



Crl.R.C.No.477 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.477 of 2023

D.Surya

... Petitioner

Vs.

The State rep by the Inspector of Police,
Uthukuli Police Station,
Tiruppur District.
Crime No.361/2022

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to call for the records in Crl MP.No.4374 of 2022 on the file of the Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore and set aside the same and subsequently, grant interim custody of the vehicle bearing registration no.TN39DX4631(YAMAHA R 15).

For Petitioner : Mr.K.Sudhakar

For Respondent : Mr.R.Vinothraja

Government Advocate (Crl.Side)



Crl.R.C.No.477 of 2023

WEB COPY

ORDER

This Criminal Revision Petition has been filed to call for the records in Crl MP.No.4374 of 2022 on the file of the Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore and set aside the same and subsequently, grant interim custody of the vehicle bearing registration no.TN39DX4631(YAMAHA R 15) to the petitioner /owner of vehicle.

2. It is the case of the prosecution that on 16.10.2022, upon secret information, when the respondent police went Pallagoundampalayam bus stop, where informant shown the person, and upon checking, the petitioner/accused herein was found with a bag of 1.150 kg ganja and selling ganja illegally in his two wheeler bearing Registration no.TN39DX4631(YAMAHA R 15). Hence a case in Crime No.361 of 2022 was registered for the offences punishable under Sections 8(c), 20(b)(ii)(B) of the Narcotic Drugs & Psychotropic Substances Act, 1985, and the



Crl.R.C.No.477 of 2023

vehicle also ganja were seized.

3. The petitioner is the owner of the above said vehicle and he filed a petition in C.M.P.No.4374/2022 before the Trial Court to release the vehicle to him. But it was dismissed, vide order dated 27.12.2022 on the ground that the petitioner is arrayed as accused in the petition mentioned case, if the property is handed over to him for interim custody, there may be a chance for committing the same offence using the said vehicle. Hence, challenging the above said order, the petitioner filed the present Revision case.

4. The learned counsel for the petitioner submitted that the petitioner is the owner of the vehicle namely two wheeler bearing Registration no.TN39DX4631(YAMAHA R 15). He further submitted that 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 vehicle is not involved in any case similar in nature and the petitioner is ready to give appropriate



Crl.R.C.No.477 of 2023

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 prayed to return the vehicle to the petitioner.

5. The learned Government Advocate (Crl.Side) submitted that, the petitioner is owner of the two wheeler bearing Registration no.TN39DX4631(YAMAHA R 15) and since the above said vehicle was used to sell the ganja illegally, it was seized and hence, he objected to return the vehicle to him.

6. 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.

7. A perusal of the records shows that, the respondent police registered a case in Crime No.361 of 2022 for the offences punishable under



Crl.R.C.No.477 of 2023

Sections 8(c), 20(b)(ii)(B) of the Narcotic Drugs & Psychotropic Substances Act, 1985, with regard to selling of ganja illegally. Further, it reveals from the records that the petitioner is the owner of the two wheeler bearing Registration no.TN39DX4631(YAMAHA R 15) and it was seized by the respondent police. The Trial Court dismissed the petition in C.M.P.No.4374 of 2022, filed by the petitioner, on the ground that the petitioner is arrayed as accused in the petition mentioned case, if the property is handed over to him for interim custody, there may be a chance for committing the same offence using the said vehicle. 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 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, this Court is inclined to allow the



Revision Petition.

9. Accordingly, this Criminal Original Petition is allowed and the impugned order dated 27.12.2022 passed by the Trial Court in CMP No.4374 of 2022 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.75,000/- (Rupees Seventy Five Thousand only) before the Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore.
- 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



WEB COPY



Crl.R.C.No.477 of 2023

vi.the petitioner shall also produce the vehicle as and when required before the court below and before the respondent police.

20.03.2023

Index: Yes/No
Internet: Yes/No
dn

To

1. The Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore
- 2.The State rep by the Inspector of Police,
Uthukuli Police Station,
Tiruppur District.
Crime No.361/2022
3. The Public Prosecutor, Madras High Court.



WEB COPY



Crl.R.C.No.477 of 2023

V.SIVAGNANAM, J.,

dn

Crl.RC No.477 of 2023

20.03.2023