



W.P.(MD).No.16269 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.07.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.16269 of 2023

Siva

... Petitioner

Vs.

1.The State represented through,
Additional Superintendent of Police,
Prohibition Enforcement Wing,
Tirunelveli District.

2.The Inspector of Police,
Kallidaikurichi Police Station,
Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to release the petitioner's new vehicle (Bajaj Platina) bearing Engine No. PFXWPA36962 and Engine chassis No.MD2A76AXXPWA13678 based on the representation dated 16.06.2023 and 26.06.2023, within a stipulated time may be fixed by this Court.

For Petitioner : Mr.S.Balasubramanian

For Respondents : Mr.M.Ramesh,
Government Advocate.



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ORDER

This Writ Petition is filed directing the respondents to release the petitioner's new vehicle (Bajaj Platina) bearing Engine No. PFXWPA36962 and Engine chassis No.MD2A76AXXPWA13678 by considering the representation dated 16.06.2023 and 26.06.2023.

2. The petitioner claims to be the owner of the two wheeler namely, New Bajaj Platina bearing Engine No. PFXWPA36962 and Engine chassis No.MD2A76AXXPWA13678. He had used the vehicle for his own work and it appears that on 13.06.2023, while regular vehicle checkup, the petitioner's two wheeler was stopped and during the search, the police officials seized 7 bottles of golden choice brandy (each 180 ml). Subsequently, a case was registered against the petitioner in Crime No.123 of 2023 dated 13.06.2023 for the alleged offences under Section 4(1)(a) of Tamil Nadu Prohibition Act.

3. The petitioner would submit that the confiscating proceeding is pending before the first respondent and the petitioner is facing criminal action. The contention of the petitioner is that as per G.O.Ms.No.14, H.P and EVI



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Department, dated 09.06.2017, a person has a right to possession for personal consumption of 4.5 liters Indian made foreign spirits, foreign liquor 4.5 liters, beer 7.8 liters and wine 9.0 liters. Since the petitioner is coming within the prescribed limit, he was not involved in the crime. He had requested vide his representations dated 16.06.2023 and 26.06.2023 for the release of the vehicle. However, no action has been taken in this regard and therefore, he has come forward with the above writ petition.

4. The respondents on instructions submitted that the preliminary investigation has been completed and the vehicle is yet to be confiscated. However, the learned counsel appearing for the respondents vehemently objected for granting such relief to the petitioner by stating that the petitioner is having 10 previous cases. The respondents submitted that even though the liquor is within permissible limits, the petitioner is repeatedly indulging in carrying the liquors and this would indicate that the petitioner is not using for his own use but he is selling the liquor. But the same was refuted by the petitioner by stating as per the Tamil Nadu Liquor (Possession of Personal Consumption), Rules 1996, the individual is permitted to possessed for personal consumption of 4.5 liters Indian made foreign spirits, foreign liquor



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4.5 liters, beer 7.8 liters and wine 9.0 liters. The respondents have seized only 180ml only. Since it is within the permitted limit, the objection submitted by the respondents cannot be entertained.

5. This Court is of the considered opinion, if the Government is running liquor shops under TASMAC, then such plea of the respondents cannot be entertained. Each and every case against the petitioner ought to be analyzed based on its own merits. When the Tamil Nadu Liquor (Possession for Personal Consumption) Rules, 1996 permits to carry any liquor below the permissible limits, the plea of the respondents that the petitioner is carrying the liquor for sale ought to be decided in the criminal case and not under Article 226 of the Constitution of India. Therefore, this Court is inclined to impose the cost of Rs.5,000/- (Rupees Five Thousand only) to the petitioner.

6. Considering the above, this Court directs the second respondent to release the two wheeler namely, New Bajaj Platina bearing Engine No. PFXWPA36962 belonging to the petitioner subject to the following conditions:-



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a) the petitioner shall execute a bond for a sum of Rs.5,000/- (Rupees Five Thousand only) in favour of the first respondent within a period of two (2) weeks from the date of receipt of a copy of this order along with an unconditional undertaking that he shall produce the vehicle as and when required till the completion of the confiscation proceedings;

and

b) the petitioner shall extend all cooperation for the enquiry to be conducted by the respondents;

7. With the above directions, this Writ Petition is allowed. There shall be no order as to costs.

05.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr



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To

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- 1.The Additional Superintendent of Police,
Prohibition Enforcement Wing,
Tirunelveli District.
- 2.The Inspector of Police,
Kallidaikurichi Police Station,
Tirunelveli District.



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S.SRIMATHY, J.

Nsr

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