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Crl.R.C.No.2230 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.2230 of 2023

Kalyanasundaram

... Petitioner

Vs.

State rep. by

Inspector of Police,

NIBCID, Coimbatore.

Crime No.46 of 2022

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order dated 17.11.2022 made in Crl.M.P.No.3654 of 2022 on the file of the Special Court for Essential Commodities Act Cases, Coimbatore and allow the above Criminal Revision.

For Petitioner : Mr.R.Thamarai Selvan

For Respondent : Mr.C.E.Pratap

Government Advocate (Crl. Side)

ORDER

The petitioner is the owner of the two wheeler YAMAHA R15,
bearing Registration No.TN-38-DA-0973, which was seized by the



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respondent Police in Crime No.46 of 2022 for offences under Sections 8(c) r/w 20(b)(ii)(B) and 25 of the Narcotics Drugs and Psychotropic Substances Act (NDPS Act). The petitioner filed a petition seeking return of two wheeler YAMAHA R15, bearing Registration No.TN-38-DA-0973 and cell phone in Crl.M.P.No.3654 of 2022 before the learned Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore. The learned Additional District Judge, by order dated 17.11.2022 dismissed the return of property petition, against which, the present revision has been filed.

2.The case against the petitioner is that the petitioner was found in illegal possession of 1.300 Kgs. of ganja in his two wheeler bearing Registration No.TN-38-DA-0973. The petitioner has got no bad antecedents and he has been falsely implicated in this case. It is further submitted that the learned Additional District Judge has granted bail to the petitioner in Crl.M.P.No.2936 of 2022 dated 28.09.2022 taking into consideration that the



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petitioner has got no bad antecedents of similar nature. It is further submitted
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that the petitioner used the vehicle for his avocation and for his personal use.

The vehicle involved is an old model and the petitioner is maintaining it with great difficulty. 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. 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.

3.The Government Advocate (Crl. Side) appearing for the respondent Police filed a counter and submitted that on 08.08.2022 at about 11.00 hours, the Sub-Inspector of Police received a secret information from the informant about the illegal sale of Ganja. Then she along with the Police team went to the place of occurrence, intercepted the accused/petitioner and



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found that he was in possession of 1.300 kgs of Ganja. The Police team arrested the accused, recorded confession statement and the contraband was seized along with two wheeler YAMAHA R15 bearing registration No. TN-38-DA-0973 under seizure mahazar in presence of witnesses. Thereafter, a case was registered in Crime No.46 of 2022 for offence under Sections 8(c) r/w 20(b)(ii)(B) and 25 of the NDPS Act against the accused/petitioner on 08.08.2022. Thereafter, the accused was sent to judicial custody on 08.08.2022 and the seized contraband and the two wheeler produced before the Special Court for Essential Commodities Act Cases, Coimbatore. Thereafter, the then Inspector of Police sent the samples of contraband to the Forensic Lab, Coimbatore for chemical analysis and the same was obtained. On collection of evidence and materials, charge sheet filed and the same was taken cognizance vide C.C.No.114 of 2022.

4.He further submitted that the petitioner, owner of the vehicle, filed a petition before the Court below in Crl.M.P.No.3654 of 2022 seeking



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return of vehicle YAMAHA R15 bearing registration No.TN-38-DA-0973
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and cell phone and the same was dismissed on 17.11.2022. 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 has already granted bail by the Lower Court 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 unusable and immobile. Added to it, the Apex Court in the case of *Sainaba vs. The*



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State of Kerala and another in Criminal Appeal No.2005/2022 [SLP
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(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 17.11.2022 passed by the learned Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore in Crl.M.P.No.3654 of 2022 is set aside. In view of the same, the



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learned Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore is directed to return the YAMAHA R15 Motor bike, bearing Registration No.TN-38-DA-0973 and Black colour Apple I Phone-12 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 Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore;

(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 Additional District Judge shall peruse the RC book and other records, retain xerox copy of the same and return the original RC book to the petitioner;



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(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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To

1.The Inspector of Police,
NIBCID, Coimbatore.

2.The Additional District Judge/Presiding Officer,
Special Court for Essential Commodities Act Cases,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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