

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.36256 OF 2017

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief:

“... to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the 3rd respondent in seizing the Vehicle bearing No.AP 07 TH 2388 of the petitioners without following any procedure or contemplated under A.P. Minor Mineral Concession Rules, 1966 as illegal, arbitrary and violative of Article 19, 21 of Constitution of India and consequently direct the 3rd respondent to release the vehicle from their custody and pass such other order or orders as the Hon'ble court may deems fit and proper in interest of justice. ”

2. The grievance of the petitioner is against the action of respondent No.3 in seizing the vehicle bearing registration No.AP-07-TH-2388 without following the procedure established by law or as envisaged under the A.P. Minor Mineral Concession Rules, 1966.

3. I have heard the submissions of the learned counsel for petitioner, the learned Government Pleader appearing for respondent Nos.1 and 2 and the learned Government Pleader appearing for respondent No.3.

4. Learned counsel for the petitioner submits that there is a valid way-bill and the same was granted in the morning hours of 16.10.2017 at about 10:00 AM and that the vehicle was seized on the allegation that the vehicle is transporting silica sand illegally

second time by using the same way-bill or Transit Form issued by respondent No.2 in the morning hours.

5. Learned Government Pleader appearing for respondent No.3 would submit that a crime has been registered in Crime No.130 of 2017 by the Station House Officer, Doravari Satram Police Station of Sri Potti Sri Ramulu Nellore District, for the offences punishable under Sections 379 and 420 I.P.C. and Section 21 (1) of MMDAR Act; that the seizure of vehicle is reported to the Court of the learned Magistrate; and, that the vehicle is produced or deposited before the Court of learned Magistrate and therefore, the petitioner has to approach the Court of learned Magistrate for release of the vehicle.

6. I have earnest consideration to the facts and submissions. This Court, at this stage, is satisfied that in the facts and circumstances of the case, the interim custody of the subject vehicle can be given to the petitioner after imposing necessary conditions as release of the seized vehicle by the Magistrate or the authority concerned is a rule and the rejection is an exception. Powers of the Court and authority concerned, wherever and whenever exercisable, are to be properly and promptly exercised to see that vehicles are not kept for a long time, that is, for more than fifteen days to one month at the police station or office of the authority concerned or the Court house, in any case. Keeping any vehicle idle in an open place exposing it to sun, rain and inclement/rough weather without any protection would lead to deterioration of its value and irreparable damage. Instead of allowing a vehicle to lie idle and rot in front of a police station or a

public office or in the yard of a Court house, it is apposite to give interim custody of the vehicle to an eligible applicant as such a course helps not only in keeping the vehicle in the same good condition but also inures for the benefit of the ultimate successful party. In that view of the matter, there is no need to deny custody of the seized vehicle to its owner or eligible person even during the pendency of investigation or a case or an enquiry with regard to any offences punishable under any enactment. In the case on hand, there are no compelling reasons, to not to pass an order giving interim custody of the subject vehicle to the petitioner.

7. Having regard to the facts and submissions, this Court is of the considered view that the Writ Petition can be disposed of by granting appropriate relief.

8. Accordingly, the Writ Petition is disposed of directing the I Additional Judicial Magistrate of First Class, Sullurupeta, SPSR Nellore District, to release the subject vehicle and give interim custody of the subject vehicle to the petitioner on his executing a personal bond along with third party sureties to the satisfaction of the said learned Magistrate and on producing necessary vehicular documents and proof of his identity and on giving an undertaking before the learned Magistrate that he will not transfer or alienate the subject vehicle in any manner and will not change the major parts and features of the subject vehicle and he will produce the subject vehicle before the competent authority or the Court as and when directed.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

There shall be no order as to costs.

M.SEETHARAMA MURTI, J

November 08, 2017

Note: Issue C.C. today.
B/o.MD

