directed the appellant-writ petitioner to make an application before the Deputy Commissioner of Prohibition and Excise, Warangal Division enclosing therewith a Fixed Deposit Receipt (FDR) drawn in favour of the Deputy Commissioner, on any nationalized bank, for a sum of Rs.1,25,000/-, and, on such an application being made, the vehicle was directed to be released for interim custody to the petitioner, subject to the final orders to be passed in the complaint registered against the petitioner. The petitioner was also directed not to alienate the vehicle or to change the physical features till the disposal of the criminal complaint, and to produce the vehicle as and when directed by the Court.

Sri P.Pravin Kumar, learned counsel for the appellant, would submit that the appellant is a poor auto rickshaw driver who purchased the vehicle by obtaining a loan from the bank on hypothecation of the said vehicle; the vehicle has been under the custody of the respondents for the past one month; the appellant is being deprived of his livelihood; the condition, that he should furnish security of Rs.1,25,000/-, is incapable of compliance; and this Court should consider relaxing this condition for grant of interim custody of the vehicle to the petitioner.

While all the other conditions stipulated by the learned Single Judge, in the order under appeal, are no doubt justified, the requirement that the appellant should furnish FDR for Rs.1,25,000/- does appear to be onerous. Sri P.Pravin Kumar, learned counsel for the appellant, would request us to reduce the quantum of security to be furnished. These are all matters which the Deputy Commissioner, Prohibition and Excise is required to consider.

We consider it appropriate, therefore, to dispose of the Writ Appeal modifying the order of the learned Single Judge to the limited extent he directed the petitioner to furnish a FDR of Rs.1,25,000/-. On the petitioner submitting an application seeking reduction in the amount to be furnished as security, the Deputy Commissioner, Prohibition and Excise shall consider the same in accordance with law and pass orders thereupon within one week from the date of receipt of the petitioner's representation, bearing in mind that the subject vehicle is the only source of livelihood for the petitioner, and the said vehicle is under hypothecation with the bank.

The Writ Appeal is disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(M.GANGA RAO, J)

21st September 2017

NOTE: Issue CC by tomorrow
B/O
RRB

