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Crl.R.C.No.1991 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1991 of 2023

Sun Group of Companies
Rep. by its Proprietor
R.Dinesh Shetty
S/o.Raji Shetty
1st Floor, No.L1, 138 L Block.
Can Enclave Extension,
Mahindra Happy Nest,
Paruthipattu, Avadi,
Chennai – 600 071.

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
T-1 Ambattur Police Station,
Ambattur, Chennai.
Crime No.601 of 2023

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order dated 12.10.2023 passed by the Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.5416 of 2023 and consequentially issue a direction for release of vehicle bearing No.TN-12-AW-2630.



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For Petitioner : Mr.S.Velmurugan

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

ORDER

The petitioner is the owner of the four wheeler Mahindra XUV Car, bearing Registration No.TN-12-AW-2630, which was seized by the respondent Police in Crime No.601 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.5416 of 2023 before the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai. The learned Principal Special Judge, by order, dated 12.10.2023 dismissed the return of property petition, against which, the present revision has been filed.

2.The contention of the petitioner is that the petitioner is running a proprietary firm in the name of Sun Group of Companies, an employment agency. The firm is registered with Micro, Small and Medium Enterprises



[MSME] with Udyam registration No.UDYAM-TN-02-0212867. The petitioner is using the vehicle for his business purpose and other usage. The petitioner's friend Madhan requested the vehicle for an urgent need for two days and the petitioner has also given the vehicle to him. Later, he was informed by the respondent police that the said Madhan along with two others were involved in NDPS offences and they were travelling in the petitioner's vehicle. The petitioner produced the ownership details and explained to the respondent police but he was informed that already the vehicle was seized in the above case and produced before the Lower Court. Hence, the petitioner filed a petition seeking return of property before the Lower Court in Crl.M.P.No.5416 of 2023, but the same was dismissed. It is submitted that now 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. Hence, he prays for return of property.

3.The Government Advocate (Crl. Side) appearing for the respondent



Police filed a counter and submitted that on 22.06.2023 at about 03.30 hours, when the then Sub-Inspector of Police, T-1 Ambattur Police Station was on station duty, he received an information about illegal sale of ganja. Then she along with the Police team went to the place of occurrence, i.e., near Check Post, Kallikuppam, the informer identified the accused persons/A1 to A3 came in Mahindra XUV car bearing registration No.TN-12-AW-2630, conducted search and found the accused in possession of 3 kgs of ganja, cash of Rs.4 lakhs and three mobile phones. The Police team arrested the accused persons, recorded confession statement and the contraband was seized along with four wheeler and mobile phones under seizure mahazar in presence of witnesses. Thereafter, an FIR in Crime No.601 of 2023 for offence under Sections 8(c), 20(b)(ii)(B) and 25 of the NDPS Act against the accused persons registered on 22.06.2023. Thereafter, the accused were sent to judicial custody on 22.06.2023 and the seized contraband and the four wheeler along with mobile phones produced before the Principal Special Court under EC and NDPS Act, Chennai. During the course of investigation, from the confession statement of A1 and A2, the then Inspector of Police arrested A4 to A7, recorded their



confession statement and seized Rs.3.5 lakhs, 2kgs of ganja and a four wheeler Black Colour KIA car bearing registration No.TN-04-BA-9940 and two mobile phones under the cover of seizure mahazar in the presence of witnesses, produced them for judicial custody and the seized contraband and the four wheeler along with mobile phones produced before the Principal Special Court under EC and NDPS Act, Chennai. The Inspector of Police sent the samples of contraband to the Forensic Lab, Chennai for chemical analysis and report is yet to be obtained. On collection of evidence and materials, charge sheet filed.

4.He would submit that A4 in the above case already filed a petition seeking return of vehicle Black Colour Kia car bearing registration No.TN-04-BA-9940 before the Principal Special Court for EC and NDPS Act, Chennai in Crl.M.P.No.6184 of 2023 and the same was dismissed on 09.10.2023. Challenging the same, A4 filed a revision petition before this Court in Crl.RC.No.1799 of 2023 and the same was allowed by this Court vide order dated 15.11.2023. He further submitted that the petitioner, owner of the vehicle, filed a petition before the Court below in Crl.M.P.No.5416 of



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2023 seeking return of vehicle Mahindra XUV car bearing registration No.TN-12-AW-2630 and the same was dismissed on 12.10.2023.

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 the proprietor of a firm registered with MSME in the name of Sun Group of Companies and the petitioner is not an accused in the above case. It is not the case that the petitioner knowing about the antecedents of A1/Madhan, petitioner's vehicle was misused by the said Madhan, for which the vehicle cannot be detained endlessly. Further, in this case the vehicle of A4 was returned to the owner of the vehicle by this Court in Crl.RC.No.1799 of 2023 dated 15.11.2023. 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 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 12.10.2023 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.5416 of 2023 is set aside. In view of the same, the learned



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Principal Special Judge, Principal Special Court under EC & NDPS Act,

Chennai is directed to return the Mahindra XUV Car bearing Registration

No.TN-12-AW-2630 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 two sureties each 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 she 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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To

- 1.The Inspector of Police,
T-1 Ambattur Police Station,
Ambattur, 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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M.NIRMAL KUMAR, J.

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