



WEB COPY



Crl.R.C.No.550 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.07.2024

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

Crl.R.C.No.550 of 2024

M.Raji

... Petitioner

Vs.

The State Represented by:
The Inspector of Police,
R-2, Kodambakkam P.S.,
Chennai.
(Crime No.83/2023)

... Respondent

Prayer : Criminal Revision case filed under Section 397 and 401 of Cr.P.C. to set aside the order passed in Crl.M.P.No.1922 of 2024 which was dismissed on 28.02.2024 by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai by allowing this revision petition.

For Petitioner : Mr.P.Iyyappan

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)



Crl.R.C.No.550 of 2024

WEB COPY

ORDER

Challenging the dismissal order passed by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai, in Crl.M.P.No.1922 of 2024 in C.C.No.59 of 2024, dated 28.02.2024, the present Criminal Revision Case has been filed by the petitioner seeking interim custody of the seized vehicle viz., Motor Cycle TVS NTRQ 125 bearing Registration No.TN 09 CU 5118, which is in the custody of the respondent/Inspector of Police, R-2, Kodambakkam Police Station, Chennai, in Crime No.83 of 2023 for the alleged offences punishable under Section 8(c) r/w 20(b)(ii)(B) of Narcotic Drugs & Psychotropic Substances Act (for short 'the NDPS Act').

2. The case of the petitioner is that, the petitioner is the owner of the vehicle bearing Registration No.TN 09 CU 5118, which was seized by the respondent in pursuance of the FIR registered in Crime No.83 of 2023 for the alleged offence punishable u/s. 8(c) r/w 20(b)(ii)(B) of the NDPS Act. Further, the above said vehicle is in no way connected with the alleged



Crl.R.C.No.550 of 2024

WEB COPY

crime as contended by the respondent police and seeking interim custody, the petitioner filed Crl.M.P.No.1922 of 2024 before the trial court, however, the trial court had dismissed the said petition, vide impugned order dated 28.02.2024. Challenging the same, the present revision is filed before this court.

3. Learned counsel for the petitioner submitted that admittedly, the petitioner is the owner of the vehicle and on the allegation that the vehicle was involved in trafficking contraband, the vehicle has been seized and kept in open space. The petitioner, being the owner of the vehicle is in no way connected with the said trafficking and she has been falsely implicated in the case by showing her accused in the criminal case. Since the petitioner's vehicle has been seized and she has been falsely implicated in the case, the vehicle if kept in open place, is prone to corrosion and deterioration by being in open atmosphere, thereby, the value of the vehicle would diminish over a period of time. Therefore, the petitioner filed petition under Section 451 r/w 457 Cr.P.C. for interim custody of the vehicle, pending trial, which



Crl.R.C.No.550 of 2024

has since been dismissed, leading to the filing of the present revision.

Learned counsel further submits that the petitioner is ready to comply with any conditions imposed by this Court and, accordingly, prays for allowing this revision.

4. Per contra, learned Government Advocate (Crl. Side) appearing for the respondent submits that the said vehicle is involved in Crime No.83 of 2023 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(B) of the NDPS Act and further, the release of vehicle involved in trafficking of narcotic substances has been dealt with by a learned single Judge of this Court in *Nahoorkani – Vs – The State (Crl.R.C. (MD)No.41 of 2019– 16.06.2023)*, wherein, this Court, after elaborate discussion of the various provisions of the NDPS Act, vis-à-vis the Code of Criminal Procedure, had rejected the claim for return of vehicle and, therefore, the claim of the petitioner for return of vehicle cannot be considered, which has been rightly rejected by the Court below and, therefore, no interference is warranted with the said decision and, accordingly, seeks dismissal of the present revision.



Crl.R.C.No.550 of 2024

WEB COPY

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent and perused the materials available on record and the various provisions of law, which have a bearing on deciding the issue as also the decision relied on by the learned Government Advocate (Crl.Side).

6. The genesis of the present case is that the petitioner was found in possession of 1.100 Kgs of Ganja in her vehicle when she was caught by the law enforcing agency and, therefore, the vehicle was seized and the petitioner was remanded to judicial custody. Pending trial, petition for interim custody of the vehicle was filed, which has been rejected against which the present revision has been preferred.

7. The short question that arises for consideration is – *Whether the petitioner is entitled for interim custody of the vehicle?*



Crl.R.C.No.550 of 2024

WEB COPY

8. Similar issue fell for consideration before the Madurai Bench of this Court in *Mohammed Shan – Vs – The State (Crl.RC (MD) No.116/2024 – Dated 8.2.2024)*, wherein, this Court, after discussing the various provisions of law as also the decision of a coordinate Bench of this Court in *Nahoorkani – Vs – The State (Crl.R.C. (MD)No.41 of 2019– 16.06.2023)* and other relevant materials, had held as under :-

“29. In Nahoorkani case (supra), relied on by the respondents, learned single Judge, finding that the directions given by the Apex Court in Mohanlal case (supra) with regard to storage, confiscation and disposal of the contraband and the conveyance, being not followed, was constrained to issue a slew of directions, the material directions being (xi) and (x) containing in Para-16 of the said order, which are quoted hereunder for reference :-

“16.

