



Crl.R.C.No.787 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

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THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.787 of 2023

Dhinakaran

... Petitioner

Vs.

State Rep. by
the Inspector of Police,
T-3 Pallavaram Police Station,
Chennai.
(Crime No.1010/2022)

... Respondent

Prayer : Criminal Revision Petition filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the order passed in Crl.M.P.No.843 of 2023, dated 21.02.2023 on the file of the Principal Special Judge for EC/NDPS Act Cases, Chennai and direct the respondent to release the two wheeler 'Honda Activa' bearing Registration No.TN 09 CH 8424 which was seized in connection with Cr.No.1010/2022 on the file of the respondent police.

For Petitioner : Mr.T.Balaji

For Respondent : Mr.J.Subbiah, GA (Crl. Side)



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ORDER

The present criminal revision petition is filed, praying to set aside the orders passed in Crl.M.P.No.843 of 2023 on the file of the Principal Special Judge for EC/NDPS Act Cases, Chennai.

2. The learned Principal Special Judge under EC & NDPS Act vide her orders dated 21.02.2023 dismissed the said petition filed under Section 451 & 457 of Cr.P.C seeking return of the two wheeler 'Honda Activa' bearing Registration No.TN 09 CH 8424 which was seized by the respondent, Inspector of Police, T3 Pallavaram Police station, Chennai in Crime No.1010/2022 for the alleged offences punishable under Sections 8(c) r/w. 20(b)(ii)(B), 28, 29(1) and 25 of NDPS Act.

3. The case of the prosecution is that on 15.12.2022 at about 07.30 hours, the Sub Inspector of Police, on receiving secret information, went along with his police team to Pallavaram Pammal Main Road near Radiance Bright Apartment and intercepted a two wheeler 'Honda Activa' bearing Registration No.TN 09 CH 8424. A search was conducted and



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the accused 1 and 2 were found in possession of 350 ml of Ganja Oil.

The said contraband was seized along with the vehicle. They also seized a Samsung Mobile phone and an i phone 13 belonging to the accused. Thereafter the respondent Police arrested the accused and remanded them to judicial custody on the same day. The seized articles and the contraband were produced before the Principal Special Court under EC & NDPS Act at Chennai. The present revision petitioner filed a petition under Section 451 & 457 of Cr.P.C. for return of the above said vehicle. Learned Principal Special Judge under EC & NDPS Act vide orders dated 21.02.2023 dismissed the said petition on the ground that the investigation is at preliminary stage. Aggrieved over the said orders, the present revision is filed.

4. The respondent filed a counter affidavit wherein, interalia, it is stated that since the investigation has not been completed the petition may be dismissed.



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5. Heard, Mr.T.Balaji, learned counsel for the revision petitioner and Mr.J.Subbiah, learned Government Advocate (Crl. Side) learned counsel for the respondent.

6. The learned counsel for the petitioner submitted that the present petitioner is not involved in any offence and that if the vehicle is kept in open space in the Police station, the value of the vehicle would diminish over a period of time. Therefore he prayed for return of the vehicle.

7. Per contra, the learned Government Advocate (Crl. side) contended that the vehicle was used for illegal transportation of Ganja Oil and if the vehicle is ordered to be returned, he may use the vehicle for committing similar offence. Hence, he sought dismissal of the petition.

8. It is relevant to refer 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 relevant portion is extracted hereunder.

Vehicles

“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.

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.”



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9. Accordingly, this Criminal Revision Petition is allowed and the impugned order dated 21.02.2023 passed by the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai is set aside. The Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai, 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 bond for a sum of Rs.50,000/- (Rupees Fifty Thousand Only) before the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai.
- iii) the Court may prepare a panchnama in Judicial Form No.82 with regard to the two wheeler 'Honda Activa' bearing Registration No.TN 09 CH 8424 and such panchanama can be used in evidence.
- iv) the petitioner shall take photograph of the vehicle bearing registration No.TN 09 CH 8424 and certified under Section 65B



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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.

17.07.2023

Index: Yes/No
Speaking/Non-Speaking order
vum

To

- 1.The Principal Special Court for NDPS Act, Chennai.
- 2.The Inspector of Police,
T-3 Pallavaram Police Station,
Chennai.
3. The Section Officer,
Criminal Section, High Court,
Madras.

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