

MHNG160001332022



ORDER (BELOW EXH.4)
(Passed 26.09.2022)

Applicant C J DARCL LOGISTICS LIMITED, a company registered and incorporated under the Companies Act has filed this application under Section 457 of the Code of Criminal Procedure through its power of attorney holder and authorized signatory Manoj Ramavtar Goyal for releasing seized iron bars (3 tons) seized by Mouda police in Crime No. 520/2021 for the offence punishable under Section 406 r/w 34 of the Indian Penal Code.

2. It is the contention of the applicant that its office is situated at DARCL House, Plot No.55 P, Institutional Area, Sector 44, Gurugram (Haryana). The applicant company is engaged in the business of logistics whereby on behalf of its clients, the applicant company manages the flow of goods between the point of origin and the point of delivery by engaging transportation services of various transporters. The applicant received an order for transporting TISCON-TMT IS:1786 FE 500 D 16 mm (7.380 Tons) and TISCON-TMT IS:1786 FE 500 D 25 mm (25.750 Tons) total weighing around 33.130 Tons from SKM Steels Limited (Dispatched from Bhandara Road Mahalgaon, Kapsi, Nagpur) to Leighton India Contractors Private Limited (PISA Dam Road Bhivandi). Therefore, the applicant placed order of above said articles to one Sukhraj Freight Carrier, a transportation company, to transport the said consignment. Accordingly, said iron bars were loaded in the Truck No. NL-01-N-4506 owned by accused No.1. Accused No.2 was

Truck Driver, who carried said consignment from Nagpur to Bhivandi. Accused No.2 loaded the Truck with ordered iron bars weighing around 33.103 Tons worth Rs.19,74,216.72/- and left for Bhivandi from Nagpur. After loading said goods, loaded goods were weighed and goods along with their weight were mentioned in Tax Invoice dated 11.8.2021 and Lorry Receipt dated 11.8.2021. Both these documents mentioned weight of goods i.e. 33.103 Tons and transporting Truck No. NL-01-N-4506. Thereafter, E-way Bill for transportation of said goods was drawn on 11.8.2021. Said truck left from Nagpur on 11.8.2021 and delivered the goods at Bhivandi.

3. It is further contended that on 17.8.2021, the complainant received phone call from the employee of applicant company at Mumbai namely Bipin appraising the fact that although the transported goods weighed 33.130 Tons at Nagpur, however, at the time of its delivery they are weighing less by 3 Tons. Thereafter, the complainant came to know that the accused have conspired and embezzled said goods weighing 3 Tons amounting to Rs. 1,50,000/- from the said truck. Therefore, the complainant, being employee of applicant company lodged complaint against the accused with police station Mouda. After registering the offence against the accused for the offence punishable under Section 406 r/w 34 of IPC, during investigation police seized embezzled goods from the accused. Said goods are still languished in the premises of police station Mouda.

4. It is further contended that the Consignor SKM Steels Limited held the applicant company accountable to suffer losses for short supply of goods to Consignee and therefore, charged and recovered Rs.3,65,703/- from the applicant company vide debit note dated 24.9.2021. Thus, after paying for the said embezzled goods, the applicant company has become

entitled for release of seized iron bars. Said iron bars is in custody of Mouda police station since more than six months. There is no suitable arrangement for keeping them and they are languishing exposed to heat, rains and dust etc. resulting in deterioration and damage to said iron bars. The iron bars being prone of rusting, it would not be proper to keep the same languishing uncared at police station Mouda. The applicant is suffering without there being any fault on his part. The applicant company is deprived of utilizing said iron bars to reduce losses unnecessarily suffered by it which the applicant company is entitled to do. The applicant is ready to abide by the conditions imposed by the court for releasing the said iron bars. Hence, this application.

