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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.02.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.R.C.No.215 of 2020

Nandhagopal

.. Petitioner

Vs

The State Rep. by
the Inspector of Police,
Vaitheeswaran Kovil Police Station,
Nagapattinam.
(Cr.No.125/2019)

.. Respondent

Prayer:- This Petition is filed under section 397 read with 401 of Cr.P.C., to set aside the order dated 26.11.2019 passed in Crl.M.P.No.3547 of 2019 on the file of the learned District and Sessions Judge, Nagapattinam.

For Petitioner : Mr.M.Vinoth

For Respondent : Mr.K.Prabakar, APP

ORDER

This criminal revision has been filed seeking to set aside the order dated 26.11.2019 passed by the learned District and Sessions Judge, Nagapattinam in Crl.M.P.No.3547 of 2019.

2.The respondent police seized the vehicle viz., Earth Moving Machine- JCB bearing registration No.TN-38-BS-8581 belonging to the petitioner in connection with the case in Crime No.125 of 2019 on 22.07.2019 under Section 379 IPC and Section 21(1) of the Mines and Minerals (Development & Regulation) Act, 1957. Seeking return of the vehicle, the petitioner, being the owner filed Crl.M.P.No.3547 of 2019 under Section 451 Cr.P.C. before the Sessions Judge, Nagapattinam and the said petition was dismissed by order dated 26.11.2019, challenging which, the present petition has been filed.

3.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent State.



4. Learned Additional Public Prosecutor submitted that there is no previous case against the petitioner nor this vehicle involved in any other case earlier. Though the reasons given by the trial Court in dismissing the petition cannot be faulted, yet, this Court is of the view that if the vehicle remains in the custody of the police indefinitely, it will get deteriorated.

5. In view of the guidelines given by the Supreme Court in *Sunderbhai Ambalal Desai Vs. State of Gujarat* [(2002) 10 SCC 290], this Court is of the view that interests of justice will be served, if the vehicle is ordered to be released to the petitioner on certain stringent conditions. The respondent police is directed to grant interim custody of the said JCB bearing registration No. TN-38-BS-8581 to the petitioner within a period of 7 days from the date of compliance of the below mentioned conditions:

- i. the petitioner shall deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs only) before the jurisdictional Tahsildar as non-refundable deposit. After receipt of the above said amount, the same will have to be deposited by the Tahsildar, to the credit of the District Mines and Minerals Foundation trust as non-refundable deposit;
- ii. the petitioner shall execute a personal bond for a sum of Rs.10,000/- with two sureties each for a like sum to the satisfaction of the District and Sessions Judge, Nagapattinam. The petitioner and the sureties shall affix their photographs and give the copies of their Aadhaar Card;
- iii. the petitioner shall give an undertaking before the respondent/ authority concerned stating that he will not use the vehicle in question for any illegal activities in future and shall produce the same as and when required by the respondent and also the trial Court, failing which the respondent/trial Court is at liberty to confiscate the vehicle;
- iv. the petitioner shall not alienate the vehicle in question till the disposal of the proceedings before the authority concerned;
- v. the petitioner shall take photograph of the vehicle and submit the same along with Compact Disc duly certified under Section 65-B of the Indian Evidence Act, 1872;



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vi. the petitioner shall surrender the original R.C. book before the District and Sessions Judge, Nagapattinam. ; and

vii. the petitioner is also directed to participate in the enquiry to be conducted by the respondent.

viii. It is also made clear that after release of the vehicle on complying with the conditions imposed by this court, if the said vehicle is found to be involved in any of the offence, it is always open to the respondent to proceed further for confiscation.

ix. Petition relating to return of R.C. Book for any purpose in the future, may be filed before the District and Sessions Judge, Nagapattinam, who may consider the same on merits.

6. By setting aside the order impugned herein, this petition is allowed in the above terms.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//
Sub Assistant Registrar

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To:

1. The District and Sessions Judge, Nagapattinam.
2. The Inspector of Police,
Vaitheeswaran Kovil Police Station,
Nagapattinam.
3. The Public Prosecutor, High Court, Madras.

+1cc to Mr.M.Vinoth, Advocate SR.14714

Cr1.R.C.No.215 of 2020

SPD(CO)
CB(20/03/2020)