

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.40224 OF 2018

ORDER:

The present writ petition came to be filed seeking to declare the action of the 3rd respondent in seizing Lorry bearing No.MH 26H 5853 together with 667 bags of jaggery powder each 30 kgs total 20,010 kgs on 27.10.2018 under the cover of Panchanama in Crime No.122 of 2018, as illegal and arbitrary.

The averments made in the writ affidavit would show that on 27.10.2018, the 3rd respondent seized the above said lorry together with jaggery, under a cover of panchanama on a premise that the jaggery powder is being used for preparation of I.D liquor. A case in Crime No.122 of 2018, on the file of the 3rd respondent, was registered on 27.10.2018 and the driver and cleaner were arrested and released on bail. It is stated that there is no prohibition for sale, purchase and transportation of jaggery or jaggery powder nor its movement is regulated under any law and no licence is required for possession and to carry on business in jaggery.

The learned Government Pleader for Prohibition and Excise, would submit that the authorities are entitled to seize the said jaggery, if it is found to be used in making I.D liquor and that no reason or explanation are forthcoming as to why the petitioner is transporting such a huge quantity of jaggery. He further submits that both the vehicle and the jaggery are liable for confiscation.

It is to be noted that the confiscation proceedings are pending before the 2nd respondent. Having regard to the facts and circumstances and in view of the fact that the proceedings are pending before the 2nd respondent and since the vehicle and jaggery are kept idle and if exposed to sun and rain, the same are likely to get

damaged, this Court is of the view that it would be just and proper to direct the authority to release the vehicle along with the seized goods on certain conditions.

Accordingly, the writ petition is disposed of directing the 2nd respondent to release the vehicle bearing No.MH 26H 5853, which is in his custody, on condition of the petitioner furnishing a Fixed Deposit Receipt issued by a Nationalised Bank for Rs.1,50,000/- (Rupees one laksh and fifty thousand only), in favour of the 2nd respondent. The petitioner shall also give an undertaking that he will not alienate the vehicle, will not create any third party rights, will not remove major parts of the vehicle and that the vehicle will be produced as and when required during the course of proceedings. In so far as jaggery is concerned, the petitioner is directed to make an appropriate application before the 2nd respondent-Deputy Commissioner of Prohibition and Excise, enclosing thereto a fixed deposit receipt issued by a Nationalised Bank for Rs.2,20,110/- (Rupees two lakhs twenty thousand one hundred and ten only), drawn in favour of the 2nd respondent, and on such application being made by the petitioner, the subject stock afore-stated shall be given to the interim custody of the petitioner. 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. No order as to costs.

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

C. PRAVEEN KUMAR,J

Date:09.11.2018.
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