



Crl.R.C.No.1244 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM

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

Crl.R.C.No.1244 of 2023

S.Kumaresan

... Petitioner

Vs.

State Rep. by

The Inspector of Police,

T-15, SRMC Police Station,

Chennai City.

... Respondent

(Crime No.385 of 2022)

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.4431/2022 dated 17.10.2022 on the file of the learned Principal Special Judge, Principal Special Court under EC & NDPS Act at Chennai.

For Petitioner : Mr.M.Vijaya Ragavan

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



Crl.R.C.No.1244 of 2023

WEB COPY

ORDER

The present revision petitioner challenging the orders passed by the Principal Special Court under EC & NDPS Act, Chennai in Crl.MP No.4431 of 2022 dated 17.10.2022.

2.The present revision petitioner is a third party. He filed an application before the Principal Special Court under EC & NDPS Act under Section 451 Cr.P.C. seeking return of two wheeler bearing Reg No.TN 60-AX-8646 which was seized by the respondent police in connection with Crime No.385 of 2022 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(B) altered to Section 8(c) r/w 20(b)(ii)(B), 21(b) of NDPS Act, 1985. The trial court judge vide her orders dated 17.10.2022, dismissed the said application on the ground that the seized contraband is a commercial quantity and that the investigation is also at a very crucial stage.



Crl.R.C.No.1244 of 2023

WEB COPY

3.Heard Mr.M.Vijaya Ragavan, the learned counsel for the revision petitioner and Mr.J.Subbiah, the learned Government Advocate (Crl.side) for the respondent.

4.The learned counsel for the revision petitioner contended that the petitioner is not connected with the crime and that his sister's son who is shown as third accused in the case had taken his vehicle without his knowledge. His submission is that, if the vehicle is kept in a open space, the value of the vehicle will diminish over a period of time. Therefore, he prayed for return of the vehicle.

5.Per contra, Mr.J.Subbiah, the learned Government Advocate (Crl.side) for the respondent contended that the investigation has been completed and that the final report has also been filed before the concerned Court.



Crl.R.C.No.1244 of 2023

WEB COPY

6. It is relevant to refer to a decision of the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai and others Vs. State of Gujarat* (2002) 10 SCC 283 held as under :

“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



Crl.R.C.No.1244 of 2023

WEB COPY

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.”

7. 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.

8. Accordingly, this Criminal Revision Petition is allowed and the impugned order dated 17.10.2022 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



Crl.R.C.No.1244 of 2023

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.
- iii. the Court may prepare a panchanama in Judicial Form No.82 with regard to the vehicle bearing registration TN 60-AX-8646 and such panchanama can be used in evidence.
- iv. the petitioner shall take photograph of the vehicle bearing registration TN 60-AX-8646 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 she will not use the vehicle for any illegal activities in future.



Crl.R.C.No.1244 of 2023

WEB COPY

vii.the petitioner shall also produce the vehicle as and when required
before the court below and before the respondent police.

No costs.

14.07.2023

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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Crl.R.C.No.1244 of 2023

R. HEMALATHA, J.

mtl

To

- 1.The Principal Special Court for NDPS Act, Chennai.
2. State Rep. by The Inspector of Police, T-15, SRMC Police Station, Chennai City.
3. The Section Officer, Criminal Section, High Court, Madras.

Crl.R.C.No.1244 of 2023

14.07.2023