



WEB COPY



Crl.R.C(MD)No.1251 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.11.2023

Pronounced on : 05.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.1251 of 2023

Manikandan

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
PEW – Thoothukudi Police Station,
Thoothukudi District.

... Respondent

PRAYER : This Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C., 1973, to call for the records and set aside the order of dismissal dated 18.10.2023 made in Crl.M.P.No.2409 of 2023 in Crime No.584 of 2023 on the file of the Principal Special Court for Narcotic Drugs and Psychotropic Substances Act Cases, Madurai by allowing the present Criminal Revision Petition.

For Petitioner : Mr.D.Selvanayagam

For Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor



WEB COPY

Crl.R.C(MD)No.1251 of 2023



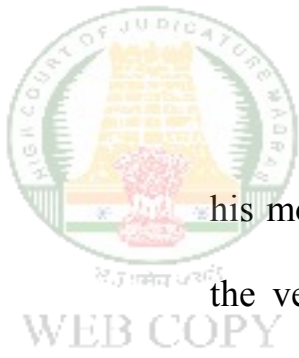
ORDER

This Criminal Revision Case is filed to set aside the order dated 18.10.2023 made in Crl.M.P.No.2409 of 2023 on the file of the Principal Special Court for NDPS Act Cases, Madurai, and to direct the respondent to grant interim custody of the vehicle Toyota Innova Car bearing Registration No.TN-22-CH-3280 which was seized by the respondent in Crime No.584 of 2023.

2. The brief facts of the case:

2.1. On 28.08.2023 at 15.00 hours while the respondent police was checking the vehicle near Pudurpandiyapuram Toll Plaza, Thoothukudi District, three vehicles bearing Registration Nos.TN 07 CK 2123, TN 22 CH 3280 Innova Car and TN 69 AM 9690 Bajaj Pulsar Bike were used by the accused for transporting Ganja. The case was registered in Crime No.584 of 2023 by the respondent police against 16 accused for the offence under Sections 8(c) r/w 20(b)(ii)(c), 25, 29(1) of NDPS Act. Totally 228 kilograms of Ganja were recovered.

2.2.The petitioner's mother one Rani was the owner of the said vehicle bearing Registration No.TN 22 CH 3280 Toyota Innova Car. The mother of the petitioner died and the petitioner is one of the legal heirs of



his mother and other legal heirs are ready to file affidavits for returning the vehicle to the petitioner. The vehicle was seized by the respondent police and the same is kept with the respondent police station in an open place thereby it will be ruined due to sunlight, rain, air and natural calamities. The petitioner's vehicle was not used for the alleged offence and false case has been registered against the petitioner. The Hon'ble Supreme Court issued guidelines for returning seized properties in **Sunderbhai Ambalal Desai case reported in (2002) 10 SCC 283.**

2.3. So the petitioner has filed the petition in Crl.M.P.No.2409 of 2023 before the Principal Special Court for NDPS Act Cases, Madurai for return of property. After hearing both, the petition was dismissed on 18.10.2023. Being aggrieved by the order, the revision petitioner preferred this Criminal Revision Case.

3. Heard both side and perused the records in this Criminal Revision Case.

4. The learned counsel appearing for the revision petitioner has submitted that the trial Court failed to appreciate the provisions of Section 451 of Cr.P.C. The car in question was not used for any



antisocial activities and was not carrying any drugs. The respondent police created a concocted story. The friends of the petitioner borrowed the vehicle for a common trip to Pondicherry. The vehicle TN 22 CH 3280 stood in the name of Rani, who died on 04.03.2021. The petitioner is the legal heir of his mother and other legal heirs are ready to file affidavits stating no objection. He has also produced a copy of legal heir certificate.

5. The trial Court has discussed the order of the High Court made in Crl.R.C(MD)No.41 of 2019 for return of property seized under NDPS Act, but dismissed the petition as the petitioner has not produced a legal heir certificate and also he has not furnished the details, when the vehicle was entrusted to whom. The petitioner has to be given an opportunity to produce a legal heir certificate. Mere retaining the vehicle would not serve any purpose and the same was deprecated by the Hon'ble Apex Court in various cases.

6. The learned counsel for the revision petitioner further submitted that the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai** case reported in **(2002) 10 SCC 283**, whenever any vehicle is seized by the police it ought not to be retained in the custody of the Court or in the



custody of the police for any longer than what is absolutely necessary.

