

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.46055 OF 2018

ORDER:

Heard learned counsel for the petitioner, learned Government Pleader for Mines and Geology, learned Government Pleader for Home (A.P). With their consent, the writ petition is disposed of at the admission stage.

The present writ petition came to be filed seeking issuance of writ of *Mandamus* declaring the action of the respondents in seizing the vehicle of the petitioner bearing No.AP-27-W-5979, without following procedure of law, as illegal and arbitrary.

On the allegation that the subject vehicle was found transporting sand from the unauthorized reaches/without any permission, during the raid conducted, respondent No.2 seized the vehicle and handed over the same to respondent No.3, to keep it in safe custody.

In identical circumstance, in I.A.No.1 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, wherein a Division Bench of this Court, by 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 reads 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 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”.

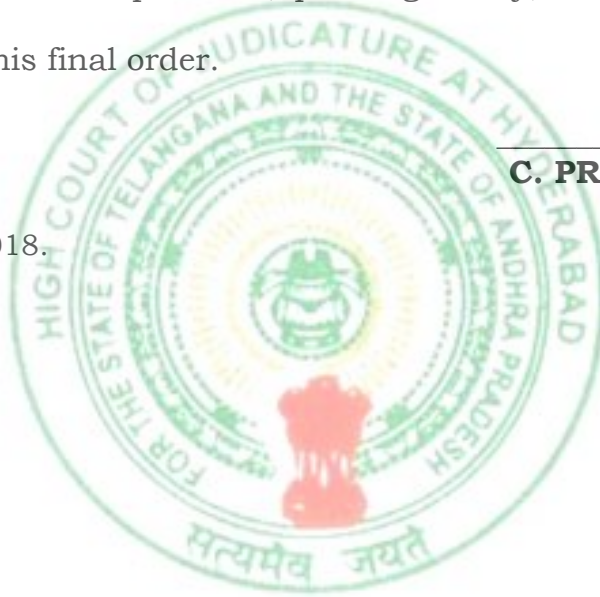
Following the above said Judgment, dated 02.08.2018, passed by a Division Bench of this Court in W.A.No.1014 of 2018 and for the reasons recorded therein, if it is the first offence, there shall be a direction to the respondents to give interim custody of the vehicle bearing No. AP-27-W-5979, to the petitioner, subject to production of the relevant documents, to prove ownership of the subject vehicle, and subject to furnishing bank guarantee or security to a tune of Rs.1,00,000/-(rupees one lakh only), in favour of the competent authority. Till the conclusion of the proceedings/prosecution,

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. 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.

With the above direction, the writ petition is disposed of. No order as to costs.

Miscellaneous petitions, pending if any, shall stand closed in the light of this final order.

Date:21.12.2018.
vhh



C. PRAVEEN KUMAR, J

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vhb