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Crl.R.C.No.516 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

CORAM

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

Crl.R.C.No.516 of 2023

Gowshik

... Petitioner

Vs.

State by
Inspector of Police,
T-15 SRMC Police Station,
Chennai.
(Crime No.258/2022)

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the Order dated 29.09.2022 made in Crl.M.P.No.2797 of 2022 on the Principal Special Court under EC & NDPS Act, Chennai.

For Petitioner : Mr.T.Maha Vishnu
for Mr.R.Thamarai Selvan

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



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ORDER

This Criminal Revision Case has been filed to set aside the order dated 29.09.2022 passed in Crl.M.P.No.2797 of 2022 by the Principal Special Court under EC & NDPS Act, Chennai.

2. The case of the prosecution is that on 19.04.2022 at about 11.00 at about 11.00 hours when Tr.Johnbosco, Sub Inspector of Police was in station duty, at that time received a secret information about illegal transport of Narcotic substances, after receiving the secret information, he along with his Police Team (i.e.) Tr.Manimaran-PC 41083 and Tr.Yogeshwaran-PC 44150 went to Ayyapanthangal, Baraniputhur Main Road. At that time the respondent police stopped the petitioner's two wheeler Yamaha R15 bearing registration No.TN-01-BJ-3783 and enquired the accused persons namely Gowshik/A1 and Sandeep/A2. On searching the accused (A1) and found in possession of 740 grams of Ganja from A1. Subsequently the respondent police have taken 2 samples of ganja each 50 grams and remaining were kept in same bag and same was seized along with above said two wheeler



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and vivo cell phone-1 from A1 under the cover of seizure mahazar in the presence of witnesses. Then the respondent police searched the accused (A2) and found in possession of 812 Grams of Ganja. Subsequently the respondent police have taken 2 samples of ganja each 50 grams and remaining were kept in same bag and the same was seized from A2 under the cover of seizure mahazar in the presence of witnesses. Then the respondent police have arrested the accused persons (A1 & A2) and obtained confession statement from them. After that the Arrested Accused persons (A1 & A2) along with the seized contrabands and properties taken to the respondent police station. A case was registered in T-15 SRMC Police Station, Cr.No.258 of 2022 u/s 8(c) r/w 20(b)(ii)(B) of NDPS Act, 1985 against the accused persons (A1 & A2) on 19.04.2022 at about 14.30 hours by Tr.D.Ravikumar, the then Inspector of Police and took up the case for further investigation. During the pendency of the investigation, the petitioner filed a petition before the Principal Special Court under EC & NDPS Act, Chennai, in Crl.M.P.No.2797 of 2022 under Sections 451 of Cr.P.C. for return of vehicle and the learned Magistrate by an order dated



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29.09.2022 dismissed the same. Challenging the said order, the petitioner has filed the present revision before this Court.

3. The learned counsel for the petitioner submitted that the petitioner is the owner of the two wheeler bearing Registration No.TN 01-BJ-3783. He further submitted that there is no previous case against this petitioner as well as the vehicle was not involved in any other case, similar in nature.

4. The learned counsel further 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 in the open space, it would cause damage to the vehicle. He further submitted that the petitioner is ready to abide by any condition imposed by this Court 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 to the petitioner.



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5. The learned Government Advocate (Crl.Side) submitted that the petitioner is the owner of the Two Wheeler bearing Registration No.TN 01-BJ-3783 and it was seized along with 1.552 kgs Ganja. He further submitted that the two wheeler was used to transport Ganja illegally and if the vehicle is returned to the petitioner, there are every chances to use it for committing similar type of offence. Hence, he objected to return the vehicle to the custody of the petitioner.

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

7. On a perusal of the records, it reveals that the petitioner is the owner of the two wheeler bearing Registration No.TN 01-BJ-3783 and it was seized by the respondent police. The Trial Court dismissed the petition in Crl.M.P.No.2797 of 2022, filed by the petitioner, on the ground that the petition, relating to return of vehicle involved in NDPS cases, is not



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maintainable before the Magistrate. It is the contention of the learned counsel for the petitioner that 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.

8. 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 Lave 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 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



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*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, 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 Two Wheeler bearing Registration No.TN 01-BJ-3783 is ordered to be handed over to the petitioner on the following conditions:

(i) the petitioner shall prove his ownership of the vehicle 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) to the satisfaction of the Principal Special Court under EC & 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 shall take photograph of the vehicle and certified under Section 65 B of the Central Act 1 of 1972 and such photographs may be used as secondary evidence.

(v) the petitioner shall not alter or alienate the vehicle in any manner;

(vi) the petitioner shall also give an undertaking that he 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.

28.03.2023

Index: Yes/No
Internet: Yes/No
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To
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1. The Principal Special Judge for EC & NDPS Act,
Chennai.
2. The Inspector of Police,
T-15 SRMC Police Station, Chennai.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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V.SIVAGNANAM, J.,

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