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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1322 of 2024

Gokulan

... Petitioner

Vs.

The Inspector of Police,
R2 Kodambakkam Police Station,
Chennai.
(Crime No.81 of 2022).

... 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.4579 of 2024 which was dismissed on 29.05.2024 by the learned Principal Special Judge for NDPS Act, Chennai.

For Petitioner : Mr.T.S.Sasikumar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petitioner has filed a petition under Section 451 of Cr.P.C., before the learned Principal Special Judge, Principal Special Court under EC and NDPS Act, Chennai - 104, in Crl.M.P.No.4579 of 2024 to return the vehicle



namely Yamaha bike bearing registration No.TN-04-AZ-5791. The learned Judge, by order, dated 29.05.2024 dismissed the same, against which, the present Criminal Revision Case is filed.

2.The contention of the petitioner is that the petitioner is facing trial along with other accused persons in C.C.No.203 of 2022 for the offence under Sections 8(c) r/w. 22(a), 22(c), 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 465, 468 & 472 of IPC. The case projected is that on 17.03.2022 the petitioner along with other accused were in a room at kothavalachavadi, at that time, the respondent conducted a search and found NITRAVET 10mg tablets, Tydol 100 mgs, unwanted kit 10mg, Alprasaft tablets, laptop, mobile phones and two wheelers were seized. He would submit that it is not the case that the petitioner used the bike in commission of offence under NDPS Act. He would further submit that investigation completed and charge sheet filed. 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.



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3.The learned Additional Public Prosecutor appearing for the respondent Police filed counter submitting that on 17.03.2022 at about 9.00 hours, the Sub Inspector of Police received a secret information about illegal sale of drug tablets nearby Chennai Trustpuram Playground. Immediately, he registered the same in the General Diary and went to the scene of occurrence along with Police team. At that time, the accused persons were selling the drug tablets. On seeing the Police, they tried to escape but the Police parties caught hold of the accused persons. During enquiry, it came to know that A6 and A7 were in possession of Nitravet and Tydol tablets in a black colour bag. The respondent police obtained confession statement from A6, in which he had stated that he purchased the drug tablets from the poongundran/A3 through Youtube Channel in the name of "Lifemed" and later, he introduced A6 to the accused 2,4, and 5. Thereafter, samples of NITRAVET and TYDOL were taken and sent for chemical analysis. The remaining drugs were seized under the cover of seizure mahazar in the presence of witnesses and A6 and A7 were arrested. Based on the confession statement of A6, the respondent police went to Poongundran's house at Kothavalchavadi, on seeing the police parties the accused persons tried to escape but they were caught. During the search conducted in the house of Poongundran, NITRAVET tables, TYDOL tablets, unwanted kit, Alprasafe



tablets were seized. Further, Bajaj Pulsar NS 200 black colour bike bearing registration No.TN-60-AX-0653, Yamaha FZ S Red colour bike bearing registration No.TN-04-AZ-5791, Yamaha FZ S Blue Colour bike bearing registration No.TN-12-AR-5729 ROG Laptop, HP Envy Laptop, Apple IPAD, Oppo mobile, Vivo mobile, Samsung mobile, Realme mobile and Voizmed Pharma Pvt Limited seal were also seized. He further submitted that if the vehicle is returned to the petitioner, he would indulge in similar activities. Hence, he 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 Vs. 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 CrI.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 29.05.2024 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in CrI.M.P.No.4579 of 2024 in Crime No.81 of 2022 is set aside. Further, in this petition, the petitioner has sought for only return of a two wheeler. 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 FZ S Red colour bike bearing registration No.TN-04-AZ-5791, on the following conditions:-

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

(v) It is made clear that the return of the vehicle is an interim custody which is subjected to the confiscation proceedings.

21.08.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Internet: Yes/No
gsk



To

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1. The Principal Special Judge,
Principal Special Court under EC & NDPS Act,
Chennai.
2. The Inspector of Police,
R2 Kodambakkam Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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