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Crl.R.C.No.839 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.06.2023

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THE HONOURABLE Mr. JUSTICE V. SIVAGNANAM

Crl.R.C.No.839 of 2023

Usha Rani

... Petitioner

Vs.

State Repesented by
Inspector of Police,
T4-Shankar Nagar Police Station,
Chennai
(Crime No.582 of 2022)

... Respondent

Criminal Revision filed under Section 397 and 401 of Cr.P.C., to set aside the order passed by the learned Principal Special Court under EC and NDPS Act at Chennai in Crl.M.P.No.163 of 2023 dated 14.02.2023.

For Petitioner : Mr.M.Ramesh Babu

For Respondent : Mr.R.Vinothraja, GA, (crl.side)

ORDER

This Criminal Revision Petition has been filed to set aside the order passed by the Principal Special Court under EC and NDPS Act, Chennai



in Crl.M.P.No.163 of 2023 dated 14.02.2023 and to return the Auto bearing Registration No.TN-05 BV 2282 to the petitioner /owner of vehicle.

2.It is the case of the prosecution that on 09.10.2022 at about 08.00hrs, the respondent Police, based on the secret information about illegal sale of Ganja at Anakaputhur Cemetery, rushed to the spot and caught the accused persons with the auto rickshaw bearing Registration No. TN-05 BV 2282 and seized 5 kgs of Ganja. Immediately, the respondent-Police arrested the accused persons and registered the case against them in Crime No.582/2022 under Sections 8(c) r/w 20(b)(ii)(B), of NDPS Act.

3.The petitioner is the wife of A1 and she is the owner of the above said auto. She is not an accused in this case. She filed a petition in Crl.M.P.No.163 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 the vehicle was seized from A1, who is the petitioner's husband, from the scene of occurrence and at the same time, both are residing in the same



residence. Hence, challenging the above said order, the petitioner filed the present Revision case.

4.The learned counsel appearing for the petitioner contended that the petitioner is the wife of A1 and she is not an accused in this case. The petitioner is the owner of the auto rickshaw bearing Registration No. TN-05 BV 2282. The respondent Police arrested A1 along with other accused for having illegal possession of 5 kgs of Ganja and also seized the vehicle. They were arrested on 09.10.2022 for the alleged offences punishable under Sections 8(c) r/w 20(b)(ii)(B), of NDPS Act in Crime No.582 of 2022. 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 guarantee as well as security for return of vehicle and also she 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 the wife of A1. He also conceded that the vehicle in question is not involved in any case similar in nature. However, he objected to return the vehicle to her.

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 against the accused persons in Crime No.582 of 2022 for the offence under Sections 8(c) r/w 20(b)(ii)(B) of NDPS Act, with regard to illegal possession of 5 kgs of Ganja. Further, it reveals from the records that the petitioner is the wife of A1 and she is the owner of the Auto bearing Registration No.TN-05 BV 2282 and it was seized by the respondent police. Further, she is not an accused in this case. The Trial Court dismissed the petition in Crl.M.P.No.163 of 2023 filed by the petitioner on the ground that the vehicle was seized from A1 by the respondent Police from the scene of occurrence and if the vehicle is



returned to the petitioner, it may be used in similar nature of offence. 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 Leave 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 vehicles 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.



10. 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 vehicle is ordered to be handed over to the petitioner on the following conditions.

- i. the petitioner shall prove her ownership of the Auto bearing Registration No.TN-05 BV 2282 by producing the R.C.Book and other relevant records;
- ii. the petitioner shall execute a bond for a sum of Rs.1,00,000/- (Rupees one lakh only) before the learned Principal Special Court under EC and NDPS Act Cases, 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 may 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.
- v. the petitioner shall not alienate or encumber the vehicle in any manner;



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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.

09.06.2023

Index:Yes/No

Internet:Yes/No

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To

1.The Principal Special Court under EC & NDPS Act, Chennai

2.The Inspector of Police,
T4-Shankar Nagar Police Station,
Chennai

3.The Public Prosecutor, High Court, Madras.



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V. SIVAGNANAM, J.

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