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Crl.R.C.No.477 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

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THE HONOURABLE **MR.JUSTICE M.NIRMAL KUMAR**

Crl.R.C.No.477 of 2024

Umasankar

... Petitioner

Vs.

The State rep. by
Inspector of Police,
Anna Nagar, P.E.W. Police Station,
Chennai District.
Crime No.133 of 2023.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order passed in Crl.M.P.No.9100 of 2023 on the file of the Principal Special Judge NDPS Act Cases at Chennai, dated 18.12.2023 and consequently direct the respondent to return the property to the petitioner, vehicle bearing TN-02-AH-4440 Bajaj Auto 180BSIV, Yellow colour.

For Petitioner : Mr.M.Che Castro

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



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ORDER

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The petitioner is the owner of passenger Auto bearing Registration No.TN-02-AH-4440, which was seized by the respondent Police in Crime No.133 of 2023 for offences under Sections 8(c) r/w 20(b)(ii)(B) of the Narcotics Drugs and Psychotropic Substances Act (NDPS Act). The petitioner filed a petition seeking return of property in Crl.M.P.No.9100 of 2023 before the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai. The learned Principal Special Judge, by order dated 18.12.2023 dismissed the return of property petition, against which, the present revision has been filed.

2.The contention of the petitioner is that the petitioner had purchased the Auto by availing private finance. The vehicle was earlier on hypothecation with G.M.Finance. Thereafter, the petitioner purchased the vehicle. The petitioner is making his livelihood by renting his Auto. Prior to the date of occurrence, one Srinivasan @ Kona Seenu/A2 took the Auto on



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monthly rental basis. The petitioner is not aware of A2's other acts. Later, the petitioner came to know that on search of Auto, 1.500 kgs. of Ganja was seized. From the date of seizure, the vehicle is kept in open exposing to vagaries of weather, further detention 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. It is further submitted that this Court in Crl.R.C.No.1057 of 2023 by order dated 17.07.2023 granted return of vehicle to an accused involved in the offence of similar nature. Hence, he prays for return of property.

3.The learned Additional Public Prosecutor appearing for the respondent Police filed a counter and submitted that on 11.02.2023 at about 19.00 hours, the then Sub-Inspector of Police received a secret information from the informant about the illegal sale of ganja. Then she along with the Police team went to the place of occurrence, intercepted the Auto and found accused in possession of 1.500 kgs of ganja. The Police team arrested the



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accused, recorded confession statement and the contraband was seized along with Auto bearing Registration No.TN-02-AH-4440 under seizure mahazar in presence of witnesses. Thereafter, a case was registered in Crime No.133 of 2023 for offence under Sections 8(c) r/w 20(b)(ii)(B) of the NDPS Act against the accused on 11.02.2023. Thereafter, the accused was sent to judicial custody on 11.02.2023 and the seized contraband and the Auto produced before the Principal Special Court under EC & NDPS Act Cases, Chennai. Thereafter, the then Inspector of Police sent the samples of contraband to the Forensic Science Lab, Chennai for chemical analysis and the report obtained.

4.He further submitted that the petitioner, owner of the vehicle, filed a petition before the Court below in Crl.M.P.No.9100 of 2023 seeking return of vehicle BAJAJ AUTO 180BSIV, Yellow Colour bearing registration No.TN-02-AH-4440 and the same was dismissed on 18.12.2023. Challenging the same, the present Criminal Revision Case has been filed. He



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further submitted that this Court in Crl.R.C(MD)No.41 of 2019, dated 16.06.2023 had given directions to the Special Court with regard to disposal of the conveyance articles seized under the NDPS Act. In view of the above, he prays for dismissal of the criminal revision case.

5.Considering the submissions made and on perusal of the materials available on record, it is seen that the petitioner is the owner of the vehicle and he is not an accused in this case, not involved in any case of similar nature. The petitioner let out the Auto for rent to A2/Srinivasan, further no contraband seized from the petitioner. It is seen that from the date of seizure, the vehicle is kept in open space exposing to vagaries of weather, further detention of Auto would cause damage to the vehicle, in result, the value of the vehicle will get diminished and vehicle would become unusable and immobile. 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]* following the judgment in the case of “*Sunderbhai*



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Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 283
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released the vehicle, involved in NDPS Act. 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, it is seen that in the said order, the decision of the Apex Court in *Sainaba's* case not referred. 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, hence, this Court is inclined to grant return of Auto to the petitioner.

6.Accordingly, this Criminal Revision Case is allowed and the impugned order dated 18.12.2023 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.9100 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 BAJAJ AUTO 180BSIV, Yellow



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Colour bearing registration No.TN-02-AH-4440 to the petitioner, on the
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following conditions:-

(i) The petitioner shall execute a personal bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with one surety 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 photostat 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 conclusion of Crime No.133 of 2023 and the consequential proceedings.



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(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.

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Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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To

1.The Inspector of Police,
Anna Nagar, P.E.W. Police Station,
Chennai District.

2.The Principal Special Judge,
Principal Special Court under EC & NDPS Act,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

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