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Crl.R.C.No.459/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.03.2023

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THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.NO.459 OF 2023

Chandralekha

..

Petitioner

1. The State, represented by its
the Inspector of Police, (Law and Order)
R-7,K.K.Nagar Police Station,
Chennai 600 078.
Cr.No.329/2022

2. P. Ramesh

..

Respondents

Prayer: Criminal Revision Petition filed under section 397 r/w.401 Cr.P.C.,to set aside the order passed by the Principal Special Court under EC & NDPS Act, Sessions Judge, Chennai 600 104 in Crl.M.P.No.6722/2022, dated 19.01.2023 and to pass an order directing the respondent Auto bearing Regn.No.TN-09-CR-5181 seized in Cr.No.329/2022 to the petitioner.

For Petitioner : Mr.S. Mohanraj

For Respondent : Mr. R. Vinothraja
GA (Crl.side)

ORDER



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This Criminal Revision case has been filed challenging the order of dismissal dated 19.01.2023 passed by the Sessions Judge, Principal Special Court under EC and NDPS Act, Chennai in Crl.M.P.No.6722 of 2022 filed under section 451 of Cr.P.C. Seeking return of Auto bearing Regn.No.TN-09-CR-5181 belonging to the petitioner.

2. The learned counsel for the petitioner contended that the petitioner is the owner of an Auto bearing Regn.No.TN-09-CR-5181 seized by the respondent police for the alleged illegal transportation of 1.250 Kilograms of Ganja. A case was registered by the respondent for the offence under section 8(c) r/w.20 (b) (ii) (B) of NDPS Act against the accused person on 31.07.2022 in Cr.No.609/2022. Pursuant to which, the Auto bearing Regn.No.TN-09-CR-5181 was seized by the respondent police and produced before the court below in B.No.212 of 2022. Seeking return of the abovesaid Auto, the petitioner filed a petition before the court below in Crl.M.P.No.6722/2022 in Crime No.329 of 2022, but the court below dismissed the petition on the ground that if the vehicle is returned to the petitioner, it may be used for committing similar nature of offence. He further submitted that the petitioner is not accused in this



case and she is only the owner of the vehicle and the vehicle is not involved in any previous similar type of offences. In such circumstances, he seeks to grant interim custody of the vehicle to the petitioner.

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, it would become unusable and the same will diminish the value of the vehicle. The petitioner is ready to give appropriate guarantee as well as security for return of vehicle and also she will produce the vehicle as and when required either before the respondent police or before the trial court and she is ready to obey any condition imposed on her by this Court. Hence, he prayed to set aside the impugned order and a direction to grant interim custody of the vehicle.

4. The learned Government Advocate (crl.side) for the respondent objected to return the vehicle to the petitioner and submitted that the petitioner is wife of the accused in Cr.No.329 of 2022 and in this case investigation is still pending and if the vehicle is returned, it may be used again for committing similar type of offences. However, he would fairly concede that there is no



previous case registered against this vehicle involving similar type of offence.

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5. 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.

6. Perusal of records would reveal that on 31.07.2022, on receiving secret information about the illegal transportation of Narcotic substances, the respondent police went to Rani Anna Nagar, nearby Chennai Corporation Amma Drinking Water Centre. At that time, the respondent police caught hold of the accused standing on that place along with Auto bearing Regn. No.TN-09-CR-5181 in a suspicious manner. On enquiry, it was found that the accused person namely one Ramesh was found in illegal possession of 1.250 kgs of Ganja and immediately they arrested the accused and seized the Auto bearing Regn.No.TN-09-CR-5181 and registered a case under section 8(c)r/w.20(b)(ii)(B) of NDPS Act on 31.07.2022 in Cr.No.329/2022. The petitioner is the owner of the above said Auto and she was not arrayed as accused in Crime No.329 of 2022 and the investigation is still pending.

7. Perusal of records would further reveal that the petitioner is the owner of



Auto bearing Regn.No.TN-09-CR-5181 and she is ready to give guarantee and security for returning the vehicle. If the vehicle is being kept in public place and kept unattended 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. Further, the Honourable Supreme Court in the case of *Sunderbhai Ambalal Desai and others Vs.State of Gujarat* in Special Leave Petition (crl.) 2745 of 2022 dated 01.10.2002 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.

8. Considering the above aspects and also 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. In the result, this Criminal Revision Case is allowed and the impugned



order passed by the Trial Court is set aside. The interim custody of the vehicle viz., Auto bearing Regn.No.TN-09-CR-5181 is ordered to be handed over to the petitioner on the following conditions.

- i. the petitioner shall prove her ownership of the vehicle by producing the R.C.Book and other relevant records;
- ii. the petitioner shall execute a bond for a sum of Rs.1,00,000 /-(Rupees one lakh only) before the XXIII Metropolitan Magistrate, Saidapet, Chennai.
- iii. The Court may prepare a panchnama in Judicial Form No.82 with regard to the Auto bearing Regn.No.TN-09-CR-5181 and such panchanama can be used in evidence.
- iv. the petitioner may take photograph of the Auto bearing Regn.No.TN-09-CR-5181 and certified under Section 65B of the Central Act 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



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when required before the court below and before the respondent police.

13.03.2023

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Index: yes/no

Internet:yes/no

To

1. The Inspector of Police, (Law and Order)
R-7,K.K.Nagar Police Station,
Chennai 600 078.
2. The Principal Special Court under EC & NDPS Act,
Sessions Judge, Chennai 600 104.
3. The XXIII Metropolitan Magistrate, Saidapet, Chennai.
4. The Public Prosecutor,
Madras High Court.

V. SIVAGNANAM, J.



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