IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 98 of 2021

HDB Financial Services Limited
-Vs-
The State of West Bengal & Anr.

For the Petitioner	: Mr. Satyaki Basu Mr. Rajshree Das
For the State	: Mr. Aditi Shankar Chakraborty Mr. Ujjwal Luksom Mr. Sourav Ganguly
Heard on	: 01.05.2023, 03.05.2023.
Judgment on	: 12.05.2023.

Ananya Bandyopadhyay, J.:-

1. The petitioner has filed an application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973 being aggrieved by a order dated 22.01.2021 passed by the Learned Additional District and Sessions Judge 4th Court at Jalpaiguri in connection with Criminal Revision No. 79/2019 wherein the Learned Court was pleased to allow interim custody of the vehicle being number UP 21BN 6325 with a condition to furnish bank guarantee of Rs.15,00,000/- through any nationalized bank and other conditions as mentioned in the said order.

2. The Learned Advocate for the petitioner submitted that the petitioner is a Non Banking Financial Company which granted loan to the respondent no. ‘2’ on 31.03.2017 to purchase the vehicle in question. The said vehicle belonging to respondent no. ‘2’ was seized by the Jalpaiguri police authority on 23.10.2017 under a complaint filed by the Sub-Inspector of Kotwali Police Station on 20.03.2017 and subsequently Kotwali Police instituted Case No. 717/2017 dated 23.10.2017 under Sections 379/ 411/ 413/ 419/ 468/ 491/ 120 of the Indian Penal Code along with Section 26 of Indian Forest Act, 1947 in connection with G.R. Case No. 4464/2017.
3. It was further submitted that the respondent no. ‘2’ filed an application before the Court of Learned Chief Judicial Magistrate, Jalpaiguri to release the aforesaid vehicle in his favour on 16.07.2018. The aforesaid Court allowed the interim custody of the vehicle as aforesaid in favour of the respondent no. 2 on condition to furnish bank guarantee to the tune of Rs.15,00,000/- as mentioned in the aforesaid order dated 16.07.2018 along with other conditions. Respondent no. 2 was unable to furnish the aforesaid amount of bank guarantee and filed a revisional application being Criminal Revision Number 74/2018 before the Court of Learned District Judge of Jalpaiguri for modification of the order dated 16.07.2018 passed by the Court of the Learned Chief Judicial Magistrate, Jalpaiguri. Vide order dated 01.12.2018 the Learned District Judge of

Jalpaiguri dismissed the revisional application filed by the respondent no. 2.

4. It was further submitted that the petitioner issued a notice dated 20.06.2019 to the respondent no. 2 for payment of outstanding amount against the purchase of the vehicle as aforesaid to the tune of Rs. 16,74,243.69/-. The petitioner filed an application before the Learned Chief Judicial Magistrate under Sections 451/457 of the Code of Criminal Procedure, 1973 praying for release of the custody of the vehicle as aforesaid which was dismissed on 03.10.2019 by the Learned Chief Judicial Magistrate, Jalpaiguri.

5. Being aggrieved against such order, a revisional application was filed before the Learned District Judge of Jalpaiguri on 24.12.2019 being Criminal Revision number 79/2019 wherein the respondent no. 2 appeared and filed an objection through an affidavit stating to allow the custody of the vehicle as aforesaid in favour of the Petitioner expressing his inability to furnish a bank guarantee to the tune of Rs.15,00,000/- as aforesaid. On transfer of such Criminal Revision being number 79/2019 to the 4th Court, Additional District and Sessions Judge, Jalpaiguri an amount of Rs.20,67,124/- was stated to be the outstanding against the loan account of the respondent no. '2'.

6. On conclusion of the hearing the Learned Additional District and Sessions Judge, 4th Court, Jalpaiguri vide order dated 22.01.2021 allowed the interim custody of the vehicle in favour of the petitioner on

condition to furnish a bank guarantee of Rs. 15,00,000/- through a nationalized bank along with other conditions as mentioned in the order dated 22.1.2021.

7. The Learned Advocate for the petitioner submits that the petitioner being a mere employee of the finance company was incapable to furnish the bank guarantee as aforesaid and was not similarly circumstanced with the respondent no. 2 and accordingly it was improbable to furnish the bank guarantee as aforesaid against the outstanding amount of Rs.23,30,214/- and filed the instant application to set aside the order dated 22.01.2021 passed in Criminal Revision No. 79/2019.

8. The Learned Advocate for the State submitted that the bank guarantee was to be furnished on behalf of the respondent no. '2' to ensure its presence as and when required for adjudication of the pending case before the Learned Trial Court and therefore the instant Criminal Revisional Application should be dismissed as the impugned order had been rightly passed.

9. The petitioner is an employee of the financial company being HDB Financial Service Limited. The petitioner in his individual capacity did not disburse the loan in favour of the respondent no. 2 and has contested the application as an authorized representative of the aforesaid company and therefore it cannot be his personal liability to furnish the bank guarantee as directed by the Learned Additional District and Sessions Judge as aforesaid. It is a fact that the ownership of the vehicle

under a higher purchase agreement lies with the bank granting loan for purchase of the vehicle. In the instant case the respondent no. 2 has been implicated in an offence as stated above and has not been discharged or acquitted thereof and in the event of pendency of the trial the subsistence of the vehicle is necessary for determination of the criminal case in question. The bank in order to gain the custody of the vehicle is under an obligation to fulfill the direction of the Court since the vehicle is one of the essentials to establish the offence or to get the respondent no. 2 acquitted of the same. The Hon'ble Supreme Court in the ***State of Karnataka Vs. K. Krishnan***[1], ***State of West Bengal Vs. Mahua Sarkar***[2] has observed that only in exceptional cases if a Court is inclined to release the vehicle during pendency in a case involving commission of offence with regard to Forest produce it should order to furnish a bank guarantee as a minimum condition.

10. Perusal of the orders passed by the Learned Trial Court and the appellate courts direction to furnish a bank guarantee for release of the vehicle as aforesaid amongst other conditions cannot be termed as illegal or improper and accordingly this Court is not inclined to interfere with the impugned order.
11. Accordingly CRR No.98 of 2021 is dismissed.
12. There is no order as to cost.

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[1] AIR 2000 Supreme Court 2729
[2] AIR 2008 Supreme Court 1591

13. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.

14. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)