



WEB COPY



CrI.R.C.No.470 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.470 of 2023

M.Aswini, F/A27 yrs., (Deceased),
D/o.Munna,
No.27/32, Rani Anna Nagar, K.K.Nagar,
Chennai-600 078.

1.Surendar, M/A26,
S/o.Ravi,
No.1/119, SK Apartment, Anbu Nagar,
Valasaravakkam, Chennai-87.

2.S.Samyuktha, F/Minor,
Represented by her Natural Guardian,
Next to her Friend.

... Petitioners

[The petitioners 1 and 2 impleaded as
per order, dated 31.07.2023 in
CrI.M.PNo.11049 of 2023 in
CrI.R.C.No.470 of 2023.]

Vs.

1.The State of Tamil Nadu,
Rep. by The Inspector of Police,
T-12, Selaiyur Police Station,
Cr.No.592 of 2022.

2.Balaji
3.Surendar
4.Vasanth
5.Yugendra

... Respondents



CrI.R.C.No.470 of 2023

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 07.02.2023 in CrI.M.P.No.312 of 2023 passed by the Principal Special Judge For NDPS & EC Act at Chennai.

For Petitioners	:	Mr.R.Karthik
For R1	:	Mr.A.Damodaran, Additional Public Prosecutor
For R2 to R5	:	No Appearance

ORDER

This Criminal Revision Case has been filed to set aside the impugned order dated, 07.02.2023 in CrI.M.P.No.312 of 2023 in Crime No.592 of 2022 passed by the Principal Special Judge, Special Court under EC & NDPS Act, Chennai.

2.During the pendency of the present Criminal Revision Case, the petitioner Aswini died on 16.04.2023, hence, the learned counsel for the petitioner filed a petition in CrI.M.P.No.11049 of 2023 in CrI.R.C.No.470 of 2023 to implead the petitioner's husband and minor daughter as petitioners 1 and 2 respectively. This Court, by order, dated 31.07.2023 impleaded them as petitioners 1 and 2.



3.The learned counsel for the petitioner submitted that admittedly, Aswini is not an accused in Crime No.592 of 2022 and She is not at all involved in the alleged crime. The lower Court dismissed the petition under Section 451 of Cr.P.C., for the reason that though the vehicle was seized from the 1st petitioner, the husband of Aswini at the scene of occurrence, the vehicle is in the name of Aswini and both of them are residing in the same residence.

4.The learned Additional Public Prosecutor appearing for the respondent Police submitted that the petitioners 1 and 2 were substituted for Aswini who is the owner of the vehicle, admittedly, she is not an accused. The 1st petitioner used the vehicle for transportation 1.2 kgs of ganja and hash oil and he was caught red handed, thereafter, arrested and the vehicle produced before the lower Court. The lower Court detained the same. Now, the 1st petitioner's wife Aswini is no more. If the 1st petitioner is granted custody of the vehicle, he might use the vehicle for similar activities, hence, objected for return of same.

5.Considering the submissions and on perusal of the materials, it is not in dispute that the substituted 1st petitioner's wife Aswini is the owner of the vehicle and she is not an accused in this case. The vehicle is financed by HDFC bank limited. The 1st petitioner is the Software Engineer, he has one year infant



baby. The 1st petitioner's parents are aged, who are taking care of his baby and the 1st petitioner is taking care of his parents, who are regularly visiting the Doctors for health issues. The 1st petitioner also used the vehicle to go to his office. Admittedly, the 1st petitioner has got no bad antecedents other than this case and the vehicle not involved in any case earlier as similar in nature. It is seen that from the date of registration of FIR, the vehicle is kept in open space exposing to vagaries of weather and thereby, the value of the vehicle is getting diminished. The Hon'ble Apex Court in the case of "***Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 290***", had given guidelines in the cases of return of property to the owner.

6. In view of the aforesaid reasons, this court is constrained to set aside the order, dated 07.02.2023 passed by the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai and the criminal revision case is allowed. In view of the same, the lower Court is directed to return the vehicle Hyundai i20 ASTA bearing Registration No.TN 09 CU 4159 to the petitioner, on the following conditions:-

- (i) The petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only), with two sureties each for a like sum to the satisfaction of the learned Principal Special Judge For NDPS & EC Act at Chennai;



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(ii) The petitioner shall produce the original RC Book of the vehicle and other relevant records. The learned Principal Special Judge shall peruse the RC book and other records, retain xerox copy of the same and return the same to the petitioner with a view to use the vehicle;

(iii) The petitioner shall not alter or alienate the vehicle in any manner till adjudication is over;

(iv) The petitioner shall also give an undertaking that he will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent and by the court below.

08.11.2023

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index : Yes/No

Internet : Yes/No

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To

1.The Principal Special Judge For NDPS & EC Act,
Chennai.

2.The Inspector of Police,
T-12, Selaiyur Police Station.

M.NIRMAL KUMAR, J.



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3. The Public Prosecutor,
High Court, Madras.

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