



Crl.R.C.No.614 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.RC.No.614 of 2023

Bakiyam

... Petitioner

Vs.

The Inspector of Police,
P-5 M.K.B. Nagar Police Station,
Chennai.
Crime No.871 of 2022

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to call for the records and to set aside the Order dated 14.02.2023 made in Crl.M.P.No.755 of 2023 by the Principal Special Court under EC & NDPS Act, Chennai in Crime No.871 of 2022 on the file of the respondent police.

For Petitioner : Mr.R.Muthumumar

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



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ORDER

This Criminal Revision Petition has been filed to set aside the order passed by the Principal Special Court under EC & NDPS Act, Chennai dated 14.02.2023 made in Crl.M.P.No.755 of 2023 and to return the vehicle TVS Scooty Pep+ Motor Cycle bearing registration No.5452 to the petitioner /owner of vehicle.

2. It is the case of the prosecution that on 05.12.2022, when the respondent police went on patrol, they found that the driver of the TVS Scooty Pep+ Motor Cycle bearing registration No.5452 was found illegally in possession of 2.100 grams of ganja and hence a case in Crime No.871 of 2022 was registered for the offence under Section 8 [c] read with 20[b] [ii] of NDPS Act and the vehicle was seized.

3. The petitioner is the owner of the above said vehicle and she is the mother-in-law of the accused Harish Kumar. The petitioner filed a petition



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in Crl.M.P.No.755 of 2023 before the Trial Court to release the vehicle to her. But it was dismissed, vide order dated 14.02.2023 on the ground that if the vehicle is returned to petitioner, it may be used by the accused in similar nature of offence. 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 TVS Scooty Pep+ Motor Cycle bearing registration No.5452. He further submitted that the vehicle is not involved in any case similar in nature and the petitioner is ready to give appropriate 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 [Criminal Side] appearing for the respondent submitted that the petitioner is owner of the TVS Scooty Pep+ Motor Cycle bearing registration No.5452 and since the above said



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vehicle was used by the accused and was in possession of 2.100 grams of ganja, it was seized and hence, he objected to return the vehicle to him. He further submitted that the vehicle is not involved in any previous case of similar nature.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate [Criminal 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.871 of 2022 for the offence under Section 8 [c] read with 20[b] [ii] of NDPS Act, with regard to possession of 2.100 grams of ganja. Further, it reveals from the records that the petitioner is the owner of the TVS Scooty Pep+ Motor Cycle bearing registration No.5452 and it was seized by the respondent police. The Trial Court dismissed the petition in Crl.M.P.No.755 of 2023, filed by the petitioner, on the ground that if the vehicle is released, it may be used to



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commit similar offence. The learned counsel for the petitioner further submitted 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* wherein the Hon'ble Supreme Court 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.

9. Considering the above aspects and also 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.



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10. Accordingly, this Criminal Original Petition is allowed and the impugned order passed by the Trial Court 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 her ownership of the vehicle by producing the R.C.Book and other relevant records;
- ii. the petitioner shall execute a personal bond for a sum of Rs.50,000/- (Rupees fifty thousand only) before the Principal Special Court under EC & NDPS Act, Chennai and the learned Judge shall not insist on production of solvency certificate.
- 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 65B of the Central At 1 of 1972 and such photographs may be used as secondary evidence.



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

21.04.2023

Index: Yes/No
Internet: Yes/No

vrc

To

1. The Principal Special Court under EC & NDPS Act, Chennai
2. The Inspector of Police, P-5 M.K.B. Nagar Police Station, Chennai.
3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

VTC

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