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Crl.R.C.No.1704 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1704 of 2023

Babu

... Petitioner

Vs.

The State rep by
The Inspector of Police,
Prohibition Enforcement Wing,
Nannilam Police Station,
Nannilam,
Thiruvarur District.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to allow the above Criminal Revision Petition and thereby set aside the order passed in Crl.M.P.No.3184 of 2023 by the District Munsif Cum Judicial Magistrate Court, Nannilam dated 04.07.2023 thereby directing the respondent Police to release Bajaj pulsar blue bike bearing No.TN-38-MC-0761.

For Petitioner	:	Mr.D.Arun
For Respondent	:	Mr.A.Damodaran, Additional Public Prosecutor

ORDER

The petitioner/accused is the owner of the vehicle viz., Bajaj Pulsar Blue colour bearing Registration No.TN 83 MC 0761 has filed a petition in Cr.M.P.No.3184 of 2023 for return of vehicle, which was seized in connection with Crime No.425 of 2023 on the file of the respondent Police. The learned



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District Munsif-cum-Judicial Magistrate, Nannilam, by order, dated 04.07.2023

WEB ~~DISMISSED~~ the petition, against which, the petitioner before this Court.

2.The case of the prosecution is that on 09.06.2023, at about 20.00 hours, when the Inspector of Police along with two Head Constables were on patrol duty, the petitioner/A1 along with A2 came in the above said vehicle. On seeing the Police, the petitioner/A1 and A2 stopped the vehicle and attempted to flee from the scene. The Police personnels secured them and made an enquiry. They disclosed their identify as Babu and Dhineshkumar. On searching the vehicle, 600 ml of six Tin Beer, 380ml of one M.C Brandy and 180 ml of one M.C Brandy found and seized along with the vehicle. Since the accused have no license for transporting the said liquor bottles, the respondent Police registered a case in Crime No.425 of 2023, for offence under Sections 4(1)(a) of the Tamil Nadu Prohibition Act.

3.The learned counsel for the petitioner submitted that the petitioner is the owner of the said vehicle and he has been arrayed as accused without any materials. When the petitioner returning home, A2 requested him to drop at Kollapuram. On seeing the Police, A2 suddenly ran away from the scene and the petitioner has no knowledge of transportation of the above said liquor by



A2. The petitioner neither involved in this case nor done any illegal act and he is only owner of the vehicle. The petitioner filed a petition under Sections 451 and 457 Cr.P.C., before the learned District Munsif-cum-Judicial Magistrate, Nannilam on the ground that the petitioner was need of his vehicle. In support of ownership of vehicle, the petitioner produced the RC book of the vehicle. Since the prosecution made its objection that the investigation is yet to be completed and notice served to the owner of the vehicle for confiscation proceedings, the learned District Munsif-cum-Judicial Magistrate, Nannilam dismissed the petition.

4.The learned Additional Public Prosecutor appearing for the respondent Police submitted that the confiscation proceedings already initiated by the Prohibition Officer and the notice, dated 12.06.2023 served to the petitioner on 21.06.2023. The initiation of the confiscation proceedings is reflected in the order of the lower Court. The learned Additional Public Prosecutor apprehends that if the vehicle is returned to the petitioner, he would continue to indulge in such activities. It would be appropriate to await the outcome of the confiscation proceedings.



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5.This Court considered the rival submissions and perused the materials available on record.

6.It is not in dispute that the petitioner is the owner of the vehicle, viz., Bajaj Pulsar Blue colour bearing Registration No.TN 83 MC 0761. It is seen that from the date of registration of FIR, the vehicle is kept in open space and thereby, the value of the vehicle is getting diminished. The Hon'ble Apex Court in the case of “*Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 290*”, had given guidelines in the cases of return of property to the owner.

7.Further, this Court in the case of “*Sakthidevi Versus State by The Inspector of Police, Thittachery Police Station, Nagapattinam District in Crl.R.C.No.501 of 2011*”, considered the case of “*David Vs. Sakthivel, Inspector of Police-cum-Station House Officer reported in 2010 1 MLJ (Crl.) 929*” and ordered return of seized vehicle to the owner, which is being consistently followed, despite initiation of the confiscation proceedings.



8.The vehicle is kept in open exposing to vagaries of weather, further detention would cause damage to the vehicle, in result, the value of the vehicle will get diminished and vehicle would become immobile.

9.In view of the aforesaid reasons, this court is constrained to set aside the order passed by the learned District Munsif-cum-Judicial Magistrate, Nannilam made in Cr.M.P.No.3184 of 2023, dated 04.07.2023 and the criminal revision is allowed.

10.The learned District Munsif-cum-Judicial Magistrate, Nannilam is directed to return the vehicle Bajaj Pulsar Blue colour bearing Registration No.TN 83 MC 0761 to the petitioner, on the following conditions:-

(i)The petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only), with two sureties each for a like sum to the satisfaction of the learned District Munsif-cum-Judicial Magistrate, Nannilam;

(ii)The petitioner shall produce the original RC Book of the vehicle and other relevant records to prove his ownership. The learned Magistrate shall peruse the RC book and other records, retain xerox copy of the same and return the same to the petitioner with a view to use the vehicle;



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(iii)The petitioner shall not alter or alienate the vehicle in any manner

till adjudication is over;

(iv)The petitioner shall also give an undertaking that he will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent and by the court below and as well as by the District Collector of the District or authorized officer in that behalf by the Government.

(v)The petitioner shall participate in the confiscation proceedings if any initiated and shall produce the vehicle before the confiscation authority.

This order is subject to the outcome of the confiscation proceedings.

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Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes/No

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To

1.The District Munsif-cum-Judicial Magistrate Court,
Nannilam.

2.The Inspector of Police,
Prohibition Enforcement Wing,
Nannilam Police Station,
Nannilam, Thiruvavarur District.



3. The Public Prosecutor,
High Court, Madras.

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M.NIRMAL KUMAR, J.

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