

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.34898 of 2018

ORDER:

Heard learned counsel for the petitioner and the learned Government Pleader for Mines and Geology and Home appearing for the respondents, apart from perusing the entire material on record.

2. On the allegation that the subject vehicle was transporting sand without any permission, during the raid conducted, the officials of the Sand Vigilance Team seized the vehicle and handed over the same to police to keep them in safe custody.

3. In identical circumstances, in I.A.No.01 of 2018 in W.P.No.21809 of 2018, this Court passed an interim order on 16.07.2018, directing release of vehicle on payment of amount and the petitioner therein carried the matter in appeal, vide W.A.No.1014 of 2018, and a Division Bench of this Court, by way of an order, dated 02.08.2018, disposed of the said Writ Appeal, modifying the order, by directing release of vehicle upon the appellant furnishing bank guarantee or security. A copy of the same is placed on record. Paragraph Nos.5 to 8 of the said order read as under:

“5. From a perusal of sub-rule (1) of Rule 9-B, it is clear that if the appellants are found guilty of the offence, they are liable to pay a penalty of Rs.1,00,000/- apart from the confiscation of the vehicle and the imprisonment of the owner. In such circumstances, a via media has to be struck, especially while considering an application for an interim order. The learned Judge thought that directing payment of Rs.75,000/- per vehicle may be a good interim solution

6. But the contention of the appellants is that ultimately if they are proved not guilty, the amount paid by them will

remain with the respondents without bearing any interest. The vehicles cannot also to be allowed to remain with the respondents, as they may get damaged due to non-use.

7. We think the objections of the appellants are fairly well founded. While the interests of the revenue are to be protected, the vehicles of the appellants cannot also be allowed to get damaged due to non-use. Therefore, we are of the view that directing the appellants to furnish bank guarantee or security for the above amount, may serve the ends of justice.

8. Accordingly, the writ appeal is ordered modifying the order of the learned Judge, directing the respondents to release the tractors cum trailers of the appellants, upon the appellants furnishing bank guarantee or security to the tune of Rs.75,000/- per vehicle, in favour of the 3rd respondent, viz., the Assistant Director of Mines and Geology. There shall be no order as to costs”.

4. Following the above said order, dated 02.08.2018, passed by a Division Bench of this Court in W.A.No.1014 of 2018, and for the reasons recorded therein, there shall a direction to the respondents to give interim custody of the vehicle to the petitioner, subject to production of the relevant documents, to prove ownership of the subject vehicles, and subject to furnishing bank guarantee or security to the tune of Rs.1,00,000/- (Rupees one lakh only), in favour of the A.D of Mines And Geology, Srikakulam, Srikakulam District/second respondent herein. Till the conclusion of the proceedings/prosecution, petitioner shall also give an undertaking that they will not alienate the vehicles, will not create any third party rights, will not remove major parts of the vehicles and that the vehicles will be produced as and when required during the course of proceedings. It is also made clear that this order holds good till the conclusion of the proceedings/prosecution.

Thereafter, it is open for the respondents herein to proceed in accordance with law.

5. Accordingly, the Writ Petition is disposed of. As a sequel thereto, miscellaneous petitions, pending if any, in these Writ Petitions, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 04.10.2018
grk



THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.34898 of 2018

Dated: 04.10.2018

grk