



Crl.R.C.No.570 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.570 of 2023

Yasar Arabath

... Petitioner

Vs.

State Rep by
The Inspector of police,
H-6, R.K.Nagar Police Station,
Chennai
(Crime No.87 of 2021)

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the order dated 03.02.2023 made in Crl.M.P.No.505 of 2023 on the file of the Special Judge, II Additional Special Court under NDPS Act. Chennai and allow the criminal revision.



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For Petitioner : Mr.S.Jayaprakash

For Respondent : Mr.R.Vinothraja
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Petition has been filed to set aside the order passed by the learned Special Judge, II Additional Special Court under NDPS Act, Chennai in Crl.M.P.No.505 of 2023 dated 03.02.2023 and allow the criminal revision.

2.The learned counsel for the petitioner submitted that the petitioner is the accused(A2) in this case. It is the case of the prosecution that on 04.03.2021, the respondent Police along with their team went to IOC Railway gate, based on the secret information about



illegal sale of Ganja in that area and at that time, they found three persons parking their vehicles in suspicious manner. On seeing the Police, the said accused persons tried to escape from the said place and the respondent-Police caught them and seized the contraband along with their vehicles. Based on the above, the respondent Police registered a case against the petitioner along with other accused on 04.03.2021 in Crime No.87/2021 under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(i) of the NDPS Act. After completion of investigation, the respondent Police filed the final report, which was taken on file by the trial Court in C.C.No.204 of 2021. The petitioner /A2 filed a petition in Crl.M.P.No.505 of 2023 before the trial Court for return of his Auto bearing Registration No.TN-05-BW-2264. The vehicle is now in the custody of the respondent Police.

3.It is the contention of the learned counsel for the petitioner



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that in the Mahazar, the Police wrongly mentioned the Auto Number as TN-05-WB-2264. The learned counsel for the petitioner has produced the copy of deposition of P.W1. During the chief examination of P.W1, the auto was produced by the Police. On verification, they found that it was not tallied with Form 95. However, the trial Court without marking it as evidence dismissed the petition for return of Auto bearing Registration No.TN-5-WB-2264.

4. The learned counsel for the petitioner further submitted that the vehicle is kept for a long time in the open space, it would cause damage to the vehicle. During the pendency of the trial, the Auto will lose its value due to depreciation, if it is kept in a open space. Therefore, the impugned order has to be set aside.

5.The learned Government Advocate (Crl.side) for the



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respondent submitted that in Form-95, the Auto Number mentioned as TN-05-WB 2264. During the trial, the Auto was not marked as evidence on the ground that in Form -95 and in the seizure Mahazaar, the Auto Number mentioned as TN-05-WB-2264 and not TN-05-BW- 2264 .

6.I have considered the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate (Crl.side) for the respondent.

7.On perusal of the records, the fact reveals that the case of the prosecution is that on 04.03.2021, the respondent Police along with their team went to IOC Railway gate, based on the secret information about illegal sale of Ganja in that area and at that time, the respondent-Police seized the contraband and arrested the accused



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persons along with their vehicles. Based on the above, the respondent Police registered a case against the petitioner along with other accused on 04.03.2021 in Crime No.87/2021 under Sections 8(c) r/w 20 (b)(ii)(C), 25 and 29(i) of the NDPS Act. Further, from the submission of the learned counsel for the petitioner and the evidence of P.W1, it is clear that the Auto bearing Registration Number No.TN-05-BW-2264 seized from the petitioner is not mentioned in the Form 95 and in the seizure Mahazar, instead of it was mentioned as No.TN-05-WB-2264. Hence, the petitioner is entitled for interim custody of his vehicle, bearing Registration No.TN-05-BW-2264 .

8.Considering the nature of the case that the petitioner is the owner of the Auto and the petitioner is ready to give guarantee and security for returning the vehicle and if the vehicle is being kept idle in open space, it would cause damage to the vehicle and the value of



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the vehicle is diminished and continuing to keep the vehicle in open air would make the vehicle unusable, this Court is inclined to grant interim custody of the vehicle to the petitioner.

9. 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*** wherein the Hon'ble Supreme Court has held that in order to protect the property, the Apex Court has directed to handover the seized articles to the owner on proper Panchnama.

10. 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



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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.

11. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 03.02.2023 passed in Crl.M.P.No.505 of 2023 by the learned Special Judge, II Additional Special Court under NDPS Act, Chennai is set aside. The learned Judge shall not insist upon the solvency certificate from the petitioner at the time of getting interim custody of the vehicle. The respondent police is directed to return the vehicle to the owner of the vehicle on the following conditions.

- i. the petitioner shall prove his ownership of the Auto bearing Registration No. **TN-05-BW-2264** by producing the R.C.Book and other relevant records;



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- ii. the petitioner shall execute a bond for a sum of Rs.1,00,000/- (Rupees one lakh only) before the learned Special Judge, II Additional Special Court under NDPS Act, Chennai.
- iii. The Court may prepare a panchnama in Judicial Form No.82 with regard to the vehicle and such panchanama can be used in evidence.
- iv. the petitioner may take photograph of the vehicle and certified under Section 65B of the Central At 1 of 1972 and such photographs may be used as secondary evidence.
- v. the petitioner shall not alienate or encumber the vehicle in any manner;
- vi. the petitioner shall give an undertaking that she will not use the vehicle for any illegal activities in future.
- vii. 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
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- 1.The learned Special Judge, II Additional Special Court under NDPS Act, Chennai.
- 2.The Inspector of police,
H-6, R.K.Nagar Police Station,
Chennai
3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

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