



WEB COPY



Crl.R.C.No.293 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2023

CORAM

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.R.C.No.293 of 2023

Thirumalai

... Petitioner

Vs.

State rep by
The Inspector of Police,
D-4, Zam Bazzar Police Station,
Chennai.
Crime No.177 of 2022

... Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the order of dismissal dated 10.01.2023 passed in C.M.P.No.6693 of 2022 by the learned Principal Special Judge, Special Court under EC NDPS Act Cases at Chennai by allowing this Criminal Revision Case.

For Petitioner : Mr.S.Gunasekar

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



Crl.R.C.No.293 of 2023

WEB COPY

ORDER

This Criminal Revision Case is filed to set aside the order of dismissal dated 10.01.2023 passed in C.M.P.No.6693 of 2022 by the learned Principal Special Judge, Special Court under EC NDPS Act Cases at Chennai by allowing this Criminal Revision Case.

2. The learned counsel for the petitioner submitted that the petitioner is A2 in the case registered by the respondent police in Crime No.177 of 2022 for the offences under Section 8(c) r/w.20(b)(ii)(B) of NDPS Act and he was arrested and remanded to judicial custody from 17.11.2022. While, arresting the accused/petitioner, the respondent police had seized his Honda Motorcycle & Scooter Activa 6G DLX bearing Registration No.TN10BQ 2926 since the vehicle was involved in the crime. Hence, the petitioner filed a petition before the Trial Court in Crl.M.P.No.6693 of 2022, seeking interim custody of the vehicle, which was dismissed on the ground that the vehicle had involved in this crime and if the vehicle is returned, the petitioner may involve his vehicle in similar offence. It was unsustainable.



Crl.R.C.No.293 of 2023

Hence, the present Revision petition is filed seeking to set aside the impugned order passed by the Trial Court.

3.The learned counsel further submitted that there was no previous cases as against the petitioner and the vehicle was also not involved in any previous case. Further, 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 had contended that the vehicle had involved in this crime and if the vehicle is returned, the petitioner may involve his vehicle in similar offence and



Crl.R.C.No.293 of 2023

hence, he objected to grant interim custody of the vehicle since the investigation has not been completed in this case.

4. I have considered the submissions made by the learned counsel and perused the materials on record.

5. On a perusal of the records, the fact reveals that the petitioner is A2 in Crime No.177 of 2022. The respondent police registered a case against the petitioner for the offences under Section 8(c) r/w.20(b)(ii)(B) of NDPS Act and he was arrested and remanded to judicial custody on 17.11.2022. The respondent police seized the contraband of 2.300 kgs of Ganja alongwith Ganja amount of Rs.10,200/-, which is of commercial quantity from the petitioner/A2. The Trial Court refused to grant interim custody of the vehicle on the ground that the vehicle had involved in this crime and if the vehicle is returned, the petitioner may involve his vehicle in similar offence. Considering the fact that the petitioner as well as the vehicle is not involved in any similar previous case, and also the petitioner is ready to



Crl.R.C.No.293 of 2023

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 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.

6. 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 the relevant portion is extracted hereunder.

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



Crl.R.C.No.293 of 2023

WEB COPY

*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, 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.

7. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 10.01.2023 passed in Crl.M.P.No.6693 of 2022 by the Principal Special Judge under EC & NDPS Act is set aside. The respondent police is directed to return the vehicle to the owner of the



Crl.R.C.No.293 of 2023

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.80,000/- (Rupees eighty 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.

14.03.2023

dn



Crl.R.C.No.293 of 2023

WEB COPY

To

1.The Principal Special Judge, Special Court under EC & NDPS Act Cases,
Chennai

2.The Inspector of Police,
D-4, Zam Bazzar Police Station,
Chennai.
Crime No.177 of 2022

3.The Public Prosecutor,
High Court of Madras,
Chennai-104.



WEB COPY



Crl.R.C.No.293 of 2023

V.SIVAGNANAM, J.,

dn

Crl.R.C.No.293 of 2023

14.03.2023