



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.RC.NO.375 OF 2022

J.Jayakanthan

... Petitioner/Petitioner

Vs.

State represented by
The Inspector of Police,
Poraiyar Police Station,
Nagapattinam District
(crime No.831 of 2020)

... Respondent/Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 21.02.2022 in Crl.MP.No.429 of 2022 in Cr.No.831 of 2020 on the file of the learned Principal District and Sessions Court, Nagapattinam and consequently allow the Crl.MP.No.429 of 2022 as prayed for.

For Petitioner : Mr.L.Poovendar Perumal

For Respondent : Mr.Leonard Arul Joseph Selvam,
Government Advocate(crl.side)

ORDER

The present revision has been filed praying to set aside the order dated 21.02.2022 made in Crl.MP.No.429 of 2022 in Crime No.831 of 2020 on the file of the learned Principal District and Sessions Judge, Nagapattinam and to allow this revision petition by passing appropriate direction to the learned District and Sessions Judge to hand over the petition mentioned vehicle to the petitioner for interim custody.

2. The case of the petitioner is that the petitioner is the owner of the tipper lorry bearing registration No.TN 74 AM 5202. In connection with crime No.831 of 2020, the respondent police recovered the said vehicle as a case property saying that the property was used for illegal sand mining. In the alleged



offence, the petitioner herein is not added as an accused. The petitioner has nothing to do with the said case and due to such seizure, the said tipper lorry is in the custody of the police. However, the said vehicle is exposed to all weather and thereby, the value of the vehicle is being drastically diminished that would only cause huge monetary loss to the petitioner and as such, the said vehicle of the petitioner may be ordered to be returned to the petitioner for interim custody. In this regard, the petition filed by the petitioner before the learned Principal District and Sessions Judge was dismissed by the order dated 21.02.2022. Therefore, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner would contend that the petitioner herein is not an accused in the petition mentioned case. The alleged occurrence had happened without the knowledge of the petitioner. The petitioner is ready to abide any condition imposed by this Court. The trial court without considering the said aspect, relying on Section 21(4A) of The Mines and Minerals (Development and Regulation) Act, also suspecting that if the petition mentioned vehicle is returned to the petitioner, the same may be redeployed for the same purpose, dismissed the petition which is erroneous in law.

4. The learned Government Advocate (Crl. side) appearing for the respondent police would submit that the petition mentioned vehicle had been used for the purpose of transportation of illegal sand mining and the same had been duly seized by the respondent police in the above said crime number and the reasons put forth by the petitioner are untenable and if the said vehicle is returned to the petitioner, the same would again be used for the similar illegal sand mining and thereby objected the petition.

5. Submissions made by the counsels appearing on either side are considered.

6. Admittedly, the petitioner is not arrayed as an accused in the petition mentioned crime number. Therefore it would see, only during the time of trial, we have to decide whether the alleged occurrence had happened within the knowledge of the petitioner or not. In otherwise, if the vehicle is kept in the police station, the value of the vehicle is being drastically diminished and that the same would only cause huge monetary loss to the petitioner. However, in order to show his bonafide, the petitioner has not shown the RC book which is the substantial evidence that the petitioner is the owner of the vehicle.

7. In this regard, the learned counsel appearing for the petitioner would submit that the petitioner has purchased the



petition mentioned vehicle from one, Mrs.Radhika for a sum of Rs.18,50,000/- on 11.09.2020 and name change in the registration certificate is yet to be effected. To substantiate his contention, he has produced the copy of the sale receipt dated 11.09.2020 and also Form 30 (Form of Transfer of Ownership). The said documents reveal that immediately after purchase of the petition mentioned vehicle, the same has been used for illegal sand mining. In this regard, it is the contention raised by the petitioner that without physically verifying the vehicle, the competent authority has refused to change the name in the RC book and therefore, it would necessary to return the petition mentioned vehicle to the petitioner for interim custody for the purpose of changing the name transfer. No doubt, as already observed, the documents relied on by the petitioner would go to show that the petitioner has purchased the petition mentioned vehicle recently. It is obvious, if the property is not produced before the RTO, they will not transfer the name in the registration certificate. In otherwise, being the reason the petitioner is not arrayed as an accused, he is entitled to receive the lorry for interim custody.

8. Thus in the said circumstances, this Criminal Revision is allowed and the impugned order dismissing the petition for return of vehicle in CrI.MP.No.429 of 2022 dated 21.02.2022 passed by the learned Principal District and Sessions Judge, Nagapattinam, is hereby set aside and that the interim custody of the vehicle in question, tipper lorry bearing registration No.TN 74 AM 5202 shall be handed over to the petitioner, subject to the following conditions:

i) The petitioner shall execute a bond for a sum of Rs.10,00,000/- with one sureties for a like sum to the satisfaction of the learned Principal District and Sessions Court, Nagapattinam.

(ii) The petitioner is directed to produce the RC book of the vehicle in question stands in his name after made transfer, within a period of one week from the date on which he received the lorry for interim custody, before the learned Principal District and Sessions Court, Nagapattinam. and file an affidavit of undertaking that he will not dispose or alter the physical features of the vehicle and that he will produce the vehicle before the said Court as and when required by the Trial Court or the Investigating Agency.

iii) The RC book of the vehicle shall be retained by the Trial Court till the disposal of the trial or until further orders from this Court.



The respondent is at liberty to proceed with the confiscation proceedings and the order passed in this revision will not be a bar to the authorities in proceeding with the confiscation proceedings.

WEB COPY

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

lok

To

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

+1cc to M/s.T.Saikrishnan, Advocate, S.R.No.25337

Cr1.RC.No.375 of 2022

MG (CO)
RLP (28/04/2022)