

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

WEDNESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION NO: 26462 OF 2022

Between:

BAIRAMPALLI ANJAYYA, S/o B.JATAYYA, Aged . 61 years, Occ. Lorry Owner, R/o H.No.13-1-1236/71, guffa naga, Indira nagar Asifnagar Hyderabad-500067

...PETITIONER

AND

1. The State of TELANGANA, Rep. by its Principal Secretary, Revenue (EXCISE) Department, Secretariat Building, HYDERABAD.
2. The Deputy Commissioner of Prohibition and Excise, Nalgonda, Nalgonda District
3. The Station House Officer Excise, Nampally Police Station, Nalgonda District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue writ or order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondent No.2 in not passing orders directing the 3rd Respondent here in to release the Petitioner RE MAXIMA C BS III, Three Wheeled Goods Vehicle Bearing Registration No. TS13UB0673 Chasis No. MD2A72AZ8GWG06823. Engine No. BBZWGC41001, seized in PCR NO. 19 of 2022 Dt. 11.05.202 in spite of my readiness to furnish the third party surety, as being illegal, arbitrary and unjust and consequently direct the Respondents to issue necessary orders for release the above said vehicle.

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondent Nos. 2 and 3 to Release the Petitioner vehicle RE MAXIMA C BS III ,Three Wheeled Goods Vehicle Bearing Registration No. TS13UB0673 Chasis No. MD2A72AZ8GWG06823, Engine No. BBZWGC41001, seized in PCR NO. 19 of 2022 M. 11.05.2022 value of ks. 25,0001- by allowing the petitioner to furnish the third party surety. pending disposal of the Writ petition.

Counsel for the Petitioner: SRI SAGGALA SRIVANI

Counsel for the Respondents: GP FOR PROHIBITION EXCISE

The Court made the following: ORDER

HONOURABLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION No.26462 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 Re Maxima C BS III, Three Wheeled Goods Vehicle bearing registration No.TS-13-UB-0673, Chasis No.MD2A72AZ8GWG06823 Engine No.BBZWGC41001 seized in PCR No.19 of 2022 dt.11-05-2022 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 Prohibition and 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 vehicle bearing Registration No. TS-13-UB-0673 on 11-05-2022 alleging that petitioner is carrying alum weighing 45 Kgs. 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

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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 vehicle seized in connection with PCR No.19 of 2022 on 11-05-2022, 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 petitioner's Re Maxima C BS III, Three Wheeled Goods Vehicle, bearing registration No.TS-13-UB-0673, Chasis No.MD2A72AZ8GWG06823 Engine No.BBZWGC41001, subject to final orders to be passed under Section 46(2) of the Act and on petitioner furnishing Fixed Deposit of Rs.25,000/- (Rupees Twenty Five 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

SD/-T.SRINIVAS
DEPUTY REGISTRAR

GB

SECTION OFFICER

//TRUE COPY//

To,

1. The Principal Secretary, Revenue (EXCISE) Department, State of TELANGANA Secretariat Building, HYDERABAD.
2. The Deputy Commissioner of Prohibition and Excise, Nalgonda, Nalgonda District

3. The Station House Officer, Namally Police Station, Nalgonda District.
4. One CC to SRI SAGGALA SRIVANI Advocate [OPUC]
5. Two CCs to GP FOR PROHIBITION EXCISE, High Court for the State of Telangana at Hyderabad . [OUT]
6. Two CD Copies.
7. One Spare Copy.

NPJ

BS

HIGH COURT

DATED:22/06/2022

ORDER

WP.No.26462 of 2022



**DISPOSING OF THE WRIT PETITION
WITHOUT COSTS.**

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[Signature]
24/06/2022