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Crl.R.C.No.1528 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.1528 of 2022

Jeevarathinam M/28 Years,
S/o Raja

... Petitioner

Vs..

State: rep. by the Inspector of Police,
K-10, Koyembedu Police Station,
Chennai.

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order passed by the learned Principal Special Court under EC & NDPS Act at Chennai in Crl.M.P.No.425 of 2022 dated 10.08.2022 and return the Tata Ace Vehicle bearing No.TN 10 AD 6744 seized in Cr.No.871 of 2019 on the file of the respondent.

For Petitioner : Mr.P.John Sundar Jabez **S.Kartik**

For Respondent : Mr.V.Meganathan
Gov. Advocate (Crl.Side)



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ORDER

This Criminal Revision Petition has been filed to set aside the order passed by the learned Principal Special Court under EC & NDPS Act at Chennai in Crl.M.P.No.425 of 2022 dated 10.08.2022 and return the Tata Ace Vehicle bearing No.TN 10 AD 6744 seized in Cr.No.871 of 2019 on the file of the respondent.

2. The case of the petitioner in brief is as follows:

The petitioner is the owner of the vehicle viz., TATA ACE bearing Registration No. TN 10 AD 6744. The respondent police registered a case in Crime No.871 of 2019 for the offences punishable under Sections 8(c) r/w 20(b)(ii) (B) and 25 of NDPS Act against one Ajith Kumar, since he was found in possession of 1.100 kgs Ganja in the above said vehicle. The accused was arrested and the vehicle was seized and the same was produced before the Trial Court in B.No.55/2019 dated 17.09.2019. The case was taken on file as C.C.No.166 of 2019 by the Principal Special Court under



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EC & NDPS Act, Chennai. The petitioner filed a petition in Crl.M.P.No.425 of 2022 to return the Vehicle, and the same was dismissed by the Trial Court. Hence this Revision Petition.

3. The learned counsel for the petitioner submitted that, no case was registered against the petitioner and the vehicle was not used for transporting the contraband and it was found only in possession of the accused. The Trial Court dismissed the petition mainly on the ground that, the said vehicle is required for marking it as material object during the evidence of Investigating Officer. He further submitted that the vehicle is under custody of the Trial Court from the year 2019 and if the vehicle is being kept idle for long period, it became junk day by day, which would cause great hardship and loss to the petitioner. He further submitted that, the Chassis and engine numbers are very much available in the vehicle and for identification of the vehicle, photograph may be taken and it can be used, while marking as material objects. To support his contention, he relied upon a decision of the *Hon'ble Supreme Court in Sunderbhai*



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Ambalal Desai and others Vs. State of Gujarat in Special Lave Petition

(Crl.)2745 of 2022 dated 01.10.2002. He further submitted that the petitioner will give an undertaking that he will not alienate the vehicle and will produce, as and when required before the Court below. Hence, as per the ratio laid down by the Hon'ble Supreme Court, the vehicle may be ordered to return the petitioner.

4. The learned Government Advocate (Crl.Side) appearing for the respondent objected to release the vehicle stating that the vehicle was used to commit an offence under NDPS Act, which is serious in nature. He further submitted that in the above case, already witnesses were examined and now, it is pending for examination of Investigating Officer and hence, the vehicle is necessary for marking as Material Object before the Trial Court and if the vehicle is released, it would affect the prosecution case. He further submitted that, in that case, none appeared on behalf of the accused before the Trial Court and hence, NBW was issued against him. Therefore, he prayed for dismissal of the revision petition.



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5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent and I have perused the materials on record.

6. A perusal of the records reveals that, a case in Crime No.871 of 2019 was registered for the offences punishable under Sections 8(c) r/w 20(b)(ii)(B) and 25 of NDPS Act against one Ajith Kumar, who was found in possession of 1.100 kg Ganja and used the vehicle TATA ACE bearing No. TN 10 AD 6744, belongs to the petitioner herein. The vehicle was produced before the Trial Court in B.No.55/2019 dated 17.09.2019 and now the vehicle is under custody of the Trial Court.

7. Earlier, the petitioner filed a petition in Crl.M.P.No.2175/2019 for return of vehicle and it was dismissed by the Trial Court. Against which, he filed a Criminal Revision Petition before this Court in Crl.R.C.No.1223 of 2019, which was also dismissed on the ground that " at the time of seizing



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of the vehicle by the prosecution, the engine and chassis number had been erased to avoid fixing the owner of the vehicle".

8. It is the contention of the counsel for the petitioner before the Trial Court in Crl.M.P.No.425/2022 that, the engine and chassis numbers are very much available in the vehicle and they tallies with the numbers available in the RC Book. Since the chassis number was not clear in the photograph filed by the petitioner, the Trial Court deputed Mr.Mohan, Junior Assistant of the Court to personally inspect the vehicle to note down the engine and chassis number with due photographs, who also inspected the same along with the respondent police and filed a report before the Trial Court. However, the Trial Court has dismissed the petition on the ground that the vehicle is required to mark as material object during Trial.

9. At this juncture, it is relevant to extract the relevant portion of the decision of the Apex Court in **Sunderbhai Ambalal Desai case**, as stated supra, relied upon by the learned counsel petitioner.



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Vehicles

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

*18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company, then insurance company be informed by the Court to take possession of the vehicle, which is not claimed by the owner or a third person. If insurance Company fails to take possession the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. **In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchanama should be prepared.***

Therefore, as per the ratio laid down by the Hon'ble Apex Court, the Trial Court may take photograph of the vehicle, identified by the parties, before handing over possession, and it can be used for marking as material object.



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As such, this Court is of the view that, keeping the vehicle in the open space, will diminished its nature and it lost its value and hence, this Court is inclined to allow the Revision Petition.

10. Accordingly, this Criminal Original Petition is allowed and the impugned order passed by the Trial Court is set aside. The Trial Judge is directed to take photograph of the vehicle and return the same to the owner of the vehicle on the following conditions.

- i. the petitioner shall prove his ownership of the vehicle by producing the R.C.Book and other relevant records;
- ii. the petitioner shall not alienate or encumber the vehicle in any manner;
- iii. the petitioner shall execute a bond for a sum of Rs.20,000/- (Rupees twenty thousand only) before the Principal Special Judge, Special Court for E.C & NDPS Act, Chennai.
- iv. the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future,
- v. the petitioner shall take photograph of the vehicle; and



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vi.the petitioner shall also produce the vehicle as and when required before the court below and before the respondent police.

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Index: Yes/No
Internet: Yes/No
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To

The Principal Special Judge under EC and NDPS Act,
Chennai.



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V.SIVAGNANAM, J.,

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