



Crl.R.C.No.993 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2023

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

Crl.R.C.No.993 of 2023

Mari

... Petitioner

Vs.

State rep by Inspector of Police,
PEW Adyar Police Station,
(Cr.No.60 / 2023)

... Respondent

Prayer : Criminal Revision Petition filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the order dated 11.05.2023 made in Cr.MP.No.2508 of 2023 on the file of Principal Special Court under EC & NDPS Act, Chennai and consequently return the vehicle.

For Petitioner : Mr.A.Mohammed Iqbal

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

ORDER

The petition is directed against the order dated 11.05.2023 passed by the learned Principal Special Court under EC & NDPS Act, Chennai in Crl.MP.No.2508 of 2023 in Cr.No.60 of 2023 registered by the Inspector of Police, PEW Adyar Police Station, Chennai.

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2. The case of the prosecution is that on 22.02.2023 at about 9.00hrs, the Sub Inspector of Police, PEW Adyar got secret information about the illegal transportation of Ganja and he immediately along with his police team went to Kottivakkam Bus stand and intercepted a two wheeler Honda Dio bearing Registration No.TN03-Z-6890. A search was conducted on the rider of the two wheeler as well as the pillion riders and they were found in possession of 10kgs of Ganja and their statements were recorded. Thereafter, an FIR in Cr.No.60 of 2023 was registered by the Sub Inspector of Police, PEW Adyar for the offences under Sections 8(c), 20(b)(ii)(a), 25 and 29(1) of NDPS Act against the accused 1 to 3. The contraband as well as the two wheeler were seized by the police and the accused were produced before the Judicial Magistrate No.II, Alandur and were remanded to judicial custody.

3.The present petitioner, who is the 3rd party, filed a petition under Section 451 Cr.PC before the Principal Special Court under EC & NDPS Act, Chennai for return of vehicle and the said petition was



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dismissed.

4. Mr.A.Mohammed Iqbal, learned counsel for the revision petitioner contended that the present petitioner is not at all involved in the present case and that if the two wheeler is kept in open space in the police station, the value would get diminished over a period of time. Therefore, he prayed for the return of the vehicle.

5. Per contra, the learned Government Advocate (Crl.side) contended that the present petitioner is the father of A2 and the vehicle was involved in the commission of offence. His further contention is that since the case is under investigation, the interim custody of the vehicle to the revision petitioner should not be given.

6. It is seen from the records, that the quantity of Ganja seized from the accused is 10kgs and the petitioner is not arrayed as an accused in the instant case.



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7. 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



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photographs of the said vehicle should be taken and detailed panchanama should be prepared.”

8. Keeping the vehicle idle in an open space, would diminish the value of the vehicle over a period of time. As such, considering the ratio laid down by the Hon'ble Supreme Court, this Court is inclined to allow the Revision Petition.

9. Accordingly, this Criminal Revision Petition is allowed and the impugned order dated 11.05.2023 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 his 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.25,000/- (Rupees Twenty Five Thousand Only) before the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai.



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- iii) the Court may prepare a panchanama in Judicial Form No.82 with regard to the vehicle bearing registration No. TN-03-Z-6890 and such panchanama can be used in evidence.
- iv) the petitioner shall take photograph of the vehicle bearing registration No. TN-03-Z-6890 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 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.

No costs.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

- 1.The Principal Special Court under EC & NDPS Act, Chennai.
- 2.Inspector of Police, PEW Adyar Police Station, Chennai.
- 3.The Section Officer, Criminal Section, High Court, Madras.



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R. HEMALATHA, J.
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