

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.35909 of 2017

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed seeking the following relief:

‘..to issue an order, writ or direction more particularly in the nature of Writ of Mandamus declaring the action of respondents in seizing the Vehicle bearing No.AP 30 AG 5726 of the petitioner without following any procedure under statutes as illegal, arbitrary and violative of Article 19, 21 of Constitution of India and consequently direct the respondents to release the vehicle from their custody and pass such other order or orders...

2. I have heard the submissions of the learned counsel for the petitioner and the learned Government Pleader representing the 2nd respondent. I have perused the material record.

3. Learned counsel for the petitioner would submit as follows: ‘The JCB vehicle which was stationed near the river bed was seized, on the intervening night of 14/ 15.10.2017 at about 01.30 hours, by the 2nd respondent stating that the JCB is being used for transporting sand illegally. The JCB was hired for removal of breakdown vehicle. Further, as per memo No.3066/ MII(1)/ 2016-3, dated 04.03.2016, there is no need of valid permit for transportation of sand. Hence, the 2nd respondent cannot seize the JCB on the ground that it is being used for transporting sand illegally. The income from the JCB is the only source of livelihood of the petitioner. The petitioner approached the respondents 2 & 3 and submitted an application for release of the JCB, but so far no decision was taken. The vehicle is now kept in the open place and is being exposed to sun and rain. Therefore, its value is getting deteriorated and there is a likelihood of the vehicle being spoiled if it is left exposed like that in a place open to sky. The petitioner is prepared to furnish any undertaking and

security as directed by the Court in case the vehicle is given to him for interim custody. In cases with identical facts, this Court is releasing the seized vehicles and hence, similar orders may be passed in this writ petition.'

4. However, learned Assistant Government Pleader on written instructions, dated 31.10.2017, placed on record, would submit that the JCB vehicle, without a number thereon, was found loading sand on to various lorries for illegal transportation and that after seizure of the said JCB, a case in crime No.122 of 2017 was registered, on 15.10.2017, for the offences punishable under Section 447 and 379 of IPC and Section 3(2) of PDPP Act by the Station House Officer, Gara Police Station, Srikakulam District, and that on the same day the vehicle is deposited/produced before the learned Additional Judicial Magistrate of First Class, Srikakulam, and that in that view of the matter, the petitioner has to approach the Court of the learned Magistrate for release of the vehicle. It is also stated that subsequently the vehicular document related to registration number of the JCB is produced.

5. Having regard to the submissions and without expressing any views on the merits of the matter, this Court, at this stage, is satisfied that in the facts and circumstances of the case, the interim custody of the said vehicle can be given to the petitioner after imposing necessary conditions as release of the seized vehicles by the Magistrates or the authority concerned is a rule and the rejection is an exception. Powers of the Court or the 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 a public office 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 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.

6. In the result, the Writ Petition is allowed and the learned Additional Judicial Magistrate of First Class, Srikakulam, is directed to release the vehicle and give interim custody of the vehicle/ JCB bearing registration No. AP 30 AG 5726 to the petitioner through the Station House Officer, Gara Police Station, on the petitioner executing a personal bond and furnishing third party surety or sureties to the satisfaction of the learned Additional Judicial Magistrate of First Class, Srikakulam, and on the petitioner further undertaking that he will not alienate or transfer the vehicle in any manner and will maintain it in the same good and road worthy condition without changing any of its features and major parts and shall produce it along with its vehicular documents at a specified place or before a specified authority/ Court as and when directed. It is made clear that on the petitioner approaching the Court and making a request, along with a copy of this order, for release of the vehicle, the necessary exercise as indicated supra shall be completed within two days from the date of the request of the petitioner.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M. Seetharama Murthi, J

06.11.2017
Vjl