

HONOURABLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION No.15730 of 2022

ORDER:

This Writ Petition is filed to issue Writ of Mandamus declaring the action of 2nd respondent in not passing orders directing the 3rd respondent to release the petitioner's vehicle motor cycle Splendor+ (13S-Self-Drum-CA) bearing registration No.TS-05-FC-5043, chasis No.MBLHAW081KHK54345, Engine No.HA10AGKHE2201 seized in PCR No.10 of 2022 dt.09-03-2022 in spite of petitioner's readiness to furnish third party security, as being illegal, arbitrary and unjust.

2. Heard learned counsel for petitioner and learned Government Pleader for Excise appearing for respondent Nos.1 to 3 and perused the record. With their consent, this Writ Petition is taken up for hearing and disposal at the admission stage.

3. Petitioner contends that 3rd respondent had seized his motor cycle bearing Registration No.TS-05C-5043 on 09-03-2022 alleging that petitioner is carrying alum weighing 1½ Kg for preparation of ID liquor; that above said conclusion drawn by respondent-authorities is without any basis inasmuch as the sale and possession of alum is not prohibited under the provisions of A.P. Excise Act, 1968 (for short

‘the Act’) and unless and until the Authorities bring on record that the same is intended for the purpose of manufacturing of any intoxicant, the same cannot be subjected to seizure.

4. Petitioner further contends that this Court, in similar circumstances in Criminal Petition No.8904 of 2014 by order dt.07-11-2014 had allowed the Criminal Petition by quashing the criminal case booked against the petitioner therein under Section 34(e) of the Act. It is also contended that since mere carrying of the same cannot be considered as an illegal activity and when the respondents have seized the conveyance on which person carrying the said goods was seized, this Court in W.P.No.22638 of 2018 by order dt.04-07-2018 had directed the respondents therein to release the vehicle upon petitioner furnishing the bank guarantee.

5. Petitioner contends that he is similarly placed like the petitioners in the above two cases and seeks grant of same relief.

6. Learned Government Pleader for Excise, while opposing the Writ Petition, would vehemently contend that as per Section 34 of the Act, transportation of any material would be considered as illegal transportation and possession of any such material would also have to be considered for the purpose of manufacturing of any intoxicant

other than toddy and therefore apart from person carrying such material being liable for prosecution, the conveyances used for transporting the said material would also be liable for seizure. To buttress the above said submission, learned Government Pleader has drawn the attention of this Court to the judgment of this Court in W.P.No.9471 of 2018 dt.12-06-2018.

7. I have taken note of respective submissions.

8. Though the issue relating to applicability of Section 13(f), 34, 53 and 55 of the Act by a person who is merely carrying the material like alum, black jaggery etc would bring them under the purview of Section 34 of the Act implying that carriage by itself would have to be impliedly considered for the purpose of manufacturing of any intoxicant, is a larger issue and need to be gone into in a matter where a challenge is made to such provision.

9. Since the grievance of the petitioner in the present Writ Petition relates to respondent No.2 not passing orders for release of his motor cycle seized in connection with PCR No.10 of 2022 on 09-03-2022, this Court is of the view that since in similar circumstances in W.P.No.22638 of 2018 this Court by order dt.04-07-2018 directed release of the vehicle involved therein upon furnishing of Fixed

Deposit from any Nationalized Bank, petitioner in the present Writ Petition would also be entitled for grant of similar relief.

10. In view of the same and for reasons alike, the Writ Petition is disposed of directing the 2nd respondent to release the motor cycle Splendor + “(13S-Self-Drum-CA) bearing registration No.TS 05-FC-5043, chasing No.MBLHAW081KHK54345, Engine No.HA10AGKHE2201 subject to final orders to be passed under Section 46(2) of the Act and on petitioner furnishing Fixed Deposit of Rs.15,000/- (Rupees Fifteen Thousand only) from any Nationalized Bank in favour of the authority as may be intimated by the 2nd respondent and also on production of original RC Book and on further giving an undertaking that he will not transfer or alienate the vehicle to any third party in any manner and will maintain the vehicle in good road-worthy condition without changing its major parts and features and would produce the same as and when directed to be produced before the competent authority. No costs.

11. Consequently, miscellaneous petitions, pending if any, shall stand closed.

T.VINOD KUMAR, J

Date: 29-03-2022

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