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Crl.R.C.No.188/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.02.2023

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THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.NO.188 OF 2023

Gaikwat

... Petitioner

Vs

The State, represented by the  
the Inspector of Police,  
B-4 Sevvapet Police Station,  
Crime No.275 /2022)

... Respondent

Prayer: Criminal Revision Petition filed under section 397 r/w.401 Cr.P.C.,to set aside the dismissal order passed by the learned Principal Special Judge, (NDPS and EC Act) at Chennai in Crl.M.P.No.6496 of 2022, dated 15.12.2022 and further direct the learned Principal Special Judge (NDPS and EC Act), Chennai to return the petitioner's three wheeler bearing Regn. No.TN-05-BW-2287 PIAGGIO Vehicles Pvt. Ltd., ABE City LPG DLX, G-Yellow to the petitioner.

For Petitioner : Mr.S. Senthilkumar

For Respondent : Mr.V. Meganathan,  
GA (Crl.side)



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## **ORDER**

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This Criminal Revision case has been filed challenging the order of dismissal dated 15.12.2022 passed by the Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai – 104 in Crl.M.P.No.6496 of 2022 filed under sections 451 and 457 of Cr.P.C. seeking interim custody of the vehicle viz., three wheeler bearing Regn. No.TN-05-BW-2287 PIAGGIO Vehicles Pvt. Ltd., ABE City LPG DLX, G-Yellow

2. The learned counsel for the petitioner contended that the petitioner is the owner of the auto seized by the respondent police for the alleged illegal transportation of 1 kg 200 grms of Ganja from the accused persons. A case was registered by the respondent for the offence under section 8(c), 20 (b) (ii) (B), 25, 29(1) of NDPS Act on 24.08.2022 in Cr.No.275/2022. Pursuant to which, the vehicle bearing Regn. No.TN 05 BW 2287 was seized by the respondent police and produced before the court below in B.No.272 of 2022 on 03.10.2022. He further submitted that the petitioner is not an accused in this case and he only rented his auto to his friend and the vehicle also not involved in similar type of any previous cases. In such circumstances, he seeks to grant interim



custody of the vehicle to the petitioner.

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3. Further, the learned counsel for the petitioner submitted that no purpose will be served in keeping the vehicle under the custody of respondent police and if the vehicle is kept for a long time in the open space, it would cause damage to the vehicle. The petitioner is ready to give appropriate guarantee as well as security for return of vehicle and also he will produce the vehicle, as and when required either before the respondent police or before the trial court. Hence, he prayed to return the vehicle and he is ready to obey any condition imposed on him by this Court.

4. The learned Government Advocate (crl.side) for the respondent objected to return the vehicle to the petitioner and submitted that the petitioner is not arrayed as an accused in this case and there is no previous case against this petitioner and the vehicle is not involved in the similar type of case previously.

5. I have considered the submissions made by the learned counsel for the



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petitioner as well as the learned Government Advocate (crl.side) for the respondent.

6. Perusal of records would reveal that on 24.08.2022, on receiving secret information about the illegal sale of Narcotic substances at Mahalakshmi Nagar, the respondent police went to scene of occurrence and found 5 persons in house and immediately caught hold of the accused persons. On enquiry of A1 to A5 and search, they found that A1 is found in possession of 1.200 kgs of Ganja and seized the contraband from the vehicle bearing Regn. No.TN 05 BW 2287 . Immediately they seized the above said vehicle and registered a case under sections 8(c), 20 (b) (ii) (B), 25, 29(1) of NDPS Act on 24.08.2022 in Cr.No.275/2022. The petitioner is the owner of the above said vehicle and he is not an accused in Crime No.577 of 2022. Further the vehicle was not involved previously in similar type of offences.

7. Perusal of records would further reveal that the petitioner is only the owner of vehicle and he is not arrayed as accused in this case and the petitioner is ready to give guarantee and security for returning the vehicle. If the vehicle is



being kept in an open space, it would cause damage to the vehicle and the value of the vehicle is diminished and continuing to keep the vehicle in open air would make the vehicle unusable.

8. At this juncture, it is relevant to rely upon a decision of the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai and others Vs .State of Gujarat in Special Leave Petition (crl.) 2745 of 2022** dated 01.10.2002 and relevant portion is extracted hereunder;

*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***



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*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, this Court is of the view that keeping the vehicle idle in the open space, will diminish its nature and lose its value and no purpose will be served. As such, considering the nature of offence and also taking into account the fact that the vehicle is not involved in any other case similar in nature previously, this Court is inclined to allow the Criminal Revision Case.

9. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 09.12.2022 passed in Crl.M.P.No.6025 of 2022 by the Principal Special Judge under EC & NDPS Act, Chennai is set aside. The trial court is directed to return the vehicle three wheeler bearing Regn. No.TN-05-BW-2287 PIAGGIO Vehicles Pvt. Ltd., ABE City LPG DLX, G-Yellow to the owner of the vehicle on the following conditions.



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- 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.1,50,000/-(Rupees one lakh and fifty thousand only) before the Principal Special Court under EC & NDPS Act, Chennai – 104.
- 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
- vi.the petitioner shall also produce the vehicle as and when required before the court below and before the respondent police.

20.02.2023

msr

Index: yes/no

Internet:yes/no



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V. SIVAGNANAM, J.

msr

To

1. The Inspector of Police,  
B-4 Sevvapet Police Station,
2. The Principal Special Judge, Principal Special  
Court under EC & NDPS Act,  
Chennai – 104
3. The Public Prosecutor,  
Madras High Court.

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