



CrI.R.C.No.323 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.323 of 2024

Venkatraman

... Petitioner

Vs.

The State rep by
The Inspector of Police,
F2 Egmore Police Station,
Chennai.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the order of dismissal passed by the learned Principal Special Judge under EC & NDPS Act at Chennai in the petition filed under Sections 451 and 457 of Cr.P.C. for return of property in CrI.M.P.No.10071 of 2023 dated 23.01.2024 in Crime No.439 of 2023 and return the Yamaha bike bearing registration No.TN-01-BK-0072 and Iphone 14 pro max mobile phone seized in the case registered by the respondent in Crime No.439 of 2023.

For Petitioner	: Mr.M.Soundar Vijay Arulram
For Respondent	: Mr.S.Raja Kumar Additional Public Prosecutor

ORDER



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The petitioner filed a petition in Crl.M.P.No.10071 of 2023 in Crime No.439 of 2023 seeking return of vehicle viz., Yamaha bike bearing registration No.TN-01-BK-0072 and Iphone 14 pro max, which were seized by the respondent Police in Crime No.439 of 2023 for offences under Sections 8(c) r/w. 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 before the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai. The learned Principal Special Judge, by order, dated 23.01.2024 dismissed the return of property petition, against which, the present revision has been filed.

2.The learned counsel for the petitioner submitted that on 17.11.2023 the petitioner who was hailing from Madhavaram went to meet his friend at Pudhupettai, at that time, the respondent police came there, conducted search and seized 1.250 kgs of ganja from Imrankhan/A1, Iphone 15 pro max and a two wheeler bearing registration No.TN-01-AZ-2574. The petitioner who was unknowingly speaking with his friend was also arrested in this case and a Yamaha bike bearing registration No.TN-01-BK-0072 and Iphone 14 pro max was seized from the petitioner. He would submit that the petitioner is



involved in the finance business, he used to go for collection to various parts of the city and in one such business transaction, he met A1 and there is nothing beyond that. He further submitted that the petitioner used his mobile phone for maintaining the contact details of persons who availed finance from him and all other details. Further, the petitioner also stored his passport details and personal details in the phone. He further submitted that the petitioner has been falsely implicated in this case. 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 and submitted that on 17.11.2023 at about 11.30 hours, when the Inspector of Police was in station duty, he received a secret information about illegal transport of Narcotic Substances. Thereafter, he went to the scene of occurrence, i.e. Nearby Immanuel Subishesha Sabai, South Koovam along with the Police team. At that time,



two suspicious persons standing with two wheeler bearing registration Nos.TN-01-AZ-2574 and TN-01-BK-0072, on seeing the police parties, they tried to escape from that place, immediately, the police parties caught hold of them. During enquiry, it came to know that the accused persons were in possession of 1.250 kgs of ganja and 2.5 grams OG. The respondent police seized the two wheelers, Iphone, cash of Rs.1,75,400/- under cover of seizure mahazar in the presence of witnesses. Thereafter, the FIR in Crime No.439 of 2023 registered for offence under Sections 8(c) r/w. 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985, samples were taken and sent for chemical analysis. Hence, prays for dismissal.

4.Considering the submissions made and on perusal of the materials available on record, it is seen that no contraband was seized from the vehicle. It is further 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.

5. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 23.01.2024 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.10071 of 2023 in Crime No.439 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 vehicle viz., Yamaha bike bearing registration No.TN-01-BK-0072 and Iphone 14 pro max, on the following conditions:-

- (i) The petitioner shall execute a personal bond for a sum of



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Rs.10,000/- (Rupees Ten 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 his ownership. The learned Principal Special Judge shall peruse the RC book and other records, retain xerox copy of the same and return the original RC book to the petitioner;

(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 he will produce the vehicle as and when required by the respondent and by the court below.

26.03.2024

Index : Yes/No
Speaking Order/Non Speaking Order



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Neutral Citation: Yes/No

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To

- 1.The Inspector of Police,
F2 Egmore 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.

cse

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