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Crl.RC No.96 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.98 of 2023

E.Karthik
Petitioner

...

Vs.

State rep. by the Inspector of Police,
P-3, Vyasarpadi Police Station,
Chennai.
(Crime No183/2022)
Respondent

...

PRAYER: Criminal Revision Petition filed under Section 401 of Criminal Procedure Code, 1973 to set aside the order dated 25.11.2022 passed in MP No.5858/2022 by the learned Principal Special Court under EC & NDPS Act, Chennai 104 in Crime No.183/2022, pending on the file of the respondent police.

For Petitioner : Mr.P.Palaninathan

for Mr.A.Amuthukumar

For Respondent : Mr.V.Meganathan



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Crl.RC No.96 of 2023

Government Advocate (Crl.Side)

ORDER

This Criminal Revision Petition has been filed to set aside the order dated 25.11.2022 passed in MP No.5858/2022 by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai 104 and to return the auto bearing registration No.TN85-J-1399.

2. It is the case of the prosecution that, on receiving a secret information about the illegal transport of Narcotic substances, on 01.05.2022, the respondent police along with their officials went to Viyasarpadi AA Road, P & T Quarters junction, and intercepted an auto bearing registration No.TN85 J 1399, which was driven by one Karthik. While inspection it was came to know that one Kannan was sitting in the backside seat and 100 kilograms of Ganja was kept under the back side seat. Hence, a case in Crime No.183/2022 was registered against them for the offences punishable under Sections 8(c) r/w 20(b)(ii)(B), 29(i), 25 NDPS Act and the above said vehicle and the contraband were seized.



Crl.RC No.96 of 2023

WEB COPY

3. The petitioner filed a petition in Crl.M.P.No.5858/2022 to release the above auto to him. But it was dismissed by the Trial Court, vide order dated 25.11.2022 on the ground if the vehicle is returned to the petitioner, he will use the vehicle to commit the offence similar in nature. Hence, challenging the above said order, the petitioner filed the present Revision case.

4. The learned counsel for the petitioner submitted that the petitioner is A2 in this Case and he is owner of the auto bearing registration No.TN-85-J-1399. He further submitted that A1 had taken the auto for hire and the petitioner has driven the vehicle for A1 and hence, he had no knowledge about the possession of contraband by A1. He further submitted that the petitioner is running his day today life, only by hiring the auto and if the vehicle is not returned to him, he will suffer a lot. Further, the vehicle is not involved in any case similar in nature and the petitioner is ready to give appropriate guarantee as well as security for return of vehicle and also he



CrI.RC No.96 of 2023

WEB COPY

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 the petitioner.

5. The learned Government Advocate (CrI.Side) submitted that, the petitioner is the owner of the auto bearing registration No.TN-85-J-1399 and it was used to transport Narcotic substances illegally and hence, it was seized along with contraband. He further submitted that the petitioner as well as the vehicle is not involved in any other case similar in nature, however, he objected to return the vehicle to the petitioner.

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

7. A perusal of the records shows that, the respondent police registered a case in Crime No.183/2022 against A1 and A2 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(B), 29(i), 25 NDPS Act with



Crl.RC No.96 of 2023

regard to the illegal transport of Narcotic substances by using an auto registration No.TN-85-J-1399. Hence the auto and the contraband were seized. Further, it reveals from the materials that the petitioner is A2 in this case and he is owner of the above auto. The above auto was produced before the jurisdictional Court in B.No.227/2022 and the same was returned to the respondent police for safe custody. The Trial Court dismissed the petition in Crl.M.P.No.5858 of 2022, filed by the petitioner, on the ground that if the vehicle is released, it will be used to commit the similar type of offence. It is the contention of the learned counsel for the petitioner that the auto is the only source to meet out the family expenses of the petitioner and he 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.

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



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.***

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,



Crl.RC No.96 of 2023

WEB COPY

considering the nature of offence and also taking into account the fact that the auto is necessary to the petitioner for his livelihood, this Court is inclined to allow the Revision Petition.

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.80,000/- (Rupees eighty thousand only) before the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai.***
- iv. the petitioner shall give an undertaking that he will not use the



WEB COPY



Crl.RC No.96 of 2023

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.

31.01.2023

Index: Yes/No

Internet: Yes/No

mst

To

1. Principal Special Judge, Principal Special Court
under EC & NDPS Act, Chennai-104.
2. The Public Prosecutor, Madras High Court.



WEB COPY



Crl.RC No.96 of 2023

V.SIVAGNANAM, J.,

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Crl.RC No.96 of 2023

31.01.2023