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Crl.R.C.No.1619 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.1619 of 2022

Sanjai

... Petitioner

Vs.

State by,
The Inspector of Police,
T-14, Pallikaranai Police Station,
Chennai.
(Crime No.910 of 2022)

... Respondent

PRAYER: Criminal Revision Petition is filed under Section 397 and 401 of Cr.P.C., to call for the entire records relating to the order dated 11.11.2022 made in Crl.M.P.No.5306 of 2022 on the file of the Learned Principal Special Judge for EC & NDPS Act, Chennai.

For Petitioner	: Mr.K.M.Mohamed Ziauddin
For Respondent	: Mr.V. Meganathan Govt. Advocate (Crl.Side)



Crl.R.C.No.1619 of 2022

WEB COPY

ORDER

Challenging the order of dismissal of the petitioner's application filed to return the vehicle under Section 451 Cr.P.C, passed by the Principal Special Court under EC & NDPS Act, Chennai, in Crl.M.P.No.5306 of 2022, dated 11.11.2022, the present Revision has been filed.

2. The Learned Counsel for the petitioner submitted that the petitioner is the owner of the vehicle namely YAMAHA MT-15 Black Mettalic Colour bearing Reg.No.TN-14-AA-5034. Based on the complaint, the respondent police registered a case against the accused person in Crime No.910 of 2022 for the offences under Sections 8(c) 20(b)(ii)(B) & 25 of NDPS Act, 1985 and seized 3.300 kgs of Ganja from the accused and also seized the vehicle. The accused/A3 was remanded to judicial custody on 11.09.2022. Further, the learned counsel for the petitioner filed an application seeking for interim custody of the vehicle and the same was dismissed by the trial Court on the ground that the contraband seized in the said vehicle is of commercial quantity.



Crl.R.C.No.1619 of 2022

3. The learned counsel for the petitioner contended that the petitioner is the owner of the vehicle bearing Reg.No.TN-14-AA-5034 and the respondent police seized the vehicle and produced before the trial Court in B.No.339 of 2022. Further, the petitioner does not commit any similar type of offence and he is ready to abide any condition imposed by this Court. If the vehicle is allowed to be stationed in an open yard under all weather conditions and the natural calamities, the value of the vehicle will be drastically depreciated.

4. When the matter was taken up, the Learned Government Advocate (Crl.Side) for the respondent objected to return the vehicle and submitted that based on the secret information, they went to the place of occurrence, at that time, the petitioner/A3 along with two accused came in a two wheeler bearing Reg.No.TN-14-AA-5034. They intercepted the vehicle and found 3.300kgs of Ganja in their possession. After arrest, the accused recorded the confession statement and seized the contraband along with the vehicles. However, he submitted that the petitioner's vehicle has not involved in any previous case or similar type of crime. Hence, he prays to dismiss the petition.



Crl.R.C.No.1619 of 2022

5. On perusal of records, the fact reveals that, the petitioner is the owner of the vehicle bearing Reg.No.TN-14-AA-5034. On 11.09.2022, at about 07.45 hours when Tr.Marichamy who was Sub Inspector of T-14, Pallikaranai Police Station, was in station duty, he got secret information about illegal sale of Ganja. Based on the secret information, the police team went to the place of occurrence near Kamakottai Nagar, Pallikaranai. At that time, the accused persons came in two wheeler bearing registration Nos.TN-14-AA-5034. The respondent police intercepted vehicle and found in possession of 3.300kgs of Ganja and thereafter, registered the case in Crime No.910 of 2022 for the offences under Sections 8 (c) 20(b)(ii)(C) & 25 of NDPS Act, 1985. It is the contention of the learned counsel for the petitioner, that the petitioner is ready to give guarantee and security for returning the vehicle and if the vehicle is being kept idle in open space, it would cause damage to the vehicle. Further, the fact reveals that, the vehicle was not involved in any similar type of offence and the petitioner has no previous case of this nature. Under such circumstances, the petitioner is entitled for interim custody of the vehicle. Therefore, this Court is inclined to return the vehicle.



6. 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 Leave Petition (Crl.)2745 of 2022 dated 01.10.2002*** and 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***



Crl.R.C.No.1619 of 2022

WEB COPY

any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchanama should be prepared.

Therefore, 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. As such, considering the 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.

7. Accordingly, the impugned order passed by the Court below is set aside and the respondent police is directed to return the vehicle bearing Registration No. TN-14-AA-5034 to the petitioner for the temporary custody on complying 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;



Crl.R.C.No.1619 of 2022

iii. The petitioner shall execute a bond for a sum of Rs.1,00,000/- (Rupees One lakh only) before the Learned Principal Special Judge for EC & NDPS Act, Chennai.

iv. The petitioner shall give an undertaking that he will not use the vehicle for any illegal activities in future;

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.

8. Accordingly, the Criminal Revision Case is allowed.

02.02.2023

bsm

Index : Yes/No.

Internet : Yes/No.

To,

1. The Principal Special Judge for EC & NDPS Act, Chennai.

2. The Inspector of Police, T-14, Pallikaranai Police Station, Chennai.

3. The Public Prosecutor, High Court of Madras, Chennai.



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Crl.R.C.No.1619 of 2022

V.SIVAGNANAM, J.,

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Crl.R.C.No.1619 of 2022

02.02.2023