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Crl.R.C.No.1955 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1955 of 2023

B.Samsudeen

... Petitioner

Vs.

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

... 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.6872 of 2023 dated 26.09.2023 on the file of the Principal Special Court [NDPS Cases], Chennai.

For Petitioner : Mr.V.Sambamurthy

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl. Side)

ORDER

The petitioner is the owner of the two wheeler TVS TORG-125,



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bearing Registration No.TN-03-AD-1966, which was seized by the respondent Police in Crime No.229 of 2023 for offences under Sections 8(c) r/w 20(b)(ii)(B) and 25 of the NDPS Act. The petitioner filed a petition seeking return of property in Crl.M.P.No.6872 of 2023 before the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai. The learned Principal Special Judge, by order, dated 26.09.2023 dismissed the return of property petition, against which, the present revision has been filed.

2.The contention of the petitioner is that the petitioner purchased the vehicle by availing finance from TVS Credit Service. The petitioner used the vehicle for his avocation and for his personal use. The vehicle is kept in open space 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.

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3.The Government Advocate (Crl. Side) appearing for the respondent Police filed a counter and submitted that on 28.08.2023 at about 18.10 hours, when the then Sub-Inspector of Police was on station duty, he received an information about the illegal sale of ganja. Then he along with the Police team went to the place of occurrence, i.e., SN City Road, Christian burial ground, wherein they found the accused persons selling ganja. The Police team arrested the accused persons, recorded confession statement and the contraband was seized along with two wheeler TVS Torg-125 bearing registration No.TN-03-AD-1966 under seizure mahazar in presence of witnesses. Thereafter, an FIR in Crime No.229 of 2023 for offence under Sections 8(c), 20(b)(ii)(B), 25 and 29(1) of the NDPS Act against the accused persons registered on 28.08.2023. Thereafter, the accused were sent to judicial custody on 29.08.2023 and the seized contraband and the two wheeler produced before the Principal Special Court under EC & NDPS Act, Chennai. The Inspector of Police sent the samples of contraband to the Forensic Lab, Chennai for chemical analysis and the same was obtained on 07.09.2023.. On collection of evidence and



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materials, charge sheet filed.

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4.He further submitted that the petitioner, owner of the vehicle, filed a petition before the Court below in Crl.M.P.No.6872 of 2023 seeking return of vehicle TVS Torg-125 bearing registration No.TN-03-AD-1966 and the same was dismissed on 26.09.2023. Challenging the same, the present Criminal Revision Case has been filed. He 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 arrayed as A4 in this case and this Court had already granted return of vehicle to an accused involved in the offence of similar nature. It is 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 Versus State of Gujarat reported in 2002 10 SCC 283*” released the vehicle which was involved in the NDPS Act. Further, the learned Government Advocate (Crl. Side) 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, 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.

6. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 26.09.2023 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.6872 of 2023 is set aside. In view of the same, the learned Principal Special Judge, Principal Special Court under EC & NDPS Act,



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Chennai is directed to return the TVS Torg-125 Motor bike, bearing Registration No.TN-03-AD-1966 to the petitioner, on the 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 her 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.

28.02.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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M.NIRMAL KUMAR, J.

cse

To

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

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