

ORDER BELOW APPLICATION EXH.14

(Date 12-12-2018)

The instant application preferred by applicant Sub-Area Manager, Neeljay Sub-Area, W.C.L.Wani area, Taq.Wani, Dist.Yavatmal, through authorize officer Shri.Ramesh Bairao Prasad, Senior Security guard of Neeljay Sub Area, Tq.Wani, Dist.Yavatmal for release of “15 mt.coal” seized by police station Shirpur through Shankar S/o.Bapuji Lande in crime No.50/2012 under section 379 of Indian Penal Code (referred in short as code).

02. It is contended that, being an authorized officer of WCL Wani lodged the report regarding incident of theft through Shankar S/o.Bapuji Lande then Senior Security officer. Now he is retired from service. On his report PSO Shirpur has seized the above coal. He is a owner of seized coal. Therefore, he preferred the present application for custody of the said coal. He will undertakes all the terms and conditions will imposed by this court. He will execute the suprutnama bond of like amount with the satisfaction of this court.

03. The applicant has filed some documents in support of his application like authority letter issued by Sunil Kumar Sub-Area Manager Neeljay Sub-Area dated 12/12/2015, xerox copy of letter issued by PSO Shirpur to W.C.L., Sub- Area Manager Neeljay etc.

04. Likewise, Police Station officer, police station Shirpur has filed the say at Exh.18, he submitted that, the coal seized in Crime No.30/2013 under section 379 of code upon the complaint of Shankar S/o. Bapuji Lande from the accused. He has no objection to return the said coal to Neeljay Sub-Area with some conditions. Similarly the learned APP submitted that if the applicant/owner of the coal is ready to abide all the terms and conditions imposed by Hon'ble court in that case no objection.

Likewise the accused filed his say and stated that he has no nexus with the coal. He has no objection to return it to the owner.

05. I have gone through the say of PSO and learned APP for the state. The PSO Wani has no objection to released the said vehicle but upon certain conditions. I gone through the document filed on record by the applicant including the letter issued by PSO Shirpur dated 18/04/2015. He stated that coal is kept in their police station. It is seized from the crime No. 50/12. There is no space to keep the seized coal in their police station. There is every likelihood to depreciate the value of coal.

06. I also gone through the say of PSO Wani, I have seen that the PSO Wani did not disputed the ownership of applicant over the seized coal. But the coal can be return to the applicant upon certain conditions. The accuse has no nexus with the seized coal and he has no objection to return the coal. The complainant was an employee of W.C.L. By his complaint the offence was lodge. Now he is retired from service. The applicant possess the authority letter to file the present application. The applicant is owner is not disputed by PSO Wani. The ownership is not disputed by investigation machinery. It is well settle rule that who is owner is better title over the property. In this case admittedly the applicant is owner therefore he is entitle for the custody of said seize coal.

07. I am of the view that the applicant is entitle for the custody of coal. If the coal remains in the custody of police for longer time the value of the coal automatically gets depreciated on day by day. This aspects is also taken into consideration while giving the custody of the vehicle. I have not found any statement in regards to the coal is longer required for investigation to the police. That statement I am expecting from investigation machinery. But after perusal to the same such thing is not seen. Hence, the applicant is owner therefore he is entitle for the

custody of coal. Hence, he is entitled for custody of coal. Hence, I pass the following order.

ORDER

1. The application below Exh.14 is allowed upon following conditions.
 - a. The custody of “15 mt.coal” seized by police station Shirpur in crime No.50/2012 under section 379 of code shall be been given to the applicant namely Shri.Ramesh Bairao Prasad, Senior Security guard of Neeljay Sub Area, Tq.Wani, Distt.Yavatmal.
 - b. The Police Station officer, Police Station Shirpur, Th. Wani, Dist. Yavatmal is directed to release the coal seized by them in above crime. It is directed to PSO Shirpur to make detailed panchanama along with the Photographs of seized coal. Similarly to ascertain the value of the coal and execute the bond thereof in like amount from the applicant.
 - c. The applicant shall execute the indemnity bond before this court in like amount of the coal.
 - d. Copy of this order be sent to Police Inspector of Police Station, Shirpur,Th. Wani, Dist. Yavatmal .

Date. 12-12-2018

(R. R. Khamatkar)
Judicial Magistrate, First Class,
(Court No. 3), Wani.