

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.06.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.12075 of 2016

Santhosh Kumar

.. Petitioner

Vs

The State rep. by
The Inspector of Police,
J-1, Saidapet Police Station,
Chennai-15.

.. Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to modify the condition imposed by Hon'ble VI Additional Sessions Judge, Chennai in Crl.R.C.No.7 of 2016 dated 31.03.2016 with respect of deposit sum of Rs.1,00,000/- cash and surrender original RC book of auto rickshaw bearing registration No.TN-04-AP-4089 and release the auto rickshaw.

For Petitioners : Mr.K.S.Suresh

For Respondent : Mr.C.Emalias, APP

O R D E R

This petition has been filed to modify the conditional order dated 31.03.2016 in Crl.R.C.No.7 of 2016 passed by the learned VI Additional Sessions Judge, Chennai.

2. Heard the learned counsel for the petitioner; learned Additional Public Prosecutor appearing for the respondent and perused the materials placed on record.

3. It is seen that this petitioner is the owner of an auto rickshaw bearing registration No.TN-04-AP-4089, which was given to one Francis on hire and it is alleged that on 07.02.2016, a passenger was carrying 110 grams of Ganja in the auto rickshaw, which was intercepted by the respondent police and a case in crime No.248 of 2016 has been registered. The passenger by name Pondy [A1] and Francis [A2], Auto rickshaw driver were arrested and the auto rickshaw was also seized. The petitioner being the owner of the auto rickshaw filed an application in Crl.M.P.No.386 of 2016 under Section 451 Cr.P.C. before the learned IX Metropolitan Magistrate,

Saidapet and it was dismissed by the learned Magistrate. Aggrieved by which, the petitioner filed CrI.R.C.No.7 of 2016 before the learned VI Additional Sessions Judge, Chennai.

4. The learned Judge, by order dated 31.03.2016 in CrI.R.C.No.7 of 2016, has ordered the return of the auto rickshaw to the petitioner on certain conditions of which, the petitioner is aggrieved by the condition Nos.2, 3 and 4 as follows:

"[2] The petitioner shall deposit a sum of Rs.1,00,000/- along with personal bond for a sum of Rs.50,000/- with two sureties of like sum to the satisfaction of the learned Magistrate.

[3] The petitioner shall surrender the original RC book and the learned Magistrate is at liberty to return the RC book for renewal of the investigation or for insuring the vehicle. The RC book can be obtained from the court by filing a petition and after the accomplishment of the purpose, the same should be returned to the court.

[4] The petitioner shall also file an affidavit of undertaking to the effect that

[a] he will not alienate the vehicle without obtaining an order from the learned Magistrate

[b] he will produce the said vehicle before the court as and when summons to produce the same and

[c] no major alteration excepting the necessary repairs to make the vehicle road worthy shall be made."

5. It is contended by the learned counsel for the petitioner that the very value of the auto rickshaw is only around Rs.1,00,000/- and the driver of the auto rickshaw has misused the same for which, the petitioner should not be mulcted with such onerous condition.

6. In this case, the quantity of Ganja involved, is small quantity, which has been carried by a passenger. The contraband has been seized and the auto rickshaw is not the subject matter of the offence, but, it is only a piece of evidence that may be required for proving the offence. It will be an unfair condition to make the petitioner to deposit Rs.1,00,000/- in a case of this nature. The owner of the auto rickshaw cannot be penalised, for the sin of the hirer.

7. Taking into consideration the facts and circumstances of the case, this Court is of the view that it will be in the interest of justice, if condition Nos.2, 3 and 4 are deleted and in its place, this Court imposes the following conditions :

[2] The petitioner shall execute a personal bond of Rs.25,000/- with two sureties to the satisfaction of the IX Metropolitan Magistrate, Saidapet, Chennai.

[3] The learned Magistrate shall take a photocopy of the RC book and attest the same. The attested photocopy of the RC book can be marked during trial and the original RC book be returned to the petitioner. The petitioner shall take photograph of the auto rickshaw, in the presence of the Magistrate and the photograph shall be certified by the Magistrate with the seal.

[4] After handing over the auto rickshaw, the respondent shall record the statement of the petitioner under Section 161[3] Cr.P.C. to the effect that he is the owner of the auto rickshaw and by the orders of this Court, he has taken possession of the auto rickshaw and that he will come and give evidence, as and when he is required before the trial Court. On the compliance of the aforesaid conditions, there can be no prohibition for the petitioner to alienate the auto rickshaw. A copy of this order, photograph and the certified photocopy of the RC book can also be marked during trial in order to prove the fact that the auto rickshaw has been returned to the petitioner on the orders of this Court.

With the above direction and modification, this petition is partly allowed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The VI Additional Sessions Judge,
Chennai.

2.The IX Metropolitan Magistrate,
Saidapet.

3.The Inspector of Police,
J-1, Saidapet Police Station,
Chennai-15.

4.The Public Prosecutor,
High Court, Madras.

1 cc to Mr.K.S.Suresh, Advocate, sr.31648

CRL.OP.No.12075 of 2016

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