



Crl.R.C.No.855 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Crl.R.C.No.855 of 2023

Kurshith Banu

.. Petitioner

Vs

State by
Inspector of Police,
T-3, Pallavaram Police Station,
Chennai.
Crime No.1046/2022.

... Respondent

Prayer: Criminal Revision Case filed under section 397 r/w.401 Cr.P.C. to set aside the order, dated 13.03.2023 made in Crl.M.P.No.1504 of 2023 on the file of the Principal Special Court under EC & NDPS Act at Chennai and allow the Criminal Revision.

For Petitioner : Mr.R.Thamarai Selvan

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



Crl.R.C.No.855 of 2023

ORDER

WEB COPY

This Criminal Revision case has been filed challenging the order of dismissal dated 13.03.2023 passed by the Principal Special Court under EC & NDPS Act at Chennai in Crl.M.P.No.1504 of 2023 seeking interim custody of the vehicle viz., Volkswagen Vento car bearing Regn.No.TN-05-AP-2626 to the petitioner.

2.The fact of the case is that the petitioner is the owner of the Volkswagen Vento car bearing Regn.No.TN-05-AP-2626. The respondent police registered a case in Cr.No.1046/2022 on 29.12.2022 for the offence under sections 8 (c), 20 (b)(ii)(B), 22 (a), 29(1) and 25 of the Narcotic Drugs & Psychotropic Substances Act, 1985 against the son of the petitioner/A1 along with the other accused for illegal transportation of 3.500 kgs of Ganja, 10ml of Ganja oil and 2 grams of Methamphetamine in the said vehicle. Pursuant to which, they have seized the above said vehicle alleging that the vehicle has been engaged in illegal transportation of contraband. Now the vehicle was kept under the custody of the court below in B.No.39 of 2023.



Crl.R.C.No.855 of 2023

WEB COPY

Since the petitioner is the owner of the vehicle, she filed a petition in Crl.M.P.No.1504 of 2023 before the Principal Special Court under EC & NDPS Act at Chennai for return of vehicle in B.No.39 of 2023. The trial court dismissed the petition considering the objection raised by the prosecution.

3.The learned counsel for the petitioner submitted that the vehicle is not involved in any previous case of offence of similar in nature. The vehicle has been kept under the custody of the court from 29.12.2022 in B.No.39 of 2023 and if the vehicle is kept in open space under unconditional weather conditions, the same would depreciate its value and user capacity.

4. Further, the learned counsel for the petitioner contended 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. 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



Crl.R.C.No.855 of 2023

WEB COPY

trial court. Hence, she prayed to return the vehicle and she is ready to obey any condition imposed on her by this Court.

5. The learned Govt. Advocate (Crlside) objected to return of vehicle, stating that the vehicle was used for illegal transportation of contrabands and if the vehicle is ordered to be returned, the accused may use the vehicle for committing same offence. He fairly conceded that the vehicle is not involved in any previous case of similar in nature.

6. Heard both sides and perused the entire materials available on record.

7. A perusal of the records would reveal that the respondent police, on receiving secret information regarding illegal transportation of contraband, conducted police patrolling in Pallavaram Station Border Road, near 200 feet junction, they intercepted the Volkswagen Car bearing Regn.No.TN-05-AP-2626 in possession contrabands. Pursuant to which, they have seized vehicle involved in illegal transportation of contrabands and registered a case against the son of the petitioner /A2 along with other accused in Cr.No.1046 of 2022



Crl.R.C.No.855 of 2023

WEB COPY

for the offence under Sections 8 (c), 20 (b)(ii)(B), 22 (a), 29(1) and 25 of the Narcotic Drugs & Psychotropic Substances Act, 1985. The petitioner is the owner of the Volkswagen Vento car bearing Regn.No.TN-05-AP-2626. After seizure, it was produced before the court below in B.No.39 of 2023 and it has been kept under custody from 29.12.2022 onwards.

8. Perusal of records would further reveal that the petitioner is the owner of vehicle and she is ready to give guarantee and security for returning the vehicle. If the vehicle is being kept in an open space, it would cause damage to the vehicle and the value of the vehicle is 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.



CrI.R.C.No.855 of 2023

WEB COPY

9. 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 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 and also taking into account the fact that the vehicle is 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 the vehicle Volkswagen Vento car bearing Regn.No.TN-05-AP-2626 is ordered to be handed over to the petitioner, who is the owner of the vehicle on the following conditions.

- i. the petitioner shall prove his 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.5,00,000/-(Rupees five lakhs only) before the Principal Special Court under EC & NDPS Act at Chennai.
- iii. The abovesaid court is directed not to insist upon the petitioner for producing solvency certificate while releasing the vehicle.



WEB COPY



CrI.R.C.No.855 of 2023

- iv.The Court may prepare a panchnama in Judicial Form No.82 with regard to the vehicle and such panchanama can be used in evidence.
- v. the petitioner may take photograph of the vehicle and certified under Section 65B of the Central Act 1 of 1972 and such photographs may be used as secondary evidence.
- vi.the petitioner shall not alienate or encumber the vehicle in any manner;
- vii.the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future;
- viii.the petitioner shall also produce the vehicle as and when required before the court below and before the respondent police.

20.06.2023

vum

Index: yes/no

Internet:yes/no

To

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

7/8



WEB COPY



Crl.R.C.No.855 of 2023

V. SIVAGNANAM, J.

vum

Crl.R.C.No.855 of 2023

20.06.2023