5. The learned APP filed his say at Exh.5 contending that Mouda police has seized iron bars from accused No.1. The charge-sheet is filed. Further submitted that from perusal of record, it prima facie seems that SKM Steel Company, Mumbai has purchased seized the iron bars from TATA Steel Company, Bhandara Road, Mahalgaon, Kapsi, Nagpur. Therefore, the owner of seized iron bar is SKM Steel Company, Mumbai. The applicant has not filed any documents for entitlement of possession over seized iron bars. The iron bars seized from accused No.1 therefore, his say is necessary before considering this application. If the iron bars are released, there is possibility of its selling and making changes in it and no possibility of its producing as and when required during trial. The applicant has not mentioned the weight of iron bars. Hence, he prayed for rejection of this application.

6. The notices were issued to the accused persons for calling their say, but said notices were returned unserved. Accused No.1 is resident of Mumbai and accused No.2 is resident of Punjab State. Therefore, calling

their say will take much time. The police has seized iron bars from accused No.1. The police has also seized truck bearing No. NL-01-N-4506, which was already released on supurtnama by accused No.1 vide order dated 20.9.2021. At the time of releasing said truck, accused No.1 did not claim seized iron bars. Therefore, it can be inferred that he did not want to claim seized iron bars. Hence, at this stage I did not think necessary to call his say for deciding said application.

7. The applicant filed photocopies of documents along with list Exh.4-A in support of his application i.e. special power of attorney dated 1.9.2021, Lorry Receipt dated 11.8.2021, Domestic Tax Invoice dated 11.8.2021, Domestic Sale Invoice dated 11.8.2021, E-Way Bill dated 11.8.2021, debit note dated 24.9.2021 and Adhar Card of power of attorney holder.

8. At this stage, except the applicant, nobody has claimed seized iron bars. Perusal of document No.1 i.e. Special Power of Attorney shows that applicant company authorized Manoj Goyal to act in the name and on behalf of the company. The applicant has also filed document at Sr.No.2 to 7 to support it's contention mentioned in the application. Perusal of these documents show that the applicant company hired truck of accused No.1 for transporting iron bars from Nagpur to Bhivandi. Document No.6 shows that the applicant company has paid amount Rs.3,65,703/- towards short supply of material to Leighton India Contractors Private Limited, which support the contention of applicant that it has paid the amount of seized iron bars to the concerned company. Moreover, considering the documents filed by the applicant as well as the say of learned APP for the State prima facie the claim of the applicant appears to be genuine. Seized iron bars is in custody of

Mouda police station since more than 6 months. There is no suitable arrangement for keeping the same. The iron bars being prone of rusting, it would not be proper to keep the same languishing uncared at police station. If said iron bars lying there henceforth, it will become valueless. The apprehension of the learned APP can be taken care of by imposing certain conditions upon the applicant while releasing said iron bars. No prejudice is going to be caused to either side if interim custody of the seized iron bars is given to the applicant upon imposing appropriate conditions. Hence, I pass the following order.

-: ORDER :-

1. Application (Exh.4) is allowed.
2. The seized muddemal property i.e. 3 Tons iron bars be returned to the applicant company till conclusion of trial on executing the indemnity bond of Rs.4,00,000/- (Rs. Four Lacs only).
3. The applicant is directed to produce bank guarantee of Rs.50,000/- within 15 days from this order in lieu of security of seized iron bars. Said bank guarantee will remain in force till conclusion of trial.
4. The applicant is liable to produce the seized iron bars or value of iron bars as and when directed by the court.
5. If the applicant committed breach of any condition as mentioned above, the bond will be automatically cancelled.
6. The Investigating Officer is directed to take colour photographs of seized iron bars at the costs of the applicant and produce it in the charge-sheet.

7. The Investigating Officer is directed to prepare detailed panchanama of seized iron bars before handing over it to the applicant.
8. The Investigating Officer is directed to return the seized iron bars to the applicant after proper verification.
9. Issue letter to Mouda Police Station accordingly.

Date : 26.09.2022

(R.R.Sherekar)
Judicial Magistrate First
Mouda

Endorsement

Case argued on	:	26.09.2022
Order dictated on	:	26.09.2022
Transcription ready on	:	26.09.2022
Order checked and signed on	:	26.09.2022

CERTIFICATE

I affirm that the contents of this P.D.F. File are same word to word as per original judgment/Order.

NAME OF STENO :- MRS. M.D.SINGH (GR.III)