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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.23035 of 2021

T.Indira Kumar

... Petitioner

Vs.

1.The Additional Superintendent of Police,
Prohibition Enforcement Wing,
Thiruvarur,
Thiruvarur District.

2.The Inspector of Police,
Prohibition of Enforcement Wing,
Thiruvarur Police Station,
Thiruvarur District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the second respondent to release the petitioner's vehicle by branding name Cheverolet Sant Grey under registration No.TN-65-T-2727 pending confiscation proceedings on the file of the first respondent in connection with First Information Report in Crime No.728 of 2021, on the file of the second respondent.

For Petitioner : Mr.S.Ponmozhi

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor

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O R D E R

This Writ Petition is filed to direct the second respondent to release the petitioner's vehicle by branding name Cheverolet Sant Grey under registration No.TN-65-T-2727 pending confiscation proceedings on the file of the first respondent in connection with First Information Report in Crime No.728 of 2021, on the file of the second respondent.

2.The 2nd respondent seized the vehicle in Crime No.728 of 2021 finding that on 02.09.2021, the petitioner's vehicle was involved in offences under Sections 4 (1) (aaa) and 4(1-A) of the Tamil Nadu Prohibition Act. The complaint is that when



the 2nd respondent along with his team was keeping surveillance watch over the prohibition offenders, at that time, near E.B. Junction, Thiruvarur District, they saw a Cheverolet Sant Grey Car bearing Registration No. TN-65-T-2727. From the above said Cheverolet Sant Grey Care, liquor bottles were seized. Finding that the vehicle was involved in prohibition offence, the vehicle was seized later and produced in the police station.

3.The contention of the petitioner is that the seized vehicle of the petitioner is now kept in open, in the police station exposing to vagaries of weather, and the vehicle is kept idle. The value of the vehicle is diminished and continuing to keep the vehicle in open would make the vehicle unusable. The respondent police not followed the instructions contemplated in G.O.Ms.No.39,(Home), Prohibition and Excise (VII) Department, dated 22.10.2019. The respondents failed to follow Section 14(4) of the Tamil Nadu Prohibition Act.

4.In view of the same, the questioning of detaining the vehicle and auctioning the same, without any confiscation does not arise. The vehicle has also not been produced before the lower Court as a case property. The petitioner, further relied upon the judgment of this Court in W.P.(MD).No.12769 of 2020 (Selvaraj Vs. The Superintendent of Police, Trichy District, Trichy) dated 28.09.2020, wherein, in similar circumstances, this court had passed an order granting interim custody of the vehicle.

5.The learned Additional Public Prosecutor submits that in this case, the vehicle, though was seized by the respondent police on 02.09.2021, the vehicle is yet to be produced before the lower court as a case property in Crime No.728 of 2021, but the seized liquor bottles were produced. The vehicle was not produced, since they are contemplating to initiate confiscation proceedings. He further submits that the 2nd respondent sent the communication to the Additional Superintendent of Police, Thiruvarur, to initiate the confiscation proceedings, but yet to receive any orders from the Additional Superintendent of Police.

6.The learned counsel for the petitioner submits that he is not aware about the confiscation proceedings, no notice served to him, finding that the vehicle seized in the month of September 2021 and so far, the vehicle neither produced before the lower court, nor confiscation proceedings initiated. Only now request made to the Additional Superintendent of Police. It is made clear that it is open to the respondents to initiate and conclude the confiscation proceedings interim custody of the vehicle alone granted this court in an identical situation had directed release the seized vehicle and handed over to the petitioner. The respondents to release the said vehicle subject to the following conditions:-



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"a.The petitioner is directed to pay a sum of Rs.5,000/- (Rupees Five Thousand only) in favour of the Legal Service Authority, Thiruvarur. It will be a non-refundable payment. The Legal Service Authority is directed to spend the amount for appropriate welfare activities.

b.The petitioner to file an undertaking affidavit to the respondents.

c.The petitioner shall not alienate or encumber the vehicle in question till the proceedings are completed.

d.The petitioner shall produce all the documents pertaining to the ownership of the seized vehicle, produce the original, handover the self attested photostat copy. The respondents to return the originals.

e.As and when the respondents call for the vehicle for enquiry, the petitioner has to produce the vehicle in question and he shall cooperate with the enquiry to be conducted by the respondents.

7.Upon completion of these formalities, the respondents shall release the vehicle forthwith without any delay. If this undertaking given by the petitioner is breached, the petitioner will not be entitled to interim release of the vehicle in future. Accordingly, the writ petition is allowed. However, there shall be no order as to costs.

8.It is made clear that it is only the interim measurement subject to the outcome of the confiscation proceedings.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Superintendent of Police,
Prohibition Enforcement Wing,
Thiruvarur,
Thiruvarur District.



2.The Inspector of Police,
Prohibition of Enforcement Wing,
Thiruvarur Police Station,
Thiruvarur District.

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3.The Public Prosecutor,
High Court, Madras.

Copy to:

The SECRETARY,
Legal service Authority,
Thiruvarur.

+1 cc to Mr.S.Ponmozhi, Advocate Sr.NO. 55634

W.P.No.23035 of 2021

VSN II (CO)

A.SK(26.11.2021)