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Crl.R.C.No.1364 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2023

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

Crl.R.C.No.1364 of 2023

Dinesh @ Appu

... Petitioner

Vs.

The State Rep. by,
Inspector of Police,
S-5, Pallavaram Police Station,
Chennai.
(Crime No.486/2022)

... Respondent

Prayer : Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code, to set aside the order passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.3895 of 2022, dated 09.09.2022.

For Petitioner : Ms.G.Gayathri

For Respondent : Mr.R.Vinothraja,

Government Advocate (Crl. Side)



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ORDER

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Challenging the orders, dated 09.09.2022 passed in Crl.M.P.No.3895 of 2022 by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai, the present Criminal Revision is filed by the petitioner.

2. The revision petitioner filed a petition in Crl.M.P.No.3895 of 2022 under Section 451 of Cr.P.C., before the Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai, seeking interim custody of the two wheeler viz., Yamaha FZ bike bearing Registration No.TN 11-P-8263, which was seized in connection with Crime No.486/2022 by the respondent police and subsequently produced before the Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in B.No.229/2022. The said petition was dismissed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai on 09.09.2022 on the ground that the vehicle was involved in illegal transportation of Ganja, aggrieved over which the present revision is filed.



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3. Ms.G.Gayathri, learned counsel for the petitioner would contend that the petitioner is an innocent person and if the seized vehicle is kept in an open space the value of the vehicle would diminish over a period of time.

4. Mr.R.Vinothraja, learned Government Advocate (Crl. side) appearing for the respondent though contended that the vehicle was used for illegal transportation of 1.100 Kgs of Ganja, did not raise any serious objection in allowing this petition.

5. In this back drop, it is relevant to refer a decision of the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai and others Vs. State of Gujarat*** reported in (2002) 10 SCC 283, in which it is held thus:

“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.”

6. It is true that keeping the vehicle idle in an open space, would definitely impair 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 grant interim custody of the vehicle to the petitioner.



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7. Accordingly, this Criminal Revision is allowed and the impugned order in Crl.M.P.No.3895 of 2022 dated 09.09.2022 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai, is set aside and the interim custody of the vehicle is given to the petitioner on the following conditions :

- i. The petitioner shall prove his ownership of the vehicle by producing R.C.Book and other relevant records;
- ii. The R.C.Book shall be deposited in the Court and the Court shall issue a certificate in this regard;
- iii. The petitioner shall execute a bond for a sum of Rs.50,000/- (Rupees Fifty thousand only) before the trial Court;
- iv. The Court may prepare a panchanama in Judicial Form No.82 with regard to the vehicle bearing Registration No. TN 11-P-8263 and such panchanama can be used in evidence;
- v. The Court shall take photograph of the vehicle bearing Registration No. TN 11-P-8263 and certify the same under Section 65B of the Central Act 1 of 1972 and such photographs may be used as secondary evidence;



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- vi. The petitioner shall not alienate or encumber the vehicle in any manner whatsoever;
- vii. The petitioner shall give an undertaking that he would not use the vehicle for any illegal activities in future; and
- viii. The petitioner shall also produce the vehicle as and when required by the court below and by the respondent police.

31.08.2023

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

To

1. The Principal Special Judge,
Principal Special Court under
EC & NDPS Act, Chennai.
2. The Inspector of Police,
S-5, Pallavaram Police Station,
Chennai.



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R. HEMALATHA, J.

vum

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