IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 136 OF 2021

Mohd Riyaz Qadir Miya Sheikh,
Aged about - 34 years, Occupation - Business,
R/o – Plot No. 1521, Yashodhra Road,
Behind Dr. Rahman Clinic, Sarwarabad Yogi,
Arvind Nagar, Uppalwadi, Nagpur
Maharashtra – 440 026 .... **PETITIONER**

- VERSUS -

(1) Collector, Nagpur District,
Collector Office,
Near Akashwani Chowk,
Civil Lines, Nagpur.

(2) Police Station, Lakadganj,
Through Police Inspector,
Lakadganj Police Station, Nagpur. .... **RESPONDENTS**

Mr Arjun Raoka, Advocate for the petitioner
Mr. M. K. Pathan, APP for the respondents

CORAM : ROHIT B. DEO, J.
DATED : 26th FEBRUARY, 2021

ORAL JUDGMENT :

Heard.

2. Rule.

3. With consent, the petition is finally heard.

4. The petitioner has a limited grievance.

5. Vide the order impugned, the Collector, Nagpur, in exercise of powers under Section 6A of the Essential Commodities Act (Act) directed that the vehicle which is 3-wheeler rickshaw of Mahindra make, bearing registration number MH-40BF-0845, be released in favour of the petitioner subject to furnishing bank guarantee in the sum of Rs. 3,00,000/- (Rupees Three Lakhs).

6. The petitioner submits that the condition is onerous and well nigh impossible to fulfill in the sense that bank guarantee is not issued/extended by the bank unless an equivalent amount or major portion of the amount, is deposited with the bank in cash or in the form of fixed deposit receipts. The petitioner submits that he is deprived of the use of the vehicle since 8-10-2020 and the same vehicle is the only source of livelihood. The petitioner submits that condition imposed be modified and he be permitted to furnish solvent security instead of bank guarantee.

7. The Collector has filed affidavit in response justifying the

condition imposed. It is submitted that the condition of furnishing bank guarantee for release of the vehicle is consistent with the provisions of Section 6(A)(1)(c) of the Act which provides that in lieu of the confiscation of the vehicle, fine not exceeding the market price as on the date of the seizure of the vehicle can be imposed.

8. In my considered view, the legislative intent is not that in every case, the bank guarantee must be for the sum of the market price of the vehicle nor is it mandatory that the fine in lieu of confiscation must correspond with the market price. To the contrary, the provision gives ample discretion and the market price is the outer limit and not the minimum threshold.

9. The learned counsel for the petitioner has invited my attention to as many as six orders passed by the learned Single Judges extending similar reliefs. The condition of furnishing bank guarantee is substituted by the condition that solvent surety be furnished. Reference may be made to :

(1) Mohsin Beg Vs. Collector, Buldhana in Criminal Revn. 97/2020,

(2) Dinesh Bhaktani Vs. Collector, Nagpur District in Criminal Writ Petition 95/2016,

(3) Syed Kadir Syed Isaq Vs. The State of Maharashtra & anr. 2014 ALL MR (Cri.) 1704,

(4) Gurucharansingh Multani Vs. State of Maharashtra & anr. In Criminal Writ Petition 242/2011,

(5) Pramod Thakre Vs. Collector, Nagpur District & anr. In Criminal Writ Petition 1000/2014 and

(6) Dinesh Rangari Vs. The Additional Collector, Nagpur & anr. In Criminal Writ Petition 502/2009.

10. In view of the consistent view of this Court and in the facts of the case, the petitioner has made out a case for modification of the condition.

11. The impugned order is modified to the extent that instead of direction to the petitioner to furnish bank guarantee in the sum of Rs. 3,00,000/-, the petitioner is permitted to furnish solvent surety for Rs. 3,00,000/- (Rupees Three Lakhs) to the satisfaction of the Collector.

12. Upon furnishing the solvent surety to his satisfaction, the Collector shall release the vehicle seized within 72 Hours.

13. Rule is made absolute in the aforestated terms.

JUDGE

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