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Crl.R.C.No.334 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2023

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THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.334 of 2023

J.Raja

... Petitioner

Vs.

The State rep by the Inspector of Police,
B-3, Kadambathur Police Station,
Tiruvallur District.
(Crime No.76 of 2022)

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to return the vehicle while colour Scorpio VLX car, bearing registration no.TN-02-AT-7099 to the petitioner herein, pending investigation and trial.

For Petitioner : Mr.G.Balachandar

For Respondent : Mr.R.Vinothraja

Government Advocate (Crl.Side)



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ORDER

This Criminal Revision Petition has been filed to return the vehicle while colour Scorpio VLX car, bearing registration no.TN-02-AT-7099 to the petitioner herein, pending investigation and trial.

2.It is the case of the prosecution that on 11.04.2022 at about 23.50 hours, Tr.D.Nadarajan, the then Inspector of Police have received secret information about the illegal transport of dry ganja and entered the same in the General Diary. Then, Tr.Siva, Sub Inspector of Police along with the Police team went to the scene of occurrence i.e.. Kadambathur Railway Station, Chennai. At that time, the accused persons were standing there and when they saw the police, they tried to escape from that occurrence place. Immediately, the police caught hold of the accused persons and during the enquiry, they came to know that the accused persons are namely Dimothi/A3, Sriram/A4, Rohan/A1 and Prithvi/A2. The Sub Inspector of Police informed the accused persons that the procedure of Section 50 of



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NDPS Act. During search, it was found that 15 nos. LSD stamps from A1's Balleno Car bearing reg.no.TN-10-BM-3339 98 and found 10 nos. LSD Stamp, MDMA Tablets-26 Nos, Meth Crystal -1gram from A3's Scorpio Car bearing reg.no.TN-02-AT-7099. Immediately, the Sub Inspector of Police arrested the above said accused A1 to A4 and seized TN-10-BM-3339 Balleno car, TN-10-BK-0159 Pulsar 200 NS, iphone-1 and POCO phone-1 from the accused Rohan/A1 and also seized TN-02-AT-7099 Scorpio Carl/iphone-11 and Redmi phone -1 from the accused Dimothi/A3 and recorded their confession statements as per Section 63 of NDPS Act.

3.The Sub Inspector of Police have seized the above said contraband under the cover of seizure Mahazar in the presence of witnesses. Based on the accused person's [A1 to A4] confession statements, the above said police team went to the Kuyilkuppam nearby Egattur Railway station and searching some more suspected persons, when they saw the police, the accused persons tried to escape from that occurrence place. Immediately the police caught the accused persons. during the enquiry, they came to know



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that the accused persons namely Sachin Saravanan/A5, Vasu/A6, Rahuman/A7, Kowsaruthin/A8 and Eswap/A9. The Sub Inspector of Police informed the accused persons that the procedure of Section 50 of NDPS Act. During the search, the police found 90 Nos. Yaba tablets from A5's Royal Enfield bike bearing reg.no.MH-49-BL- 9851 and also found 1500 nos. Yaba tablets from A7's bags. Immediately. the Sub Inspector of Police have arrested the above said accused A5 to A9 and seized the above said two wheeler, One plus phone-2 nos from the accused namely Sachin Saravanan/A5 and seized Redmi phone-2 nos and Realme-1 from the accused Rahuman/A7 and recorded their confession statements as per Section 63 of NDPS Act. Then, the Sub Inspector of Police has seized the above said contraband under the cover of seizure Mahazar in the presence of witnesses.

4.Based on the above, a case was registered in B-3. Kadambathur Police Station in Crime No.76 of 2022 under Sections 8 (c) r/w.20(b) (ii) (B), 22(b), 22(c) & 25, 29(1) of the NDPS Act, 1985 against A1 to A12 on



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11.04.2022 at about 23.50 hours by Tr.D.Nadarajan, the then Inspector of Police and taken up further investigation of this case.

5. It appears that the petitioner is the owner of the above said vehicle and he filed a petition in Crl.M.P.No.710 of 2023 before the Trial Court to release the vehicle to him. But it was dismissed, vide order dated 13.02.2023 by the Court below considering the nature of offence that the seized contraband is of commercial quantity and also the fact that since investigation is at crucial stage, if the vehicle is returned to the petitioner, it may affect the investigation. challenging the above said order, the petitioner filed the present Revision case.

6.The learned counsel for the petitioner has submitted that the petitioner is not the accused in this case. The petitioner herein is the father of A4/Sriram. The respondent Police registered a case against the accused persons in Crime No.76 of 2022 for the offences alleged under Sections 8 (c) r/w.20(b) (ii) (B), 22(b), 22(c) & 25, 29(1) of the NDPS Act, 1985. The



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petitioner is not having any knowledge about the accused persons and he is not involved in any previous offences as alleged by the prosecution. He further submitted that if the vehicle is kept for a long time in the open space, it would cause damage to the vehicle and its value gets diminished. He further submitted that the vehicle is not involved in any case similar in nature and the petitioner is ready to furnish 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 would urge this Court to order return of the vehicle to the petitioner while setting aside the order passed by the Court below.

7. The learned Government Advocate (Crl.Side) submitted that, the petitioner is the owner of the vehicle namely white colour Scorpio VLX car, bearing registration no.TN-02-AT-7099 and A4 is the son of the petitioner. The petitioner is not involved in any previous cases and he is not the accused in the present case also. Since the above said vehicle was used to transport the Ganga illegally, it was seized and hence, he objected to



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return the vehicle to the petitioner.

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

9. A perusal of the records shows that, a case was registered in B-3. Kadambathur Police Station in Crime No.76 of 2022 under Sections 8 (c) r/w.20(b) (ii) (B), 22(b), 22(c) & 25, 29(1) of the NDPS Act, 1985 against A1 to A12 on 11.04.2022 at about 23.50 hours by Tr.D.Nadarajan, the then Inspector of Police and taken up further investigation of this case. The petitioner is the owner of the above said vehicle and he filed a petition in Crl.M.P.No.710 of 2023 before the Trial Court to release the vehicle to him. But it was dismissed, vide order dated 13.02.2023 by the Court below considering the nature of offence that the seized contraband is of commercial quantity and also the fact that since investigation is at crucial stage, if the vehicle is returned to the petitioner, it may affect the



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investigation and hence, the learned Judge refused to grant interim custody of the vehicle.

10. At this juncture, it is relevant to refer a decision of the Hon'ble Supreme Court in ***“Sunderbhai Ambalal Desai and others Vs. State of Gujarat in Special Lave Petition (Crl.)2745 of 2022 dated 01.10.2002,*** wherein, 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 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



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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 ratio laid down by the Hon'ble Supreme Court, this Court is inclined to allow the Revision Petition.

11. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 13.02.2023 passed by the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai is set aside. 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 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.10,00,000/-



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(Rupees Ten lakhs only) before the learned Principal Special Judge, Special Court under EC & 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
- vi.the petitioner shall also produce the vehicle as and when required before the court below and before the respondent police.

15.03.2023

Index: Yes/No

Internet: Yes/No

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Issue order copy on 27.03.2023.

To

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

2. The Inspector of Police,
B-3, Kadambathur Police Station,
Tiruvallur District.
(Crime No.76 of 2022)

3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,
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