



Crl.R.C.No.2276 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

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THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

Crl.R.C.No.2276 of 2023

Jamal

...Petitioner/Claimant

Vs.

State rep. by
The Inspector of Police,
T18 Thazhambur Police Station,
Tambaram District.
Chennai.

...Respondent/Complainant

PRAYER : Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to call for the records and set aside the Judgment in Crl.M.P.No.5316 of 2023 dated 20.10.2023 in Cr.No.140 of 2023 on the file of the Special Court under EC and NDPS Act, Chennai for the offences under Sections 451 r/w 457 of Cr.P.C.

For Petitioner : Mr.C.Balasubramaniam

For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)



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ORDER

The revision challenges the dismissal of the petitioner's application in Crl.M.P.No.5316 of 2023, filed for return of his vehicle i.e., Volkswagen Polo bearing Reg.No.KL-40-T-0002.

2. An FIR was registered against the son of the petitioner for possession of 2 kgs of Ganja in Crime No.140 of 2023 for the offences under Sections 8(c), 20(b)(ii)(B), 25 and 29(1) of the NDPS Act. During the course of the investigation, the vehicle was seized as the said vehicle was used by the son of the petitioner for carrying the contraband. The petitioner sought for return of the property stating that he was not an accused and that the vehicle is kept idle in the police station subject to the vagaries of weather and interim custody of the vehicle may be handed over to him.

3. The respondent opposed the said petition. The learned Principal Special Judge, the Special Court under EC and NDPS Act, Chennai – 600 104, dismissed the said petition on the ground that the



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vehicle is liable to be confiscated and hence, the petition is not maintainable.

4. Mr.C.Balasubramaniam, the learned counsel for the petitioner would submit that the petitioner is the owner of the property and even as against his son, there are no previous cases; that since the vehicle is in custody of the police for more than eighteen months, the value is reduced and hence, the vehicle may be returned subject to the confiscation proceedings.

5. Mr.S.Udaya Kumar, the learned Government Advocate (Crl.Side) for the respondent submitted that the confiscation proceedings were initiated as early as in November 2023; and that thereafter no further action has been taken so far.

6. The Hon'ble Supreme Court in *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 Gujrath reported in ***2002 10 SCC 283***” released the vehicle which was involved in the offence under Section NDPS Act. It is seen that though this Court in Crl.R.C.(MD) No.41 of 2019, the order dated 16.06.2023 had dismissed the petition for release of vehicle involved in offence under the NDPS Act, the Judgement of the Hon'ble Supreme Court in **Sainaba's case** (cited supra) was not brought to the notice of this Court. In view of the decision of the Hon'ble Supreme Court, this Court is inclined to consider the petition for return of vehicle.

7. Admittedly, the petitioner is the owner of the vehicle and there are no previous cases against the son of the petitioner. Though the confiscation proceedings were initiated in November 2023, no further steps have been taken so far. The vehicle cannot be allowed to be kept idle at the police station, which would diminish its value and would not be of any use either to the petitioner or to the State. Hence this Court is of view that the vehicle can be returned subject to confiscation proceedings on the following conditions:

8. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 20.10.2023 passed by the learned Principal Special



Judge, the Special Court under the EC and NDPS Act, Chennai – 600 104, in Crl.M.P.No.5316 of 2023 in Crime No.140 of 2023 is set aside. In view of the same, the respondent is directed to return the Volkswagen Polo bearing Reg.No.KL-40-T-0002 to the petitioner on the following conditions:

(i) The petitioner shall execute a personal bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two sureties for a like sum to the satisfaction of the learned Principal Special Judge, the Special Court under EC and NDPS Act, Chennai – 600 104;

(ii) The petitioner shall produce the original RC Book along with a self-attested Photostat copy of the RC Book of the vehicle and other relevant records to prove his ownership. The learned Principal Special Judge, the Special Court under EC and NDPS Act, Chennai – 600 104, shall peruse the RC book and other records, retain a 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;

(iv) The petitioner shall also give an undertaking that he will produce the vehicle as and when required by the



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respondent and by the court below.

(v) The return of property would be subject to the result of the confiscation proceedings.

19.12.2024

Index : Yes/No

Neutral Citation: Yes/No

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To

1.The Principal Special Judge,
The Special Court under the EC and NDPS Act,
Chennai – 600 104

2.The Inspector of Police,
T18 Thazhambur Police Station,
Tambaram District.

3.The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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