



Crl.R.C.(MD)No.418 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.07.2023

Pronounced on : 02.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD)No.418 of 2023

Sivan Pandi

... Petitioner/Accused-4

Vs.

State rep. by,

The Inspector of Police,

Velipalayam Police Station,

Nagapattinam District.

(Crime No.394/2022)

... Respondent/Complainant

PRAYER: This Criminal Revision Petition is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records and set aside the Order passed by the Presiding Officer, Special Court for Essential Commodities Act Cases/Additional District Judge, Thanjavur in



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Cr.M.P.No.1125 of 2023 dated 06.03.2023 and set aside the same and grant interim custody of the vehicle namely, Four Wheeler Mahindra Pick up Van bearing Registration No.TN51 AQ 5171 to the petitioner.

For Petitioner : Mr.K.Kumaravel

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

ORDER

The Petitioner filed this revision against the dismissal order dated 06.03.2023 passed in Cr.M.P.No.1125 of 2023 on the file of the Presiding Officer/Additional District Judge, Special Court for Essential Commodities Act Cases, Thanjavur, which was filed under Section 451 Cr.P.C., to seek interim custody of the vehicle, namely, Four Wheeler Mahindra Pick up Van bearing Registration No.TN51AQ5171, which is involved in the illegal transportation of the “Ganja”.

2. The Petitioner is said to have committed the offence under Section 8(c) r/w 20(b)(ii)B of the Narcotic Drugs and Psychotropic



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Substances Act, 1985.

3. According to the prosecution, on 24.09.2022 at 2.00 a.m., the respondent police intercepted the vehicle of the petitioner and found that the petitioner, along with other accused, were in possession of the 1.500 kg of 'Ganja'. Therefore, the respondent police registered the case against the petitioner and other accused for the offence under Section 8(c) r/w 20(b)(ii)B of the Narcotic Drugs and Psychotropic Substances Act, and seized the vehicle and contraband and samples. Thereafter, they produced the same before the Court.

4. The petitioner filed the petition under Section 451 Cr.P.C., to seek interim custody of the vehicle namely, Four Wheeler Mahindra Pick up Van bearing Registration No.TN51AQ5171 before the learned trial Judge in Cr.M.P.No.1125 of 2023. The learned trial Judge dismissed the same on the ground that the petitioner is a habitual offender and more than 20 number of cases are pending against him. Challenging the same, the petitioner filed the present revision.

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5. The learned counsel for the petitioner submitted that the petitioner is innocent and he has been falsely roped in this case and his vehicle has also been falsely seized. The vehicle has been under the custody of the respondent police without proper maintenance and hence, the value of the property is getting diminished. He placed reliance on the judgment of the Hon'ble Supreme Court reported in ***2002(10)SCC283 [Sunderbhai Ambalal Desai v. State of Gujarat]*** seeks the interim custody. He further submitted that the learned trial Judge dismissed the petition only on the ground that number of previous cases are pending against the petitioner and the same can not be the reason to dismiss the petition.

6. The learned Additional Public Prosecutor submitted that as per the judgment of this Court in Crl.R.C.(MD)No.41 of 2019 (***Nahoorkani vs. State***), the petition under Section 451 Cr.P.C is not maintainable in view of the specific bar under Sections 60, 61, 62 & 63 of the NDPS Act. He further submitted that as per Rule 257 of the Madras High Court



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Criminal Rules of practice, when there is a bar to release the vehicle in the Special Act, the petition under Section 451 Cr.P.C., is not maintainable. He further submitted that the petitioner has more than 20 previous cases and hence, the order of dismissal by the learned trial Judge need not be interfered.

7. This Court has considered the rival submissions made by both side counsel and also perused the records.

8. The petitioner's vehicle bearing registration No.TN51AQ5171 was seized by the respondent police along with 1.500 k.g. of “Ganja”. The learned trial Judge dismissed the petition on the ground that petitioner is having number of previous cases. The said reasoning of the learned trial Judge is in accordance with law.

9. Apart from that as rightly pointed out by the learned Additional Public Prosecutor, the petition under Section 451 Cr.P.C., to seek the interim custody of the vehicle is not maintainable. The same was



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elaborately dealt by this Court CrI.R.C.(MD)No.41 of 2019 and learned Single Judge of this Court held as follows:-

“12. Further, the provision under Section 63 of the NDPS Act is clear that the decision regarding confiscation had got to be taken during the trial and not after it and the right of the State to confiscate the conveyance and articles or things seized under this Act is irrespective of the result of the trial. In view of the provision under Section 63 of the Act, the provisions of the Code of Criminal Procedure as contained in Sections 451 and 452 will stand modified to the extent and any claimant to the property will be obliged to satisfy the Court in terms of the exceptions carved out in Sections 60, 61 and 62 of the NDPS Act before he is returned the custody of the vehicle taken into consideration when it was being used for transporting a narcotic substance. Therefore, when the conveyance is seized under the NDPS Act, the return of property does not arise as contemplated under Sections 451 and 452 of Cr.P.C and it is liable to be confiscated under Section 63 of the NDPS Act. The Magistrate may not have jurisdiction to entertain a petition filed under



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Section 451 of Cr.P.C in the light of the Special Rule made under Section 52A of the Act.

13. In fact, Section 63 of the Act had provided for a procedure in making confiscations. It gives the power to the Court to decide whether any article or thing seized under the Act is liable to be confiscated in terms of Sections 60, 61 or 62 of the Act. Before the amendment to Section 52A, the conveyance was not included as an item which should be seized and disposed of. The very fact that conveyance had been incorporated in the amendment itself indicates that the Government intended to provide a special procedure to deal with such conveyance, while taking into account the fact that most of the transportation is done in conveyances which itself is defined under Section 2(viii) as meaning “a conveyance of any description whatsoever including any aircraft, vehicle or vessel”. Therefore, if any vehicle is involved in the transportation of narcotic drug, psychotropic substance or controlled substance, such vehicles also could be seized and disposed of in terms of Section 52A(1) of the Act.”



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10. In view of the above provision under the NDPS Act and the decision of this Court rendered in Crl.R.C(MD)No.41 of 2019, this Court holds that petition under Section 451 Cr.P.C., to seek the interim custody is not at all maintainable when the vehicle was seized under the NDPS Act. Hence, the trial Court order is hereby confirmed.

11. Accordingly, this Criminal Revision Petition is dismissed.

02.11.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
P JL

To

1. The Presiding Officer,
Special Court for Essential Commodities Act Cases/
Additional District Judge,
Thanjavur.

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2. The Inspector of Police,
Velipalayam Police Station,
Nagapattinam District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN,J.

PJL

**Pre-delivery Judgment made in
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02.11.2023