

In the Court of Sessions, Tirunelveli Division
Before the Principal Sessions Judge, Tirunelveli.
PRESENT: **THIRU.S.KUMARAGURU, B.L.,**
PRINCIPAL SESSIONS JUDGE.

Wednesday, the 09th day of November 2022

Cr.M.P.No.10093/ 2022

(CNR No.TNTL 0101 3779 2022)

Muthulakshmi, W/o. Gandhiraja. **Petitioner / Owner of the vehicle.**
/Vs/

State: The Sub Inspector of Police,
Tirunelveli Taluk Police Station,
Cr.No. 210/2022.

.... **Respondent/complainant.**

Petition dt: 28.09.2022 filed u/Sec. 451 and 457 Cr.P.C prays to remand and return the petition mentioned vehicle bearing Registration No. TN 67 BW 6220 as interim custody to the petitioner.

This petition is coming on this day for hearing before me in the presence of Thiru.K.SAMUEL BASKARRAJ, Advocate for the petitioner and Thiru. K.SUBRAMANIAN, the Public Prosecutor for respondent and on hearing both sides arguments and perusal of entire case records, this court delivered the following...

ORDER

The petitioner has filed this petition U/s. 457 and 451 of Cr.P.C., seeking to remand and return the petition mentioned Vehicle bearing Registration No. TN 67 BW 6220 as interim custody to the petitioner.

2. The averments raised by the petitioner in his petition are summarized as follows:-

The petitioner is owner of the property. The case property is a Tipper Lorry. The vehicle's Registration Number is TN 67 BW 6220 and it stands in the name of the petitioner. The respondent has registered a case for the offence under Section 465, 468, 470, 471 and 379 IPC in Crime No.210/2022 on the file of Tirunelveli Taluk P.S. The FIR is pending before the Judicial Magistrate No.III, Tirunelveli. The petitioner is an accused in this case. The said vehicle being kept in the hands of the respondent police. If the vehicle is being kept in the present condition, it will be damaged due to hot sun and heavy rain and the value of the vehicle will be

diminished. The petitioner is in need of her vehicle for daily avocation. If the petition is not allowed the petitioner will put to irreparable loss. Hence the petition.

3. On the other hand, the respondent police has raised their objections before this Court and the averments stated in the written objections are summarized as follows:-

The petitioner is the 4th accused in this case. If the vehicle is returned to the petitioner, it is possible to commit the same type of offences repeatedly. Hence seeks to dismiss the petition.

4. The case of the prosecution is that on 01.09.2022 accused persons have transported the gravel sand in six vehicle without proper trip sheet and further interrogation reveals that lorry drivers transported the property by holding fake documents. Hence the case was registered for the offence under Sections 465, 468, 470, 471, and 379 of IPC.

5. Based on the contention raised by both sides, this court has framed the following point for final determination which is as follows:

Whether the petition can be allowed?

6. In order to prove the petitioner's case on the side of petitioner Ex.P.1 to Ex.P.5 were marked. Respondents side no oral or documentary evidence adduced.

7. Answer to Point:

The learned counsel for the petitioner has argued that the petitioner is the owner of the said Vehicle bearing Registration No. TN 67 BW 6220 was seized by the respondent in connection with the case in Crime No.210/2022 for the offence under Section 465, 468, 470, 471 and 379 IPC attached with Tirunelveli Taluk police Station and the said vehicle was not yet remanded by the concerned Judicial Magistrate. The learned counsel for the petitioner has further submitted that the said vehicle is parked in open place. If the vehicle is parked in open place in rain and sunlight continuously, the vehicle will be damaged and its market value will be down, hence the petitioner has come forward with this petition seeking to remand and return his vehicle as interim custody, otherwise he will be put to irreparable loss and

hardship, that if the vehicle is returned to the petitioner as interim custody, she will obey the condition imposed by this court and prayed to allow this petition.

8. On the other-hand, the respondent police has filed his objections by stating that if the vehicle is handed over to the petitioner there is possible to use the vehicle for committing the same type of offences repeatedly. The learned Public prosecutor has submitted that, the petitioner is an accused in this case and objected to return the property to her.

9. After taking into consideration of the both sides learned counsels arguments and on perusal of the case records, now this court is to decided that whether the petitioner's contention is acceptable one. In this regard, this court has gone through the case records it shows that the petitioner has produced the copy of First Information Report concerned in Cr.No.210/2022 of P.S., which is marked as Ex.P.1. The copy of R.C.Book of the vehicle is marked as Ex.P.2. The contents of R.C.Book Ex.P.2 it reveals that the petitioner is the owner of the vehicle. the Copy of Insurance is marked as Ex.P.3. The Copy of Adhaar Card is marked as Ex.P.4.

10. Further on perusal of the report dated: 17.10.2022 received from the learned Judicial Magistrate No.III, Tirunelveli, it reveals that the petition mentioned vehicle bearing Registration No. TN 67 BW 6220 was not yet remanded before the concerned Judicial Magistrate Court.

