

03 26.05.2022
Dd

CRR 1820 of 2022

Court 7
(vacation Bench)

In the matter of : **Subhodip Mondal**
... petitioner

Mr. Tanmay Chowdhury,
Ms. Ritoprita Ghosh, Advocates
....for the petitioner

Mr. Prasun Kr. Dutta, Id. APP
Ms. Amita Gaur,
...For the State

Mr. Prasun Kr. Dutta, Id. APP also with Ms. Amita Gaur appears for the State. The concerned authority is directed to regularize their appointments.

This revisional application has been preferred against an Order no. 5 dated 10.05.2022 wherein the trial Court was pleased to reject the petitioner's prayer for interim custody of the seized tractor in favour of petitioner, on the ground that there is no specific provision of interim release of a seized vehicle which was seized in connection with Section 21(1) of the Mines and Mineral (Development & Regulation) Amendment Act, 2015, rather sub-Section 4(a) of Section 21 of the said Act prescribes the confiscation of seized articles by an order of Court, competent to take cognizance under said Act and said competent Court is Special Court under Section 30(B) of the Act having equal status and power of Court of Sessions.

Learned Trial Court also relied upon a judgment of Madras High Court delivered on 23.03.2022 in Criminal R.C. No. 755 of 2021 in Krishna Moorti vs. the State.

It is submitted on behalf of the petitioner that the petitioner is the registered owner of the tractor in question being registration no. WB 16 BB 6721 and all on a sudden he came to know that the said vehicle has been intercepted by the police on the allegation of carrying illegal sand-mix earth on April 30, 2022, along with four other tractors. The petitioner had prayed for return of the said seized tractor before the Learned Additional Chief Judicial Magistrate where the case is pending being G.R. Case No. 470 of 2022 and on the basis of the said application, learned Additional Chief Judicial Magistrate was pleased to call for a report from the concerned Police Station. Subsequently, on May 10, 2022 the concerned Investigating Authority had submitted a report disclosing that they have no objection to return the seized vehicle owned by the petitioner, Subhodip Mondal.

It is further submitted by the petitioner that the provision for interim relief of the seized vehicle as mentioned by the learned Magistrate in order impugned does not apply in the present case and nowhere in the said provision it has been mentioned that the said authority has been entrusted only to the special court and before commitment, learned Magistrate is wholly authorized and empowered to deal with the prayer of the petitioner to release the seized vehicle. Accordingly, the petitioner has prayed for passing order directing the learned ACJM, Arambagh, Hooghly to hand over interim custody of the seized vehicle in favour of the petitioner upon furnishing proper bond.

Learned Additional Public Prosecutor submits that the Investigating Authority has submitted no-objection in respect of the seized tractor and as such, he has got no objection, if the interim custody is given to the petitioner/owner of the said tractor, except the loaded sand-mix earth which has been seized in connection with the present case.

Considering the submission of both the parties and in view of the fact and circumstances of the present case and also relying upon the principles laid down by the Hon'ble Supreme Court in ***Sunderbhai Ambala Desai Vs. State of Gujrat, 2002 supp (3) SCR 39***, I find that it is a fit case where the prayer for interim

custody should be given to the petitioner in order to avoid further damage of the tractor in question and no effective purpose will be served by making it junk day by day at the police station premises.

In view of the above, learned Additional Chief Judicial Magistrate, Arambagh, Hooghly is hereby directed to give interim custody of the seized tractor being registration no. WB 16 BB 6721 along with all seized connected original papers but not loaded sand-mix earth which was loaded and has been seized in connection with the present case in favour of the petitioner/owner Subhodip Mondal on condition of furnishing a bank guarantee of Rs.15 lakh and also a bond of similar amount. The petitioner will also file one coloured photo duly signed by the petitioner and the Investigating Authority before the learned Magistrate and learned Magistrate will give interim custody of the said tractor to the petitioner also on condition that he will not change the basic nature and character of the tractor and will produce the said tractor before the Court concerned as and when it will be asked to produce either during trial or for the purpose of confiscation at the end of the trial.

CRR 1820 of 2022 is **disposed of** accordingly.

(Ajoy Kumar Mukherjee, J)