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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.05.2020

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.R.C.No.502 of 2020

Bhuvaneshwari .. Petitioner/Accused
Vs.
State represented by
The Inspector of Police,
Manalmedu Police Station,
Nagapattinam District.
(Crime No.53 of 2020) .. Respondent/complainant

Criminal Revision filed under Sections 397 and 401 of Criminal Procedure Code to call for the records in Crl.M.P.No.930 of 2020 on the file of the learned District and Sessions Judge, Nagapattinam dated 17.03.2020 and to set aside the same and subsequently grant interim custody of vehicle Tipper Lorry bearing registration No.TN 49 V 7851.

For Petitioner : Mr.N.Chinnaraj
For Respondent : Mrs.Kritika Kamal.P
Government Advocate (Crl. Side)

O R D E R

The petitioner herein is the owner of the Tipper Lorry bearing Registration No.TN-49-V-7851. It is stated that the aforesaid lorry is involved in a criminal case registered by the respondent police in Cr.No.53 of 2020 under Section 397 of IPC & 21(1) of Mines and Minerals (D & R) Act, 1957 and accordingly, the lorry has been seized by the respondent.

2. Heard Mr.N.Chinnaraj, learned counsel for the petitioner and Mrs.Kritika Kamal, learned Government Advocate (Crl. Side) appearing on behalf of the petitioner.

3. The learned counsel for the petitioner submitted that the petitioner is the owner of the lorry and that, if the lorry is allowed to be under the custody of the respondent, its value and condition would deteriorate, apart from affecting the very livelihood of the petitioner's business.



4. The learned Government Advocate submitted that the investigation is still pending and in case, the custody of the lorry is handed over to the petitioner, it could facilitate the petitioner to involve in similar offences in future and the possibility of selling the vehicle is also imminent. The learned Government Advocate on instructions submitted that there are no previous cases against the petitioner, being the owner of the lorry.

5. The Hon'ble Supreme Court in a judgment in *Sunderbhai Ambalal Desai v. State of Gujarat* reported in AIR 2003 Supreme Court 638 had laid down the following dictum, in connection with custody and disposal of property, pending trial, in certain cases. The relevant portion of the said order reads as follows:

"7. In our view, the powers under Section 451 Cr.P.C., should be exercised expeditiously and judiciously. It would serve various purposes, namely:--

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If



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the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

6. Following the dictum laid down by the Hon'ble Supreme Court in the aforesaid case, various orders have also been passed by this Court, ordering release of the vehicle in custody, pending investigation and the decision in M.Ramesh V. Inspector of Police and another reported in 2019 SCC Online Mad 8828, is one among them.

7. By taking into account, the law laid down as above, as well as the submissions made by both the learned counsels and considering that the petitioner was not involved in any similar offences earlier, I am of the view that the custody of the property could be handed over to the petitioner on the following terms and conditions:-

1)The respondent herein is directed to hand over the custody of the vehicle bearing registration No.TN-49-V-7851 to the petitioner within a period of three days from the date of receipt of a copy of this order.

2)The aforesaid custody of the vehicle shall be subject to the condition that the petitioner deposits a sum of Rs.25,000/- before the jurisdictional Revenue Tahsildar, as a Non Refundable Deposit.

3)The Petitioner shall hand over the original registration certificate of the vehicle bearing registration No.TN-49-V-7851, prior to taking custody, before the concerned jurisdictional Judicial Magistrate.

4)The petitioner shall not alienate the vehicle till the disposal of the aforesaid criminal proceedings.

5)The handing over the vehicle to the petitioner, will be subject to confiscation proceedings, if any.



8. The Criminal Revision Petition stands ordered accordingly.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

Cr1.R.C.No.502 of 2020

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