



Crl.R.C.No.531 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

CORAM

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

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Yabesh

... Petitioner

Vs.

State rep. by
Inspector of Police,
C2 Elephant Gate Police Station,
Chennai.
(Crime No.280/2022)

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the order of dismissal passed by the learned Principal Special Judge under EC & NDPS Act at Chennai in the petition filed u/s 451 & 457 Cr.P.C for return of property in Crl.M.P.No.746 of 2023 dated 15.02.2023 in Crime No.280 of 2022 (on the file of the respondent) and return the Apache bike bearing no.TN 06 AA 8976 and VIVO Y50 mobile phone seized in the case registered by the respondent in Cr.No.280 of 2022.



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For Petitioner : Mr.R.C.Paul Kanagaraj
For Respondent : Mr.R.Vinothraja,
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case has been filed to set aside the order dated 15.02.2023 passed in Crl.M.P.No.746 of 2023 by the learned Principal Special Judge under EC & NDPS Act, Chennai.

2. The case of the prosecution is that on 24.07.2022 at about 09.00 hours, the defacto complainant namely Tr.Raja, Sub Inspector of Police, attached to C2, Elephant Gate Police Station, Chennai received a secret information and entered the same in the General Diary, then got permission from the Deputy Superintendent of Police. Thereafter, the Sub Inspector of Police along with police party vehicle check up at wall tax road, NSC Bose Road Junction, the respondent police conducted vehicle check with A1 came on his bike bearing registration No.TN 85-1236 [Dio Dx Bike] and found illegal possession of 1.100 grams of dry ganja, 8 grams of Methamphetamine [Commercial Quantity]. Immediately, the respondent



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police arrested accused and remanded into him judicial custody. Based on the confession statement A1 the respondent police went to Chidatharipettai Fish Market to secure A-2/petitioner herein and A3, who were illegally having Nitravet tablets 1200 [4 boxes]. Further the respondent police arrested the A2 & A3 and remanded them to judicial custody. A case was registered in C2 Elephant Gate Police Station, Chennai in Cr.No.280 of 2022 u/w 8(c) r/w 20(b), (ii)(b), (C), 22(C) 25, 29(1) of the NDPS Act against the accused [A1 to A3] on 24.07.2022 at about 9.00 hours by the sub Inspector of Police and same was submitted to the then Inspector of Police taken up the case for further investigation.

3. During the pendency of the investigation, the petitioner filed a petition before the learned Principal Special Judge for EC & NDPS Act, Chennai, in Crl.M.P.No.746 of 2023 under Sections 451 of Cr.P.C. for return of vehicle and the learned Magistrate by order dated 15.02.2023 dismissed the same. Challenging the said order, the petitioner has filed the present revision before this Court.



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4. The learned counsel for the petitioner submitted that the petitioner is the owner of the Apache Bike bearing Registration No.TN 06 AA 8976, seized by the respondent police for the alleged illegal transportation of 2.300 Kilograms of Ganja, 8 grams of Meth and 1200 Nos of Nitravet tablets. A case was registered by the respondent for the offence under section 8(c) r/w.20 (b) (ii) (b), 22(C). 25 & 29(1) of NDPS Act against the accused persons on 24.07.2022 in Cr.No.280/2022. Pursuant to which, and Cell phone VIVO Y50 was seized by the respondent police and produced before the Court below. Seeking return of the above said phone and two wheeler, the petitioner filed a petition before the Court below in Crl.M.P.No.746/2023 in Crime No.280 /2022, but the Court below dismissed the petition on the ground that the phone used for sale of ganja and two wheeler used for illegal transportation of narcotics drug are required for evidence and if the same is returned to the petitioner, it will affect investigation which is still pending. He further submitted that the petitioner was not involved in any previous similar type of offences. In such



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circumstances, he seeks to grant interim custody of the two wheeler and cell phone to the petitioner.

5. 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 and if the phone is kept unused for a long time, it would become unusable and the same will diminish the value of the phone. He further submitted that the petitioner is ready to abide by any condition imposed by this Court for return of vehicle and Cell phone and also he will produce the vehicle and phone, as and when required either before the respondent police or before the Trial Court. Hence, he prayed to return the properties to the petitioner.

6. The learned Government Advocate (Crl.Side) submitted that the petitioner is the owner of the Apache Bike bearing Registration No.TN 06 AA 8976 and it was seized by the respondent police for the alleged illegal



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transportation of 2.300 Kilograms of Ganja, 8 grams of Meth and 120 Nos of Nitrovet tablets. He further submitted that if the vehicle and cell phone are returned to the petitioner, there are every chances to use it for committing similar type of offence. Hence, he objected to return the properties to the custody of the petitioner.

7. 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.

8. On a perusal of the records, it reveals that on 24.07.2022, on receiving secret information about the illegal transportation of Narcotic substances, the Sub Inspector of Police along with police party conducted vehicle check up at wall tax road, NSC Bose Road Junction, A1, who was coming on his bike bearing registration No.TN 85-1236 [Dio Dx Bike] on seeing the police, tried to flee and A1 was apprehended. From the possession of A1, 1.100 kg of dry Ganja and 8 grams Methamphetamine



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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.

11. 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 phone idle, 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 petitioner is not involved in any other case similar in nature previously, this Court is inclined to allow the Criminal Revision Case.

12. Accordingly, this Criminal Revision Case is allowed and the impugned order passed by the Trial Court is set aside. The respondent police is directed to return the vehicle and cell phone to the owner on the following conditions:

- (i) The Court shall prepare detailed



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panchanama of the vehicle and phone;

(ii) The petitioner shall produce the original RC Book of the vehicle and other relevant records to prove her ownership and the respondent police, on perusal of the RC book and other records, retaining the Xerox copy of the same, shall return the original documents to the petitioner with a view to use the vehicle and also prove his ownership of the phone by producing relevant records;

(iii) The petitioner shall not alienate or encumber the vehicle and phone in any manner;

(iv) The petitioner shall execute a bond for a sum of ***Rs.50,000/-(Rupees Fifty Thousand only)*** for vehicle and ***Rs.20,000/-(Rupees Twenty Thousand only)*** for phone before the ***learned Principal Special Judge for EC & NDPS Act, Chennai.***

(v) The petitioner shall also give an



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undertaking that she will not use the vehicle and phone for any illegal activities in future and also to produce the vehicle as and when required by the respondent or the Court below;

(vi) The petitioner shall take photograph of the phone and the same shall be produced before the court.

28.03.2023

Index: Yes/No
Internet: Yes/No
rpl

To

1. The Principal Special Court under EC & NDPS Act, Chennai.
2. The Inspector of Police,
C-2, Elephant Gate Police Station,
Chennai.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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V.SIVAGNANAM, J.,

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