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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.24350 of 2021

K.Usha

...Petitioner

Versus

1. The Deputy Superintendent of Police,
Prohibition Enforcement Wing,
Hosur,
Krishnagiri District.

2. The Inspector of Police,
Prohibition Enforcement Wing,
Hosur,
Krishnagiri District.
Crime No.360 of 2021

...Respondents

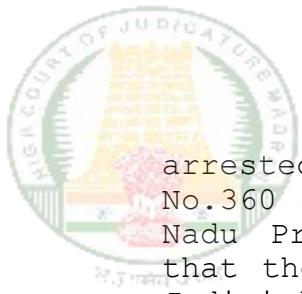
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Director, specifically Writ in the nature of WRIT OF MANDAMUS directing the respondents to release the petitioner's vehicle namely, Toyota Etios Car bearing No.KA 03 MU 0949 which was seized by second respondent in Crime No.360 of 2021 immediately.

For Petitioner : Mr.C.Munusamy
For Respondents : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

This Writ Petition has been filed to direct the respondents to release the petitioner's vehicle namely Toyota Etios Car bearing registration No.KA 03 MU 0949, which was seized by 2nd respondent in Crime No.360 of 2021.

2.The learned counsel for the petitioner submitted that the petitioner is the owner of the vehicle bearing registration No.KA 03 MU 0949. The petitioner's vehicle entrusted to his driver Mathiyazhagan for work. When the vehicle was intercepted and checked near Jijivadi check post, Hosur by the 2nd respondent Police, 240 bottles of 180 ml (KA) 8 PM Wishky were found and the same were seized. Thereafter, the driver of the vehicle was



arrested along with contraband and FIR was registered in Crime No.360 of 2021, for offence, under Section 4(1)(a) of the Tamil Nadu Prohibition Act. The learned counsel further submitted that the seizure of the vehicle was not informed to the learned Judicial Magistrate No.II, Hosur. He further submitted that during confiscation proceedings, show cause notice to be issued to the noticee, reply of noticee to be considered and thereafter only, orders to be passed. In this case, neither the confiscation proceedings initiated, nor the vehicle of the petitioner produced before the learned Judicial Magistrate No.II, Hosur. On the other hand, the vehicle detained in the 2nd respondent Police Station exposing to vagaries of weather and thereby, the value of the vehicle is getting diminished.

3.He further submitted that in this case, the confiscation authority has not followed the procedure and principle of natural justice. The vehicle has not produced before the lower Court as a case property. In support of his submissions, the learned counsel for the petitioner relied on 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.

4.The learned Additional Public Prosecutor appearing for the respondents submitted that when the vehicle of the petitioner was intercepted near Jijivadi Check Post, Hosur by the 2nd respondent Police, 240 bottles of 180 ml (KA) 8 PM Wishky were found and the same were seized, driver of the vehicle arrested along with contraband, FIR was registered in Crime No.360 of 2021, for offence, under Section 4(1)(a) of the Tamil Nadu Prohibition Act, 1937.

5.It is seen that the vehicle of the petitioner seized in the month of May 2021 and till date the vehicle neither produced before the lower Court, nor confiscation proceedings initiated. The vehicle has been kept in open place, exposing to vagaries of weather.

6.It is open to the respondents to initiate and conclude the confiscation proceedings. Till such time, this Court is inclined to grant interim custody of the vehicle to the petitioner. Earlier, this court in a similar situation, had granted interim custody of the vehicle to its owner.

7.In view of the above, the 2nd respondent is directed to release the vehicle of the petitioner viz., Toyota Etios Car bearing registration No.KA 03 MU 0949 subject to the following conditions:-



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

(ii)The petitioner shall not alienate or encumber the vehicle in question till the completion of the confiscation proceedings.

(iii)The petitioner shall produce all the documents pertaining to the ownership of the seized vehicle to the 2nd respondent.

(iv)The petitioner has to produce the vehicle in question as and when required by the 2nd respondent and he shall cooperate with the enquiry to be conducted by the 2nd respondent.

8.Upon completion of those conditions, the 2nd respondent 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, this Writ Petition is allowed. No costs.

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

Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Superintendent of Police,
Prohibition Enforcement Wing,
Hosur,
Krishnagiri District.
2. The Inspector of Police,
Prohibition Enforcement Wing,
Hosur,
Krishnagiri District.



3. The Secretary Legal Services Authority
Krishnagiri.

4. The Public Prosecutor,
High Court, Madras.

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NSK 24/11/2021