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Crl.O.P.(MD)No.20609 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2024

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THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P(MD)No.20609 of 2024

Sivaram

... Petitioner

-Vs-

State of Tamil Nadu,
Rep.by the Sub Inspector of Police,
Devarkulam Police Station,
Tirunelveli District.
(In Crime No.5 of 2024)

... Respondent

Prayer: Criminal Original Petition - filed under Section 528 of Bharatiya Nagarik Shuraksha Sanhita, to set aside the docket order dated 13.08.2024 made in Cr.M.P.No.12731 of 2024 in S.T.C.No.2448 of 2024 on the file of the Judicial Magistrate No.III, Tirunelveli.

For Petitioners : Mr.M.Perumal

For Respondent : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to set aside the order dated 13.08.2024 made in Cr.M.P.No.12731 of 2024 in S.T.C.No.2448 of 2024 on the file of the learned Judicial Magistrate No.III, Tirunelveli.



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2.The case of the prosecution is that the respondent police has received a secret information about selling of kanja at Devarkulam Sankari School. The respondent had went to the spot and found that there is some suspicious movement. When the respondent police enquired the accused, namely Rathnavel @ Robin, he had given contradictory answers. Hence, the respondent police searched the vehicle of the accused and seized 6 pockets, each containing 10 grams, of kanja from him. Therefore, the respondent police registered the case in Crime No.5 of 2024 for the offence punishable under Sections 8(c), 50(b)(ii)(A) of NDPS Act r/w. 77 of the Juvenile Justice Act and the vehicle used by the accused was also seized by the respondent police.

3.The contention of the petitioner is that he is the owner of the vehicle bearing registration No.TN-76-AR-0966 and he is not an accused in this case. The accused is the known person to the petitioner, since he was residing in the neighbourhood. For the purpose of some urgency, he required the vehicle of the petitioner and hence, the petitioner had lent his bike without knowing the activities of the accused. The respondent police after investigation, found that the petitioner is innocent and he has no knowledge about the accused. The petitioner further submits that he



used the vehicle for regular activities. Since the vehicle has been retained by the respondent Police, the petitioner is put to hardship.

4.He further submits that the petitioner's vehicle is kept in a open space exposing to vagaries of weather and hence, the value of the vehicle is getting diminished and the same will make the vehicle unusable. Hence, he filed a petition before the trial Court seeking release of vehicle. However, the trial Court without considering the application on merits, returned the said application stating that '***already inventory has been prepared and sent to drug disposals committee. Hence, file before proper forum. So returned***'.

5.The learned Additional Public Prosecutor appearing of the respondent Police submits that the petitioner's vehicle is involved in a case registered under NDPS Act and hence, the vehicle was seized. Hence, he opposed this petition.

6.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor for the respondent Police.



7.From the submissions made above and the perusal of the materials available on record, indicate that the petitioner is not an accused in this case and he lent his bike to the accused, who has involved in this crime. The Hon'ble Supreme Court in the case of ***Sainaba vs. State of Kerala and another [Criminal Appeal No.2005 of 2022 (SLP (CRL)No.72080 of 2022]*** had entertained the petition for return of vehicle seized under NDPS case.

8.Further, the reason given by the trial Court in returning the petition seeking return of vehicle is not proper. This Court earlier had an occasion to decide the similar issue involved in this case in Crl.R.C.No. 2093 of 2023, wherein this Court had directed the trial Court to entertain the return of property seized under NDPS Act following ***Sainaba's*** case (referred supra).

9.In view of the above, this Court holds that the order of the trial Court returning the application of the petitioner seeking return of vehicle is not proper. The trial Court is directed to number the petition and decide the same on its own merits and in accordance with law. The trial Court is also reminded of the order passed by this Court in Crl.R.C.No. 2093 of 2023 dated 28.02.2024.



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10.This Criminal Original Petition is allowed on the above terms.

11.The Registry is directed to return the original petition filed along with this petition to the petitioner enabling him to represent the same before the trial Court.

26.11.2024

Index : Yes/No

Internet : Yes/No

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Note: Issue order copy on 26.11.2024

To

- 1.The Sub Inspector of Police,
Devarkulam Police Station,
Tirunelveli District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.NIRMAL KUMAR,J.

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