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Crl.R.C.No.1713 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.1713 of 2022

K.Surya
Petitioner

...

Vs.

The State rep. by the Inspector of Police,
P6, Kodungaiyur Police Station,
Chennai 600 118.
Respondent

...

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to call for the records relating to order dated 03.08.2022 passed in Crl.MP No.2066 of 2022 in Crime No.325 of 2022 on the file of the Principal Special Court under EC and NDPS Act, Chennai and set aside the same and further, direct the respondent to release the two wheeler KTM RC 200 bearing registration No.TN-05-CB-4273.

For Petitioner

: Mr.Jeeva Kuralamudhu



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For Respondent : Mr.V.Meganathan, Govt.Advocate
(Crl. Side)

ORDER

This Criminal Revision Petition has been filed to set aside the order dated 03.08.2022 passed in Crl.MP No.2066 of 2022 by the Principal Special Court under EC and NDPS Act, Chennai and direct the respondent to release the two wheeler KTM RC 200 bearing registration No.TN-05-CB-4273 to the petitioner.

2. It is the case of the prosecution that on 30.03.2022 at about 17.30 hours, on receipt of secret information about the illegal transport of Narcotic substances, the respondent police along with their officials, went to Jawahar Street, Krishnamoorthy Nagar, where, three persons namely Prabu, Jaffar and Surya were standing in a suspicious manner along with Auto bearing Registration No.TN 05 CA 0754 and two wheeler bearing registration No.TN 05 CB 4273 KTM. Further, on inspection, A1 to A3 were found in possession of 180 Tablets of Nitrovet-10; 240 Tablets of Nitrovet-5; 28 tablets of tydol 50mg; 130 tables of Tydol. Therefore, a case in Crime



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No.325/2022 was registered against them under Sections 22(b), 25, 29(1) of NDPS Act and the contraband and the vehicles were seized.

3. The learned counsel for the petitioner submitted that the petitioner is the owner of the two wheeler bearing registration No.TN 05 CB 4273. He further submitted that the petitioner has not committed any offence as alleged by the respondent police and his vehicle was not involved in any other case, similar in nature. He further submitted that, the petitioner filed a petition in Crl.M.P.No.2066 of 2022 before the Trial Court to return the vehicle to him, however, it was dismissed, vide order dated 03.08.2022. It is the contention of the learned counsel 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. He further submitted that the petitioner is ready to abide by any condition imposed by this court for return of vehicle and also he will produce the vehicle, as and when required either before the respondent police or before the Trial Court. Hence, he prayed to return the vehicle to



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the petitioner.

4. The learned Government Advocate (Crl.Side) filed counter affidavit and submitted that, the petitioner is the owner of two wheeler viz., Bajaj KTM bike bearing registration No.TN 05 CB 4273 and it was seized along with Auto bearing registration No. TN 05 CA 0754. He further submitted that the two wheeler was used to transport the Narcotic substances and if the vehicle is returned to the petitioner, there are every chances to use it for committing similar type of offence. Hence, he objected to return the vehicle to the custody of the petitioner.

5. Heard the learned counsel appearing for the petitioner and the respondent and I have perused the materials on record.

6. A perusal of the records shows that, the respondent police registered a case in Crime No.325/2022 against A1 to A3, under Sections 22(b), 25, 29(1) of NDPS Act. In the above case, the vehicles namely Auto bearing registration No. TN 05 CA 0754 and Bajaj KTM bike bearing



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registration No.TN 05 CB 4273 and Narcotic substances, as stated supra, were seized. The petitioner herein is A3 and he is the owner of two wheeler bearing registration No.TN 05 CB 4273. The Trial Court dismissed the petition filed by the petitioner to return his two wheeler, vide order passed in Crl.MP No.2066 of 2022 dated 03.08.2022.

7. The contention of the petitioner is that, he has not committed any offence as alleged by the prosecution and he is ready to abide by any condition imposed by this Court for returning the vehicle and if the vehicle is being kept idle in open space, it would cause damage to the vehicle. According to the respondent police, the accused persons were found in possession of Natcotic substances and the vehicles were used for transporting the Narcotic Substances.

8. At this juncture, it is relevant to rely upon 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*** and



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the relevant portion is extracted hereunder.

Vehicles

17. 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.

*18. 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.***

As per 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 lost its value and no purpose will be served. Therefore, considering the



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nature of offence and also taking into account the fact that the vehicle is not involved in any other case similar in nature, this Court is inclined to allow the Criminal Revision Case with some conditions.

9. Accordingly, this Criminal Revision Case is allowed and the impugned order passed by the Trial Court is set aside. The respondent police 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 not alienate or encumber the vehicle in any manner;
- iii. the petitioner shall execute a bond for a sum of Rs.75,000/- (Rupees seventy five thousand only) before the Principal Special Judge under EC & NDPS Act, Chennai-104.***
- iv. the petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future.



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- v. the petitioner shall take photograph of the vehicle; and
- vi.the petitioner shall also produce the vehicle as and when required before the court below and before the respondent police.

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Index: Yes/No
Internet: Yes/No
mst

To

1. The Principal Special Judge under EC & NDPS Act, Chennai.
2. The Inspector of Police, P6, Kodungaiyur Police Station, Chennai.
3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

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