

nsc.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.5676 OF 2019

M/s. Almeida Marine Services	... Petitioner
Versus	
State of Maharashtra	...Respondent

Mr. Anil Vishnoi, for the Petitioner.

Mr. A. R. Patil, A.P.P for the Respondent - State.

PSI – S.B.Nikalje, Local Crime Branch, Raigad-Alibag, is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 5th DECEMBER, 2019

P.C. :

1. Heard learned counsel for the parties.
2. By this petition, the petitioner has impugned clauses 2, 3 and 4 of para 12 of the order dated 24th September, 2019, passed by the learned Additional Sessions Judge – 2, Raigad-Alibag.
3. Learned Counsel for the petitioner submits that the direction to the petitioner – company to furnish bank guarantee of Rs.5,00,000/- in clause – 3, as well as the direction to execute indemnity bond of

Rs.2,50,00,000/- in clause – 2 and the direction to furnish personal bond in the sum of Rs.20,00,000/- with one solvent surety in the like amount in clause 4, for return of the petitioner's barge, are harsh, unreasonable and onerous. He submits that the observations made by the learned Judge whilst partly allowing the petitioner's appeal for release of the barge, are harsh conditions i.e. as stated above in clauses 2, 3 and 4 of the impugned order.

4. Learned Counsel for the Petitioner infact seeks complete modification of all the aforesaid three clauses and wants release of the barge, without any of the conditions being imposed for release of the said barge.

5. Learned APP opposed the petition.

6. Perused the papers. On 18th July, 2019, Mandwa Sagari Police Station, registered C.R. No.32 of 2019, alleging offences punishable under Sections 3 and 7 of Essential Commodities Act. Pursuant to the registration of the said FIR/CR, 3 barges and 8 boats were seized by the police. On 30th July, 2017, the petitioner's barge "M.V.Jencarl" was seized. Pursuant to the said seizure, the Collector, Raigad-Alibag, issued show-cause-notice to the

petitioner on 2nd August, 2019. The petitioner filed his reply on 8th August, 2019 and the Collector, Raigad-Alibag, was pleased to pass the impugned order dated 9th August, 2019 and the petitioner's barge was confiscated.

7. Being aggrieved by the said confiscation, the petitioner filed an Appeal in the Court of the learned Additional Sessions Judge-2, Raigad-Alibag, being Criminal Appeal No.100 of 2019. It was argued before the learned Sessions Judge that Section 6A of Essential Commodities Act was not applicable. It was further submitted that no essential commodity i.e. diesel was seized from the petitioner's barge "M.V.Jencarl" nor was there any material to indicate that there was diesel on the barge and as such there was no contravention of the provisions of Section 3 of Essential Commodities Act. It was further submitted that as there was no seizure of diesel or any other essential commodity from the barge, the question of confiscating or seizure of the barge, did not arise. It was also submitted that the Collector had mechanically ordered confiscation of the barge, without any material to confiscate the same.

8. Considering the submissions made by the petitioner before the learned Additional Sessions Judge-2, Raigad-Alibag, the learned Sessions Judge vide order dated 24th September, 2019 was pleased to partly allow the

Appeal being Criminal Appeal No.100 of 2019, on certain terms and conditions. The said order is reproduced herein-under:-

“ORDER

- 1)
- 2) M.V.Jencarl barge registration No. PNJ/294, which is confiscated shall be returned to appellant company on its **executing indemnity bond of Rs.2,50,00,000/-** (Rs. two crores fifty lakhs only).
- 3) Appellant company is directed to furnish **bank guarantee of Rs.5,00,000/-** (Rs. Five lakhs Only).
- 4) Further appellant company is directed to furnish **personal bond in the sum of Rs.20,00,000/-** (Twenty lakhs Only) **with one solvent surety in the like amount** for return of the barge.
- 5)
- 6)
- 7)
- 8)”

9. Learned Counsel for the Petitioner is aggrieved by the imposition of clauses 2 to 4 in this present petition, in view of the finding recorded by the learned Sessions Judge.

10. Learned APP when questioned states on instructions that no diesel was found on the petitioner's barge "M.V.Jencarl".

11. In this view of the matter, *prima facie*, it appears that there was no basis for confiscation of the said barge. The learned Sessions Judge has therefore rightly allowed the release of the said barge. As far as the conditions imposed in clauses 2 to 4 are concerned, the same are in the facts and having regard to what is stated aforesaid, harsh, unreasonable and onerous. As far as clause – 3 of the impugned order is concerned, directing the petitioner to furnish bank guarantee of Rs.5,00,000/-, the same is quashed and set aside. As far as clause – 2 of the impugned order, directing the barge to be returned to the petitioner – company on its executing indemnity bond of Rs.2,50,00,000/- is concerned, the said clause is modified. Accordingly, the petitioner's barge be returned to the petitioner -company, on the petitioner – company executing indemnity bond of Rs.50,00,000/-. As far as clause – 4 of the impugned order is concerned, the said clause directing the petitioner – company to furnish personal bond in the sum of Rs.20,00,000/- with one solvent surety in the like amount for return of the barge is concerned, the same is modified to the extent that the petitioner – company shall now only furnish personal bond in the sum of Rs.20,00,000/-. The petitioner – company is not required to furnish

solvent surety, as directed in clause – 4 of the impugned order 24th September, 2019.

12. Rest of the conditions imposed vide order dated 24th September, 2019, to remain as it is.

13. The Petition is allowed and disposed of in above terms.

14. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.