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Crl.R.C.No.2088 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.2088 of 2023

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... Petitioner

Vs.

State rep By

The Inspector of Police,

T-4 Shankar Nagar Police Station,

Tambaram District.

Crime No.610 of 2023.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order passed in Crl.M.P.No.8099 of 2023 dated 24.11.2023 on the file of Special Judge for EC & NDPS Act Cases, Chennai and direct the respondent to release YAMAHA R15 Motor Bike bearing Registration No.TN10BU3414, which was seized in connection with the Crime No.610 of 2023 on the file of the respondent police to the petitioner.

For Petitioner : Mr.S.Chandrasekar

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



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ORDER

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The petitioner is the owner of the two wheeler, namely, Yamaha R15 Motor Bike bearing Registration No.TN10-BU-3414, which was seized by the respondent Police in Crime No.610 of 2023 for offences under Sections 8(c) r/w 20(b)(ii)(B), 25 and 29(1) of the NDPS Act. The petitioner filed a petition seeking interim custody of the said vehicle under Section 451 r/w 457 of Cr.P.C., in Crl.M.P.No.8099 of 2023 in Crime No.610 of 2023 before the learned Principal Special Judge (FAC), Principal Special Court under EC & NDPS Act, Chennai. The learned Principal Special Judge, by order, dated 24.11.2023 dismissed the return of property petition, against which, the present revision has been filed.

2.The gist of the case is that the petitioner is the owner of the vehicle. She purchased the two wheeler by availing loan from HDFC Bank Limited. The petitioner's husband, who is working in a private finance institution as collection agent, using the vehicle for his work. The vehicle,



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which was parked in their house on 23.09.2023, was found missing.

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Thereafter a complaint was lodged by the petitioner's husband before the Virugambakkam Police Station and a case in Crime No.616 of 2023 dated 25.09.2023 for offence under Section 379 of I.P.C. was registered. The petitioner had been making regular enquiries with the Virugambakkam Police, who had stated that steps have been taken to locate the vehicle and secure the same. This being so, during October, 2023 to the shock of the petitioner, she was informed that her vehicle was involved in NDPS offences committed by Elango and Selvam and a case in Crime No.610 of 2023 has been registered by Shankar Nagar Police Station, Tambaram Range and the vehicle has been produced before the NDPS Court. After getting that information, the petitioner filed a petition for return of property before the Lower Court. The Lower Court relying upon the judgment of this Court in Crl.R.C(MD).No.41 of 2019 dated 16.06.2023, dismissed the petition.



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3.The contention of the petitioner is that the facts of the case in

Crl.R.C(MD).No.41 of 2019 would not be applicable to the petitioner's case.

The petitioner is the victim in this case. Theft has been committed on the petitioner's vehicle and thereafter the petitioner had lodged a complaint.

Earlier on 25.09.2023, vehicle has been seized by the respondent police. He

further relied upon the judgment of the Hon'ble Apex Court in a case of

Sainaba vs. The State of Kerala and another, wherein the Hon'ble Apex

Court had granted return of vehicle involved in NDPS cases to the owner,

depending on its own facts and circumstances. The petitioner is ready to

comply with any condition that this Court may impose while granting return

of vehicle.

4.The learned Additional Public Prosecutor admitted that the

petitioner is the owner of YAMAHA R15 Motor Bike bearing Registration

No.TN10-BU-3414. Her husband was using the vehicle for his work. The

vehicle was parked near the petitioner's parents house on 23.09.2023 in the



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night hours. On 24.09.2023 morning, when the petitioner husband went to take his bike, the bike was found missing. Thereafter the case in Crime No.616 of 2023 registered for offence under Section 379 of IPC by Virugambakkam Police Station. This being so, the accused in Crime No.610 of 2023 had used this vehicle to commit offence under Section NDPS Act and the respondent-Shankar Nagar Police has seized the vehicle in Crime No.610 of 2023 on 06.10.2023. A complaint has been lodged by the petitioner for missing of the vehicle much before on 24.09.2023. The petitioner is the owner of the vehicle not connected with the Crime No.610 of 2023. He further submitted that the Trial Court referring to the case in Crl.R.C(MD) No.41 of 2019 may be applicable to the facts of the present case.

5.Considering the submissions made and on perusal of the materials available on record, this Court finds that the petitioner is the owner of the vehicle, which is not disputed. A theft has been committed on the



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petitioner's vehicle and a case in Crime No.616 of 2023 has been registered by Virugambakkam Police on 25.09.2023. In this case, the accused in Crime No.610 of 2023 has used the stolen vehicle for commission of NDPS offence. The petitioner is not concerned with the case in Crime No.610 of 2023. The petitioner purchased the vehicle by availing assistance from HDFC Bank Limited and she has also burdened to repay the EMI. Due to the detention of the vehicle, the petitioner's husband impaired of continuing with the work.

6.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. The Hon'ble Apex Court in the case of ***“Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 290”***, had given guidelines in the cases of return of property to the owner.



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7. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 24.11.2023 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.8099 of 2023 is set aside. In view of the same, the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai is directed to return the vehicle YAMAHA R15 Motor Bike bearing Registration No.TN10-BU-3414 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) 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 photostate copy of RC Book of the vehicle and other relevant records to prove her ownership.



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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.

09.01.2024

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index : Yes/No

Internet : Yes/No

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Note: Issue order copy on 12.01.2024.



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To
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- 1.The Principal Special Judge,
Principal Special Court under EC & NDPS Act,
Chennai.
- 2.The Inspector of Police,
T-4 Shankar Nagar Police Station,
Tambaram District.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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