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Crl.R.C.No.189 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.189 of 2024

Rohit Varman

... Petitioner

Vs.

The Inspector of Police,
M-8, Sathangadu Police Station,
Chennai.
Crime No.200/2023.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order in Crl.M.P.No.8974 of 2023 dated 27.12.2023 in Crime No.200 of 2023 on the file of the Principal Special Court under EC & NDPS Act, Chennai.

For Petitioner : Mr.S.Apunu
For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

ORDER

The petitioner filed a petition in Crl.M.P.No.8974 of 2023 in Crime No.200 of 2023 seeking return of vehicle viz., KTM Duke bearing registration No.TN-03-AH-9615, which was seized by the respondent Police in Crime No.200 of 2023 for offence under Sections 8(c), 20(b)(ii)(B) & 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 before the



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learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai. The learned Principal Special Judge, by order, dated 27.12.2023 dismissed the return of property petition, against which, the present revision is filed.

2.The contention of the petitioner is that the petitioner's bike was seized by the respondent Police since his brother/A3 and other accused said to have illegally transported contraband. The petitioner handed over his vehicle on the request made by his brother/A3 for urgent work and the petitioner is not away about A3 activities or the other accused. It is submitted that the vehicle is kept in open space exposing to vagaries of weather, further detention of vehicle would make the vehicle unusable, rusted and it would become a scrap. The petitioner is ready to comply with any condition that this Court may impose while granting return of vehicle. Hence, he prays for return of property.

3.The learned Additional Public Prosecutor appearing for the



respondent Police filed counter submitting that on 24.06.2023 at about 15.00 hours the Sub Inspector of Police attached to the respondent Police and other Police personnels had gone to the scene of occurrence i.e., 3rd Street Kumar Tea Shop, Jothingar. At that time, the accused persons came in the said vehicle and on seeing the Police, they tried to escape. The Police caught hold them and made enquiry. During enquiry, it came to know that the accused were found in possession of 1.200 kgs of ganja, then the respondent Police arrested them and obtained confession statements. Thereafter, the Police had seized the contraband and the said vehicle, arrested the accused, registered FIR in Crime No.200 of 2023 for offence under Sections 8(c), 20(b)(ii)(B) & 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985, remanded the accused and sent the contraband for forensic examination. If the vehicle is ordered to be released, again the accused will commit similar type of offences. Hence, he prays for dismissal.

4.Considering the submissions made and on perusal of the materials,



admittedly, the petitioner is the owner of the two wheeler viz., KTM Duke bearing registration No.TN-03-AH-9615 and he is not an accused in this case. The petitioner's brother/A3 took the said two wheeler in the guise of urgent work, on the other hand he involved in the above case.

5.It is seen that from the date of seizure, the vehicle is kept in open space 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. Added to it, the Apex Court in the case of *Sainaba vs. The State of Kerala and another in Criminal Appeal No.2005/2022 [SLP (CRL.) No.72080/2022]* by following the judgment of the Apex Court in the case of “*Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 283*” released the vehicle which was involved in the NDPS Act. Further, the learned Additional Public Prosecutor objected return of property by referring to the order of this Court in Crl.R.C.(MD).No.41 of 2019 dated 16.06.2023, but it is seen that in the said order, the decision of the Apex Court in *Sainaba's* case has not been referred to. In view of the decision of the Apex Court on this point as laid



down which is binding under Article 141 of the Constitution of India, this Court is inclined to allow return of property.

6. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 27.12.2023 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.8974 of 2023 in Crime No.200 of 2023 is set aside. In view of the same, the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai is directed to return the KTM Duke bearing registration No.TN-03-AH-9615, on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.5,000/- (Rupees Five Thousand only) with two sureties to the satisfaction of the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai;

(ii) The petitioner shall produce the original RC Book along with self attested photostat copy of RC Book of the vehicle and other relevant records to prove her ownership. The learned Principal Special Judge shall peruse the RC book and other records, retain xerox copy of the same and return the



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original RC book to the petitioner;

WEB COPY (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 she will produce the vehicle as and when required by the respondent and by the court below.

27.03.2024

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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To

- 1.The Inspector of Police,
M-8, Sathangadu Police Station,
Chennai.
- 2.The Principal Special Judge,
Principal Special Court under EC & NDPS Act,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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