** * * * **

(xi) Any person claiming the ownership of the conveyance, he may approach the concerned Drug Disposal Committee directly and make his claim. On such application Drug Disposal Committee concerned before taking decision on the disposal of the vehicle, shall grant opportunity of hearing to the parties and pass appropriate orders on the representation made by the party in accordance with law as expeditiously as possible,



WEB COPY



CrI.R.C.No.550 of 2024

within a period of 2 months.

(xii) If any persons approach the Trial Court for release of vehicle, in case the property already produced before the trial court and assigned R.P.No. then such court shall conduct enquiry and pass suitable orders as contemplated u/s 63 of NDPS Act or if the vehicle not produced before the court then competent court shall pass appropriate order by directing the Petitioner to approach concerned Drug Disposal Committee for getting suitable relief.”

30. From the above directions, it is evident that the procedure to be followed is as envisaged u/s 63 of the NDPS Act, which has been dealt with by this Court in extenso in the earlier portion of the order and to that extent the said decision is squarely applicable with regard to the release of the vehicle/conveyance, which is involved in the offence. Therefore, the rightful procedure is for the owner of the property to approach the competent court/special court seeking release of the property, in line with the mandate under Section 60 (3) and proviso to 63 (2) of the NDPS Act and upon satisfaction it is for the Special Court to invoke its power to grant interim custody of the property as sought for under Section 451 Cr.P.C. pending trial.

31. From the aforesaid discussion, this Court holds that it is only the owner of the vehicle, who could claim for interim custody of the property, viz., conveyance, by filing petition before the Special Court u/s 451 Cr.P.C. and upon such petition being filed, subject to fulfillment of the conditions stipulated u/s 60 (3) and proviso to 63 (2) of the NDPS Act, it is for the Special Court to pass appropriate orders. It is



Crl.R.C.No.550 of 2024

WEB COPY

further made clear that it is only the Special Court, which is conferred with powers and jurisdiction to decide a petition filed u/s 451 Cr.P.C. with regard to interim custody of the property, viz., the conveyance, by following the mandate contemplated u/s 60 and 63 of the NDPS Act and by virtue of the procedure contemplated u/s 451 Cr.P.C. and strict adherence to Section 451 Cr.P.C. would not be applicable but for the provisions of Sections 60 (3) and 63 (2) of the NDPS Act.”

9. From the above decision it is clear that it is only the owner of the vehicle, who could claim for interim custody of the property, viz., conveyance, by filing petition before the Special Court u/s 451 Cr.P.C. and upon such petition being filed, subject to fulfillment of the conditions stipulated u/s 60 (3) and proviso to 63 (2) of the NDPS Act, it is for the Special Court to pass appropriate orders. It is further made clear that it is only the Special Court, which is conferred with powers and jurisdiction to decide a petition filed u/s 451 Cr.P.C. with regard to interim custody of the property, viz., the conveyance, by following the mandate contemplated u/s 60 and 63 of the NDPS Act and by virtue of the procedure contemplated u/s 451 Cr.P.C. and strict adherence to Section 451 Cr.P.C. would not be



Crl.R.C.No.550 of 2024

applicable but for the provisions of Sections 60 (3) and 63 (2) of the NDPS Act.

10. Coming to the facts in issue, there is no quarrel that the petition u/s 451 Cr.P.C. has been filed before the trial court, which exercises jurisdiction and that the petition has been filed by the petitioner, who claims to be owner of the vehicle. Therefore, the first arm with regard to jurisdiction and ownership stands fulfilled, but the second arm with regard to the owner of the vehicle satisfying the Court by proving that the vehicle was used without his knowledge or connivance has not been established, as the vehicle was seized from the petitioner, who is the owner of the vehicle, along with the contraband and the name of the petitioner is shown as accused in the FIR. Therefore, without the petitioner absolving herself from the offence by establishing that she has not trafficked contraband, seeking interim custody of the vehicle would not be permissible, as her complicity in the offence stands intricately connected with the said vehicle and it would not be in the interest of the prosecution to have the vehicle given interim



Crl.R.C.No.550 of 2024

custody to the petitioner, as the vehicle is a material object, which is connected with the commission of the offence.

11. In the above backdrop of the factual scenario, even Section 60 (3) of the Act would not stand attracted to the case of the petitioner for seeking interim custody of the vehicle, as she cannot prove that she had no knowledge or connivance about the offence which had been committed, as her name finds place in the FIR. Rightly appreciating the aforesaid position of law, the trial court had rejected the plea of the petitioner for interim custody of the vehicle, which cannot be said to be perverse, arbitrary or illegal and, therefore, the said order does not deserve any interference at the hands of this Court.

12. Therefore, rightly, the petition for return of property filed by the petitioner was dismissed by the Court below and the findings rendered therein to arrive at the subjective decision, being rational, reasonable and legal, no interference is warranted with the well considered decision



Crl.R.C.No.550 of 2024

WEB COPY

rendered by the court below. Accordingly, the Criminal Revision Case fails and the same is dismissed.

29.07.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
sp

To

1. The Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.
2. The Inspector of Police, R-2, Kodambakkam P.S., Chennai.
3. The Public Prosecutor, Madras High Court, Chennai.



WEB COPY



Crl.R.C.No.550 of 2024

M.DHANDAPANI, J.

sp

Crl.R.C.No.550 of 2024

29.07.2024