11. Further, this court has gone through the case records it shows that the respondent police or DRO has not followed the procedure to produce the vehicle before the jurisdictional court within stipulated time. Further the Revenue authority or Station House Officer has not taken any steps to confiscate the vehicle. Further the offending vehicle is parked in open place without any maintenance. In this circumstances this vehicle is parked in open place, it will possible to fade of colour of the vehicle. Further, the said vehicle is parked in open place and it will possible to cause damage the body of the vehicle due to rain and sunrise. Further more, without using the vehicle in long period, it will possible to damage the parts of the vehicle and engine of the vehicle. This court has considered the attitude of the Revenue

authorities for not taken any steps to confiscate the vehicle and not taken on file in near future, the vehicle was parked without maintenance in proper manner, it will possible to cause damage to the vehicle and also reduce the market value of the said vehicle. The objection submitted by the learned public prosecutor is not sufficient to disprove the petitioner's case.

12. The petitioner has come forward with this petition seeking to remand and return the said vehicle bearing Registration No. TN 67 BW 6220 as interim custody to her. On perusal of copy of Registration Certificate, it reveals that the vehicle is stands in the name of the petitioner. In these circumstances, if the vehicle is kept in police custody/court custody in open place and not proper maintain, it will possible to damage the vehicle and also to reduce the market value of the vehicle. For long time, if the vehicle is kept in police custody, there is no use. Further it is not possible to commence the trial proceedings in near future. Under these circumstances, if the vehicle is handed over to the petitioner as interim custody, no prejudice will be caused to the respondent police. The above said principle is laid down in '**2002 Supreme Court (3) SCR 39' in case Sunderbhal Ambalal Desai....Petitioner-vs-State of Gujarat ...Respondent'**. The above said case law is applicable in the present facts of the case. The above all aspects are considered by this court and this court is inclined to remand and to return the petition mentioned Vehicle bearing Registration No. TN 67 BW 6220 to the petitioner as interim custody.

13. In the result, this petition is allowed and the Tipper Lorry bearing Registration No. TN 67 BW 6220 in Cr. No. 210/2022 of Tirunelveli Taluk P.S. is ordered to remand and return as interim custody to the petitioner with the following conditions:-

1. The respondent police is ordered to remand the Tipper Lorry bearing Registration No. TN 67 BW 6220 seized in Crime No.210/2022 before the concerned Judicial Magistrate Court within 15 days from the date of this order.
2. that the petitioner shall execute a personal bond for a like sum of Rs. **1,00,000/-** (Rupees One Lakh only) with two sureties along with solvency certificate each for a like sum to the satisfaction of the Principal District Judge, Tirunelveli.
3. That the petitioner shall deposit a sum of **Rs.50,000/-** (Rupees Fifty Thousand only) to the

credit of Crime No.210 /2022 before the learned Principal Sessions Judge, Tirunelveli without prejudice to his rights and contentions before the trial Court.

4. that the petitioner shall deposit the R.C. Book original of Tipper Lorry bearing Registration No. TN 67 BW 6220 on the file of concerned Judicial Magistrate court with direction to apply for and get it back for the purpose of payment of tax and renewal on obtaining appropriate orders from the concerned court and to reproduce the same within the time specified by the concerned Judicial Magistrate court;
5. that the vehicle shall be photographed in the presence of Head Clerk of the Judicial Magistrate Court No.III, Tirunelveli under a Mahazar at the cost of the petitioner and the petitioner's signature to be obtained in the backside of each photographs and copy of photograph, C.D., shall be kept in the case bundle;
6. That the petitioner shall not effect any change or alteration in the physical features of the Tipper Lorry bearing Registration No. TN 67 BW 6220 without the permission of the court;
7. that the petitioner shall not effect any transfer by way of sale or alienation, mortgage, pledge or hypothecation of the said vehicle until further orders; and
8. that the petitioner shall produce the vehicle as and when directed by the trial court.
9. that if any deviations found on the part of the petitioner in complying the above conditions action will be taken against the estate of the sureties of the petitioner;

Dictated to the steno-typist, directly typed by her in computer, corrected and pronounced by me, this the 09th day of November 2022.

Sd/- S.KUMARAGURU,
PRINCIPAL SESSIONS JUDGE,
TIRUNELVELI.
09.11.2022.

List of exhibits marked on the petitioner's side:

Ex.P.1	Copy of First Information Report in Cr.No.210/ 2022 of Tirunelveli Taluk P.S.
Ex.P.2	Copy of Registration Certificate of the Tipper Lorry bearing Registration No. TN 67 BW 6220
Ex.P.3	Copy of insurance of the vehicle bearing Registration No. TN 67 BW 6220
Ex.P.4	Copy of Adhaar Card of the petitioner

Sd/- S.KUMARAGURU,
PRINCIPAL SESSIONS JUDGE,
TIRUNELVELI.
09.11.2022

To

The Judicial Magistrate No.III, Tirunelveli
The Inspector of Police, Tirunelveli Taluk P.S.,
The Counsel for the petitioner.