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Crl.R.C.No.823 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.823 of 2023

A.Benazir Banu

...

Petitioner

Vs.

State rep.by

Inspector of Police

T-14, Pallikaranai Police Station,

Chennai – 600 100

(Crime No.815 of 2022)

...

Respondent

PRAYER: Criminal Revision Case filed under Section 397 read with 401 of the Criminal Procedure Code, 1973 (as amended) to call for the records pertaining to the order dated 19.04.2023 in Crl.M.P.No.1836 of 2023 on the file of the Principal Special Court under EC & NDPS Act, Chennai and set aside the same.

For Petitioner

: Mr.R.Arun Kumar

For Respondent

: Mr.R.Vinothraja

Government Advocate (Crl.side)



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ORDER

This Criminal Revision Case has been filed challenging the impugned order dated 19.04.2023 passed in Crl.M.P.No.1836 of 2023 by the Principal Special Court under EC & NDPS Act, Chennai.

2.The case of the prosecution is that on receiving secret information on 12.08.2022 at about 10.00 hours, V.Marisamy, the then Sub Inspector of Police along with his police team went to spot i.e. Jalladiyanpettai Erikarai Street, Nearby Gaint Jones School. At that time, three unknown persons were standing on that place suspiciously with two cars Hyundai accent bearing Reg.No.TN – 06 – 9909 and Chevrolet Beat LP bearing Reg.No.TN-07-BP-1595, the respondent police caught hold of the one accused person and enquired them. During the enquiry came to know that the accused persons namely Thameem Ansari (A1), Sai Swaroop (A2) and Shrinivas (A3). On searching the said vehicles and found 5 Kgs Ganja. Subsequently, the respondent police have taken 6 samples of ganja each 50 grams and remaining were kept in same bag and the same was seized along



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with above said four wheelers from the accused persons under the cover of seizure mahazar in the presence of witnesses. Then, the respondent police have arrested the accused persons (A1 to A3). Based on the above, a case was registered by the respondent police in Crime No.815 of 2022 for offences punishable under Sections 8(c), 20(b)(ii)(B) & 25 of NDPS Act, 1985 against the accused persons and the seized materials were produced before the Principal Special Court for EC/NDPS Act Cases, Chennai on 05.09.2022 and the same were taken on file in A.No.505 of 2022 and B.No.222 of 2022. After investigation, charge sheet has been filed against the accused persons and the same was taken on file in C.C.No.04 of 2023.

3.The learned counsel for the petitioner submitted that the petitioner is the owner of seized car and mobile phone and she is not an accused and she is the third party. The car and the mobile phone were seized by the respondent police from accused and now, the car and mobile are in custody of the trial Court.

4.Further, the learned counsel for the petitioner submitted that no



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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. The petitioner is ready to give appropriate guarantee as well as security for return of car and mobile phone and also she will produce the vehicle and mobile phone, as and when required either before the respondent police or before the Trial Court. Hence, she prayed to return the seized car and mobile phone and she is ready to obey any condition imposed on her by this Court.

5.The learned Government Advocate (Crl.side) appearing for the respondent submitted that the petitioner is the wife of the first accused. If the car and mobile phone are returned to the petitioner, she may not produce the same and it is indulged to involve the similar offence again. He further submitted that there is no previous case against this petitioner and the car and mobile are not involved in the similar type of case previously. There is no bad antecedent in this regard against this petitioner.



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6.I have considered the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate (Crl.side) for the respondent.

7.On perusal of the records, the fact reveals that on receiving secret information, the respondent police along with the police team went to spot i.e. Jalladiyanpettai Erikarai Street, Nearby Gaint Jones School. At that time, three unknown persons were standing on that place suspiciously with two cars Hyundai accent bearing Reg.No.TN – 06 – 9909 and Chevrolet Beat LP bearing Reg.No.TN-07-BP-1595, the respondent police caught hold of the one accused person and enquired them and on searching the said vehicles and found 5 Kgs Ganja and the same were seized along with above said four wheelers from the accused persons under the cover of seizure mahazar in the presence of witnesses. Based on the above, a case was registered by the respondent police in Crime No.815 of 2022 for offences punishable under Sections 8(c), 20(b)(ii)(B) & 25 of NDPS Act, 1985 against the accused persons and the seized materials were produced before



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the Principal Special Court for EC/NDPS Act Cases, Chennai on 05.09.2022 in A.No.505 of 2022 and B.No.222 of 2022. After investigation, charge sheet has been filed against the accused persons and the same was taken on file in C.C.No.04 of 2023.

8.Further, on perusal of records would further reveal that the petitioner is the owner of properties and she is ready to give guarantee and security for returning the abovesaid vehicle and mobile. If the properties are being kept in an open space and unusual condition, it would cause damage to the vehicle and mobile phone and the value of the vehicle and mobile phone are diminished and continuing to keep the vehicle in open air would make the vehicle unusable. Further, the Honourable Supreme Court in the case of **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.

9. Considering the above aspects and also the ratio laid down by the



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Hon'ble Apex Court, this Court is of the view that keeping the vehicle idle in the open space and unusual of the mobile phone, 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 vehicle and mobile are not involved in any other case similar in nature previously, this Court is inclined to allow the Criminal Revision Case.

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 car namely Chevrolet Beat bearing registration No. TN-07-BP-1595 and mobile phone IPHONE 11 PROMAX WHITE colour are ordered to be handed over to the petitioner, who is the owner of the property on the following conditions.

- i. the petitioner shall prove his ownership of the car and mobile phone by producing the R.C.Book and other relevant records;
- ii. the petitioner shall execute a personal bond for a sum of



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Rs.5,00,000/-(Rupees one lakhs only) for the abovesaid car and mobile phone before the Principal Special Court Under EC & NDPS Act, Chennai – 104 and the learned Principal Special Judge shall not insist for production of solvency certificate.

- iii. The Court may prepare a panchnama in Judicial Form No.82 with regard to the car and mobile phone and such panchanama can be used in evidence.
- iv. the petitioner may take photograph of the car & mobile phone and certified under Section 65B of the Central Act 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;
- vi. the petitioner shall give an undertaking that he will not use the vehicle and mobile phone for any illegal activities in future;
- vii. the petitioner shall also produce the car and mobile phone as and when required before the court below and before the respondent police.

Index: Yes/No
Internet: Yes/No
mrp

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1. The Principal Special Court under EC & NDPS Act,
Chennai.
2. Inspector of Police
T-14, Pallikaranai Police Station,
Chennai – 600 100
(Crime No.815 of 2022)
3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

mrp

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