

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.No.1115/2019

S.Selvarasi

.. Petitioner

Vs.

1.The Revenue Divisional Officer
Attur Taluk, Salem District.

State rep.by

2. The Inspector of Police
Thalaivasal Police Station
Salem District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondents herein to return the Tipper Lorry Registration No.TN-48-S-6819 pursuant to the petitioner representation dated 23.12.2018.

For Petitioner : Mr.K.Krishnan
For Respondents : Mr.E.Manoharan, AGP

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J.)

By consent, this Writ Petition is taken up for final disposal.

2 The petitioner claims to be the owner of Tipper Lorry bearing Reg.No.TN-48-S-6819 Engine Number MBIG3DYC4BETF6196, Chassis Number 6 and according to him, he is using the said vehicle for lawful purposes and however, on 02.10.2018, the 2nd respondent had seized the said lorry on the alleged ground of transportation of river sand without any valid permit and also registered the case in Cr.No.364/2018 against the driver of the lorry, viz., Thiru.Rajasekar as well as the son of the petitioner, viz., Thiru Prabhu for the alleged commission of the offence u/s.379 IPC and 21[1] of the Mines and Minerals Regulation Development Act, 1957, and both the accused were arrested and enlarged on bail vide order dated 03.12.2018 in

Cr1.OP.Nos.25283 & 27915/2018 subject to condition that they have to deposit a sum of Rs.45,000/- each. Accordingly, they had deposited the said sum and they got released.

3 The learned counsel for the petitioner would submit that the vehicle came to be seized as early as on 02.10.2018 and it is parked in open space and as such, it is open to vagaries of weather and since the petitioner is solely depending upon his livelihood by running/operating the said Lorry, he prays for early release of the same.

4 Per contra, Mr.E.Manoharan, learned Additional Government Pleader appearing for the respondents would submit that since the vehicle was found transporting river sand illegally, it was seized and the remedy, if any, open to the petitioner is to approach the jurisdictional Magistrate u/s.451 Cr.P.C.and opposed the release of the vehicle.

5 This Court has considered the rival submissions and also perused the materials placed before it.

6 Admittedly, the driver of the lorry and the son of the petitioner were arrested and while they were enlarged on bail, condition was imposed to deposit Rs.45,000/- each, to the credit of the crime number and the said conditional order has also been complied with and later on, they came to be released on bail. The vehicle in question is parked in the premises of the 2nd respondent police for the past four months.

7 This Court, in the light of the submissions made coupled with the facts and circumstances, is inclined to order the release of the vehicle in question, by way of interim custody to the petitioner, subject to the following conditions:

- (i)The petitioner shall produce relevant documents before the respondents to establish the ownership of the vehicle in question;
- (ii) The petitioner shall deposit a sum of Rs.10,000/- (Rupees ten Thousand Only) to the credit of Cr.No.364/2018 on the file of the 2nd respondent police ;
- (iii) The petitioner shall give an undertaking that he will not use the vehicle for any other illegal/unlawful activities in future and he will not alienate/encumber the vehicle in question till the disposal of the proceedings before the authority concerned and he will produce the same as and when required by the respondent police/jurisdictional Magistrate.
- (iv) The petitioner shall also execute a personal bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties in a like sum to the satisfaction of the respondents/respondent police/jurisdictional Magistrate.

8 On complying with the conditions imposed in this writ petition, the respondent is directed to release the Tipper Lorry bearing Reg.No.TN-48-S-6819 Engine Number MBIG3DYC4BETF6196, Chassis Number 6 to the petitioner forthwith. In case of violation of any of the conditions aforesaid, it is open to the respondents to initiate appropriate action for seizure of the vehicle. It is also made clear that this Court has not ordered the release of contraband said to have been transported in the said vehicle.

9 This Writ Petition is disposed of accordingly. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

AP

To

1.The Revenue Divisional Officer
Attur Taluk, Salem District.

2.The Inspector of Police
Thalaivasal Police Station
Salem District.

+1 CC to Mr.K.Krishnan, Advocate sr 8911.

+1 CC to The Govt. Pleader sr 9170.

W.P.No.1115/2019

SP(15/02/2019)