



Crl.R.C.No.456 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 15.03.2023**

**CORAM**

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

**Crl.Rc.No.456 of 2023**

Udhayakumar

... Petitioner

Vs.

The State,  
rep by the Inspector of Police,  
M2, Milk Colony Police Station,  
Madhavaram,  
Chennai.

(Crime No.8 of 2022)

... Respondent

**PRAYER:** Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the order passed by the learned Principal Special Judge, Special Court under EC & NDPS Act Cases, Chennai in Crl.M.P.No.4490 of 2022 dated 22.09.2022 and to order return of motorcycle/bike bearing its registration no.TN18 BB 8642 and bearing its model name as YAMAHA FASCINO in Crime no.8 of 2022, which is pending on the file of respondent Police.

For Petitioner : Ms.R.S.Indira

For Respondent : Mr.R.Vinothraja

Government 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 Judge, Special Court under EC & NDPS Act Cases, Chennai in Crl.M.P.No.4490 of 2022 dated 22.09.2022 and to order return of motorcycle/bike bearing its registration no.TN18 BB 8642 and bearing its model name as YAMAHA FASCINO in Crime no.8 of 2022, which is pending on the file of respondent Police.

2.It is the case of the prosecution that on 06.01.2022 at about 12.00 hours, when Tr.Saravanan, the then Sub Inspector of Police was in station duty, at that time received a secret information about illegal transport of Narcotic Substances, and after receiving the secret information, he along with his Police Team (i.e) Tr.Renu-Gr.I PC 44443 and Tr.Azhagukaliraj-Gr.I PC 37416 went to Mathur Erikkarai. At that time, two accused persons were standing on that place along with two wheeler Yamaha Fascino bearing Reg.No.TN-18-BB-8642. On seeing the police parties, the accused persons



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trying to escape from that place, immediately the respondent police caught and hold of the accused persons and enquired them, and during the enquiry they came to know that their names are Samuel/A1 and Manikandan/A2. On searching the accused (A1), found in possession of 1.300 Kgs of Ganja and the same was seized along with the above said bike from A-1 under the cover of seizure Mahazar in the presence of witnesses. Thereafter, the respondent police have arrested the accused A1 & A2 and obtained confession statement from them. After that, they arrested the accused persons (A1 & A2) along with the seized contrabands and properties taken to the respondent police station.

3. Based on the above, a case was registered in M-2, Milk Colony Police Station, Madhavaram in Cr.No.08 of 2022 under Section 8(c) r/w 20(b)(ii)(B) and Section 25 of the NDPS Act, 1985 against the accused persons (A1 & A2 ) on 06.01.2022 at about 15.45 hours by the respondent Police and took up the case for further investigation.



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4.It appears that the petitioner is the owner of the above said vehicle namely motorcycle/bike bearing its registration no.TN18 BB 8642 and he filed a petition in Crl.M.P.No.4490 of 2022 before the Trial Court to release the vehicle to him. But it was dismissed, vide order dated 22.09.2022 by the Court below considering the nature of offence and also the fact that if the vehicle is returned to the petitioner, it may be used by the accused in similar offence. Hence, challenging the above said order, the petitioner filed the present Revision case.

5.The learned counsel for the petitioner has submitted that the petitioner is not the accused in this case. The petitioner is the father of A1. The respondent Police registered a case in Cr.No.08 of 2022 under Section 8(c) r/w 20(b)(ii)(B) and Section 25 of the NDPS Act, 1985 against the accused persons (A1 & A2 ) on 06.01.2022 and arrested them and seized the vehicle namely motorcycle/bike bearing its registration no.TN18 BB 8642. The petitioner is not having any knowledge about the crime and he is not involved in any previous offences as alleged by the prosecution. He



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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.

6.The learned Government Advocate (Crl.Side) submitted that, the petitioner is the owner of the vehicle namely motorcycle/bike bearing its registration no.TN18 BB 8642 and A1 is his son. 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 contraband illegally, it was seized and hence, he objected to return the vehicle to the petitioner.

7.Heard the learned counsel appearing for the petitioner and the



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

8.A perusal of the records shows that, a case was registered in Cr.No.08 of 2022 under Section 8(c) r/w 20(b)(ii)(B) and Section 25 of the NDPS Act, 1985 against the accused persons (A1 & A2 ) on 06.01.2022 and arrested them and seized the vehicle namely motorcycle/bike bearing its registration no.TN18 BB 8642. The petitioner is the owner of the above said vehicle and he filed a petition in Crl.M.P.No.4490 of 2022 before the Trial Court to release the vehicle to him. But it was dismissed, vide order dated 22.09.2022 by the Court below considering the nature of offence and also the fact that if the vehicle is returned to the petitioner, it may be used by the accused in similar offence. and hence, the learned Judge refused to grant interim custody of the vehicle. Considering the fact that the petitioner is not the accused in this case and also he is not involved in any previous cases, this Court is inclined to grant interim custody of the vehicle.



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9. 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 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



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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.

10. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 22.09.2022 passed by the learned Principal Special Judge, Special Court under EC & NDPS Act 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.50,000/- (Rupees Fifty thousand only) before the learned Principal Special Judge, Special Court under EC & NDPS Act
- iv. the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future,



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- 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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**To**

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

2. The Inspector of Police,  
M2, Milk Colony Police Station,  
Madhavaram,  
Chennai.  
(Crime No.8 of 2022)

3. The Public Prosecutor, Madras High Court.

**V.SIVAGNANAM, J.,**



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