

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

Writ Petition No.16546 of 2022

ORDER:

This Writ Petition is filed seeking a *Writ of Mandamus* to declare the action of the 2nd respondent in not directing the 3rd respondent to release the Vehicle UILTRA Goods Carriage-DCM bearing Registration No.KA-01-AM-370, with Chasis No.MAT764011J7C05584, Engine No. 5LNGDICR17BRY501972, was seized in connection with FIR No.5 of 2022 dated 04.01.2022 on the file of Maripeda police station, as illegal, arbitrary, abuse of process of law, violation of principles of natural justice and contrary to the provisions of Telangana State Excise Act with a consequential direction to release the said vehicle.

2. Heard learned Counsel for the petitioner, learned Government Pleader for Excise appearing for the respondent Nos.1 and 2 and learned Government Pleader for Home appearing for respondent No.3, and with their consent, the Writ Petition is taken up for hearing and disposal at the stage of admission.

3. It is the case of the petitioner that he is the owner of the subject vehicle and plying the same on hire by engaging a driver; that without his knowledge and authorization, the driver used it for carrying black jaggery and Alum; that the respondents-authorities seized the above vehicle for illegal transportation of 5000 kgs of Black Jaggery in 100 bags, each containing 50 kgs, and 200 kgs of Alum in 4 bags, each

containing 50 kgs, and registered a case against the driver of the vehicle along with others, in Crime No.5 of 2022 on 04.01.2022; that petitioner is willing to furnish a third party security to the extent of the value of the vehicle; that in spite of the readiness expressed by him, the respondents, in particular the 2nd respondent, is not directing the 3rd respondent to release the said vehicle; and that the said action of the respondents–authorities in seizing the vehicle and keeping it in open place, resulting in damage to the said vehicle, is contrary to the judgment of the Hon’ble Supreme Court in ***Sunderbhai Ambalal Desai V/s. State of Gujarat***¹.

4. The petitioner further contends that in similar circumstances, this Court directed release of the vehicle on certain conditions and the petitioner is similarly placed.

5. Learned Counsel for the petitioner has also brought to the notice of this Court a similar order passed in W.P.No.14663 of 2020, dated 03.09.2020, wherein this Court directed the petitioner therein to approach the 2nd respondent, i.e. the Deputy Commissioner, by making an application and on such application being made, directed the said authority to consider the said application within a time frame.

6. Learned Government Pleader for Excise appearing for respondents does not dispute the above said fact. However, he submits that the subject vehicle involved in the crime, belongs to the

¹ (2002) 10 SCC 283

State of Karnataka; that there is every possibility of the vehicle not being produced before the authorities in connection with the investigation into the above crime; and that in the event of this Court directing release of the said vehicle, sufficient safeguards should be imposed to ensure that the vehicle is produced as and when required in connection with the above crime.

7. Taking note of the submissions, since this Court, in similar circumstances, had directed release of the vehicle, having regard to the law laid down by the Hon'ble Apex Court in ***Sunderbhai Ambalal Desai*** (1 *supra*), this Court is of the view that the petitioner should also be directed to comply with the conditions laid down herein subject to which the respondents shall release the vehicle.

8. The Writ Petition is accordingly disposed of directing the respondents, in particular respondent Nos.2 and 3 to release the vehicle UILTRA Goods Carriage-DCM bearing Registration No.KA-01-AM-370, with Chasis No.MAT764011J7C05584, Engine No. 5LNGDICR17BRY501972, subject to condition of the petitioner furnishing Fixed Deposit of Rs.1,50,000/- (Rupees one lakh fifty thousand only) in favour of the 2nd respondent. The petitioner shall also furnish an undertaking that he will not alienate or change the physical features of the vehicle. The 2nd respondent shall write to the RTA authority not to transfer the said vehicle in favour of any third party without clearance from the Excise Department. Needless to say, release of the said vehicle is subject to the orders that could be passed

by the 2nd respondent authority pursuant to the enquiry to be conducted under the provisions of the Excise Act. No costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. No order as to costs.

Date: 31.03.2022
MRKR

T. VINOD KUMAR, J

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Writ Petition No. 16546 of 2021

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MRKR

