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Crl.R.C.No.591 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.07.2024

CORAM:

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

Crl.R.C.No.591 of 2024

Imran Khan

... Petitioner

Vs.

State Represented by
Inspector of Police,
F2, Egmore Police Station,
Chennai District.
(Cr.No.439/2023)

... Respondent

Prayer : Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 23.02.2024 made in Crl.M.P.No.543 of 2024 on the file of the Principal Special Court under EC and NDPS Act, Chennai.

For Petitioner : Mr.I.Periaswamy

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



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ORDER

This Criminal Revision petition has been filed to set aside the order dated 23.02.2024 made in Crl.M.P.No.543 of 2024 on the file of the Principal Special Court under EC and NDPS Act, Chennai.

2. The case of the petitioner is that, the petitioner is A1 and he is the owner of the Honda Dio bearing Reg No.TN 01 AZ 2574 and Apple Iphone 15 Pro Max, which was seized by the respondent in pursuance of the FIR registered in Crime No.439 of 2023 for the alleged offence u/s. 8(c) r/w 20(b)(ii)(B), 29(1) & 25 of the NDPS Act, 1985. Further, the petition mentioned properties have been utilized by the petitioner for the purpose of transportation of narcotic drugs and the respondent had seized the petition mentioned properties and kept the same in the police station for the aforesaid offences. Therefore, seeking interim custody, the petitioner filed Crl.M.P.No.543 of 2024 before the trial court, however, the trial court had dismissed the said petition, vide impugned order dated 23.02.2024. Challenging the same, the present Criminal Revision Case is filed.



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3. Learned counsel for the petitioner submitted that admittedly, the petitioner is the owner of the vehicle and the mobile phone on the allegation that the above said properties were involved in trafficking contraband, the same have been seized and kept in open space. The petitioner, being owner of the said properties are in no way connected with the said trafficking and he has been falsely implicated in the case by showing him as accused in the criminal case. Since the petitioner's properties have been seized and he has been falsely implicated in the case, the vehicle and mobile phone if kept in open place, is prone to corrosion and deterioration by being in open atmosphere, thereby, the value of the case properties would diminish over a period of time. Therefore, the petitioner filed petition under Section 451 Cr.P.C. for interim custody of the vehicle and mobile phone, pending trial, which were since dismissed, leading to the filing of the present revision petition. Learned counsel further submits that the petitioner is ready to comply with any conditions imposed by this Court and, accordingly, prays for allowing this criminal revision petition.



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4. Per contra, learned Government Advocate appearing for the respondent submits that the abovesaid properties are involved in Crime No.439 of 2023 for the offences punishable under Section 8(c) r/w 20(b)(ii)(B), 29(1) & 25 of NDPS Act and further if the case properties were released, it may be used for similar purpose of trafficking of narcotic substances and the said vehicle and mobile phone have been utilised by the accused persons for the purpose of trafficking contraband and the involvement of the petitioner would be known only after the investigation is completed and, appreciating all the aforesaid facts, the trial court had rejected the claim for interim custody of the case properties and, therefore, no interference is warranted with the said decision and, accordingly, seeks dismissal of the present revision.

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.

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6. The genesis of the present case is that the accused persons were found to be in possession of 1.250 Kgs of Ganja and 2.5 grams of OG ganja and when they were apprehended by the law enforcing agency and, the vehicle and mobile phone were used for the purpose of perpetrating the crime and, therefore, the case properties were seized. Pending trial, petition for interim custody of the case properties 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?*

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)***



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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, 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



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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 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.,



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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 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 and mobile phone. Therefore, the first arm with regard to jurisdiction and ownership stands fulfilled, but the second arm



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with regard to the owner of the case properties satisfying that the Court by proving that the said properties were used without his knowledge or connivance has not been established, as the said properties were seized from the petitioner, who is the owner of the vehicle and mobile phone, along with the contraband and the name of the petitioner is shown as accused in the FIR. Therefore, without the petitioner absolving himself from the offence by establishing that he has not trafficked contraband, seeking interim custody of the vehicle and mobile phone would not be permissible, as his complicity in the offence stands intricately connected with the said vehicle and mobile phone and it would not be in the interest of the prosecution to have the vehicle and mobile phone given interim custody to the petitioner, as the vehicle and mobile are material objects, which are connected with the commission of the offence.

11. In the above backdrop of the factual scenario, even Section 60 (3) of the NDPS Act would not stand attracted to the case of the petitioner for seeking interim custody of the vehicles, as he cannot prove that he had no



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knowledge or connivance about the offence which had been committed, as his names find 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 case properties, 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 rendered by the court below. Accordingly, the Criminal Revision Petition fails and the same is dismissed.

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
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1. The Inspector of Police, F2, Egmore Police Station,
Chennai District.
2. The Principal Special Court under EC and NDPS Act, Chennai.
3. The Public Prosecutor, Madras High Court, Chennai.



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M.DHANDAPANI, J.

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