



Crl.R.C.No.581 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.581 of 2024

Kumutha

... Petitioner

Vs.

State Rep. by Inspector of Police,
N-2, Kasimedu Police Station,
Chennai.

... Respondent

Prayer : Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. to call for the entire records pertaining to the order dated 11.03.2024 passed by the Principal Sessions Judge under EC & NDPS Act in Crl.M.P.No.1826 of 2024 in Crime No.326 of 2023 on the file of Respondent, N-2 Kasimedu Police and set aside the same.

For Petitioner : Mr.M.Ponmudi

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 11.03.2024 passed by the Principal Sessions Judge under EC & NDPS Act in Crl.M.P.No.1826 of 2024 in Crime No.326 of 2023 on the file of Respondent, N-2 Kasimedu Police.

2. The case of the petitioner is that, the petitioner is the owner of the Hero Splendor Plus bearing Registration No.TN-03-AE-5628, which was seized by the respondent in pursuance of the FIR registered in Crime No.326 of 2023 for the alleged offence u/s. 8(c) r/w 20(b)(ii)(B), 25 & 29(1) of the NDPS Act. Further, the above said vehicle belonged to the petitioner and the said vehicle had been utilized by her husband / A4 without her knowledge for the purpose of transportation of narcotic drugs and the respondent had seized the vehicle and kept the same in the police station for the aforesaid offences. The petitioner is in no way connected with the crime and is not arrayed as an accused in the offence. Therefore, seeking interim custody, the petitioner filed Crl.M.P.No.1826 of 2024 before the trial court,



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however, the trial court had dismissed the said petition, vide impugned order dated 11.03.2024. Challenging the same, the present Criminal Revision Case is filed.

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. Since the petitioner's vehicle has been seized and is being kept in open place, the vehicle is prone to corrosion and deterioration by being in open atmosphere, thereby, the value of the vehicle would diminish over a period of time. Further, for the purpose of her livelihood, the petitioner requires her vehicle as otherwise, she would be put to hardship and irreparable loss. Therefore, the petitioner filed petition under Section 451 r/w 457 Cr.P.C. for interim custody of the vehicle, pending trial, which has since been dismissed, leading to the filing of the present revision. Learned counsel further submits that the petitioner is ready



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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.326 of 2023 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(B), 25 & 29(1) of the NDPS Act and further if the vehicle is released, it may be used for similar purpose of trafficking of narcotic substances and the petitioner is the owner and the accused / A4 is the husband of the petitioner and the petitioner's vehicle had 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 vehicle 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



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learned Government Advocate (Crl. Side) appearing for the respondent and perused the materials available on record.

6. The genesis of the present case is that the accused persons were found to be in possession of 2.200 Kgs of Ganja when they were apprehended by the law enforcing agency and, the vehicle was used for the purpose of perpetrating the crime and, therefore, the vehicle was seized. 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?*

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



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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, 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



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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 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



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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.

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



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to the owner of the vehicle satisfying the Court by proving that the vehicle was used without her knowledge or connivance has not been established, as the petitioner is the owner of the vehicle and A4 is the husband of the petitioner, and only after investigation it could be elicited whether the petitioner was involved in the offence. Though the name of the petitioner is not shown in the FIR, merely on the said ground it cannot be inferred that the petitioner has no nexus with the trafficking of the contraband unless the investigation is completed. Since the complicity of the petitioner in the offence would be clear only after completion of investigation, it would not be in the interest of the prosecution to have the vehicle given interim 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 he cannot prove that she had no knowledge or connivance about the offence which had been committed and



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the investigation also not having been completed, merely because the name of the petitioner does not find place in the FIR cannot be taken as a ground to absolve the petitioner. 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 of this Court.

12. Accordingly, the Criminal Revision Case fails and the same is dismissed.

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

1. Inspector of Police, N-2, Kasimedu Police Station,
Chennai.
- 2.The Principal Sessions Judge under EC & NDPS Act
- 3.The Public Prosecutor, Madras High Court, Chennai.



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M.DHANDAPANI, J.

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