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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2022

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THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No.403 of 2022

M.Neelakandan ...Petitioner/Petitioner/Owner of the Vehicle

Vs.

The State Rep. by  
The Inspector of Police,  
Panamarathupatty Police Station,  
Salem District.  
(Crime No.78 of 2021)

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 397 & 401 of Cr.P.C., to set aside the order passed in C.M.P.No.22 of 2022 in Spl.C.C.No.57 of 2021 on the file of the learned Additional District Judge and Presiding Officer, Special Judge for EC/NDPS Act Cases, Salem dated 15.02.2022.

For Petitioner : Mr.B.Gopalakrishnan

For Respondent : Mr.Leonard Arul Joseph Selvam,  
Government Advocate(crl.side)

O R D E R

This Criminal Revision Petition has been filed praying to set aside the order dated 15.02.2022, passed in C.M.P.No.22 of 2022 in Spl.C.C.No.57 of 2021 by the learned Additional District Judge and Presiding Officer, Special Judge for EC/NDPS Act Cases, Salem, and to pass a positive order to hand over the petition mentioned vehicle for interim custody to the petitioner.

2. The case of the petitioner is that he is arrayed as accused in Crime No.78 of 2021, registered for the offences under Sections 8(c) r/w 20(b)(ii)(B) 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (herein after called to as "the NDPS Act). In connection with the said case, the respondent police seized the petitioner's vehicle (Swift Dzire Car) bearing registration No.TN24 AL 9542 and after made recovery, the same was produced before the jurisdictional Court, where the said car was received as case property in C.P.No.80 of 2021.



3. In the said circumstance, the petitioner herein filed an application before the trial Court under Section 451 of Cr.P.C., seeking the relief of interim custody of the said Swift Dzire car. However, the trial Court by an order dated 15.02.2022 dismissed the application stating that if the property is returned to the petitioner for interim custody, he may be involved in the similar offences. Challenging the said impugned order, the petitioner is before this Court with the present Criminal Revision Case.

4. Heard the learned counsel appearing on either side and perused the materials on record.

5. It is not in dispute that the petitioner is the owner of the petition mentioned Swift Dzire car. Further the contention raised by the learned Government Advocate (Crl. Side) appearing for the respondent police is that the said car was used for transporting ganja weighing about 6 Kg. Further as of now the case is under investigation and the trial has not been started. Only after concluding the trial, it can be decided whether the petition mentioned case has been used for transporting the prohibited contraband with the knowledge of the petitioner or not. Of course, if the contraband was transported by using the service of the car with the knowledge of the revision petitioner, there may be a chance for passing an order to confiscate the said vehicle.

6. In this regard, Section 60 of the NDPS Act prescribed the procedure in respect of the confiscation, as under :-

"60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.-1 [(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.]

(2) Any narcotic drug or psychotropic substance lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance 2 [or controlled substances] which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance, materials, apparatus or utensils



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liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance 2 [or controlled substances], or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use."

Accordingly, the said Section prescribed the procedure for confiscation, wherein the material objects which are recovered as used in the commission of offence is liable for confiscation. Further, Section 60 (3) of the NDPS Act prescribes the procedure that only in the circumstance that the petitioner shown his innocence by way of proving his case that the alleged offence had happened without his knowledge, then only he becomes eligible for getting the property to his custody.

7. In the said situation, being the reason that the petitioner is arrayed as accused in the petition mentioned case, if the property is handed over to him for interim custody, there may be a chance for tampering the evidence. Accordingly, I am of the opinion that the impugned order passed by the learned Special Judge is within the frame work of the NDPS Act and therefore, this is not a time to return the vehicle for interim custody.

8. In view of the above discussion, this Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

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To

1.The Additional District Judge  
and Presiding Officer,  
Special Judge for EC/NDPS Act Cases,  
Salem .

2.The Inspector of Police,  
Panamarathupatty Police Station,  
Salem District.

3.The Public Prosecutor,  
High Court of Madras.

Copy To

The Section Officer,  
Criminal Section,  
High Court, Madras.

+1cc to Mr.B.Kumarasamy, Advocate SR.No.21453

Cr1.RC.No.403 of 2022

SKM(CO)  
GMY(12/04/2022)