The trial Court failed to appreciate the decision of the Hon'ble Supreme Court and also the **Hon'ble Division Bench of Karnataka High Court** reported in **2022 SCC Online SC 1784**. In support of his arguments, the learned counsel for the revision petitioner has relied on the catena rulings as follows:-

1. (2002) 10 SCC 283 (Sunderbhai Ambalal Desai Vs. State of Gujarat)
2. Order passed in Crl.P.No.3571 of 2021 and batch cases by the Division Bench of Karnataka High Court.
3. 2022 SCC Online SC 1784 (Sainaba Vs. State of Kerala & Another)
4. 2023 SCC Online Ker 1023 (Shanil Vs. State of Kerala)
5. Order dated 16.06.2023 passed in Crl.R.C(MD)No.41 of 2019
6. 2023 SCC Online Cal 1842 (Salil Kumar Chatterjee Vs. State of West Bengal)
7. Order dated 10.07.2023 passed in Crl.R.C.No.1010 of 2023 of Madras High Court
8. Order dated 11.07.2023 passed in Crl.R.C.No.993 of 2023 of Madras High Court
9. Order dated 17.07.2023 passed in Crl.R.C.No.787 of 2023 of Madras High Court
10. 2023 SCC Online Pat 2276 (Sukh Sagar Kumar Vs. State of Bihar & Others)



**11. 2023 SCC Online HP 886 (Subhash Thakur
Vs. State of Himachal Pradesh)**

**12. Order dated 26.07.2023 passed in
Crl.R.C.No.562 of 2023 of Madras High Court**

**13. Order dated 28.07.2023 passed in
Crl.R.C.No.1241 of 2023 of Madras High Court**

**14. 2023 SCC Online Chh 3182 (Bhuneshwar
Rajwade Vs. State of Chhattisgarh)**

7. The learned Additional Public Prosecutor for the respondent filed a counter and contended that the petition under Section 451 of Cr.P.C. is not maintainable. In fact, the vehicle in question is subjected to confiscation proceedings under Section 51(A)(1) of NDPS Act as directed by the Hon'ble High Court in Crl.R.C(MD)No.41 of 2019 dated 16.06.2023. The trial Court has correctly appreciated the above decision and dismissed the petition. The vehicle was seized with contraband. If the interim custody of the vehicle is ordered, there are more possibilities for not co-operating for investigation and the petitioner may alter the physical conditions of the vehicle. In **Sunderbhai Ambalal Desai** case, the Hon'ble Supreme Court discussed only about the custody of the stolen articles, vehicles, etc., and there is no word about the vehicles or articles which were used for committing the offence. The decision is not applicable to the facts of this case. The vehicle was handed over to the



Drug Disposal Committee and so the matter was pending before the DDC, the petitioner has to approach the said committee and not the trial Court. If the vehicle is returned, the petitioner would continue the offence of this similar nature. Therefore, he strongly opposed this petition.

8. The learned counsel for the revision petitioner replied that the Drug Disposal Committee has no power to entertain the petition for interim custody of the vehicle as held by the Division Bench of Karnataka High Court.

9. On hearing both, it is clear that the petitioner is one of the accused in this case. It is alleged that three vehicles bearing registration Nos.TN 07 CK 2123 Innova Car, TN 22 CH 3280 Innova Car and TN 69 AM 9690 Bajaj Pulsar Bike were used by the accused for transporting totally 228 kilograms of Ganja and the case was registered in Crime No. 584 of 2023 by the respondent police against 16 accused for the offence under Sections 8(c) r/w 20(b)(ii)(c), 25, 29(1) of NDPS Act. The revision petitioner states that among three vehicles one of the vehicles bearing Registration No.TN 22 CH 3280 Innova Car belongs to him and the R.C.Book stands in his mother's name Rani, who is now no more.



10. It is argued by the learned counsel for the revision petitioner that the revision petitioner filed the petition before the trial Court for interim custody of the vehicle and the same was dismissed. It is contended by the learned Additional Public Prosecutor for the respondent that the trial Court has no jurisdiction to entertain the petition under Section 451 of Cr.P.C., since the vehicle in question is subjected to confiscation proceedings under Section 52(A) (1) of NDPS Act and the same was handed over to the Drug Disposal Committee.

11. On perusal of rulings relied on by the learned counsel for the revision petitioner, it is clear that in view of the settled principle of the Hon'ble Supreme Court held in **Sunderbhai Ambalal Desai** case, there is no use in keeping seized vehicles at police station in open place exposing to sunlight and rain for a long period and it is open to pass appropriate orders for return of seized vehicles on conditions. The **Division Bench of Karnataka High Court in its order passed in Crl.P.No.3571 of 2021, dated 17.05.2022** clearly held that the Magistrate or the Special Court is conferred with the power/jurisdiction to consider the application for interim custody of the vehicle under Section 451 and 457 of Cr.P.C. in cases arising out of NDPS Act and also the Drug Disposal Committee constituted under Section 52(A) of NDPS



Act has no authority to consider the application for release of vehicle on interim custody.

12. The **Hon'ble Full Bench of Kerala High Court** has also **passed the orders in W.A.No.1304 of 2022, dated 19.02.2024** as follows:-

"Thus we hold that, the jurisdictional Special Court under the Act has the power to consider the grant of interim custody of vehicles seized under the Act, by invoking the powers under Section 457 of the Cr.P.C. the reference is answered accordingly".

13. The Hon'ble Supreme Court ordered for release of vehicle seized under NDPS Act declining the view taken by the High Court and Special Court that they are not empowered under Section 451 of Cr.P.C. to release the vehicle involved in NDPS Act. The learned Single Judge of Principal Seat of this Court has also ordered for release of vehicle involved in NDPS Cases for interim custody in Crl.R.C.No.s.1010 of 2023, 993 of 2023, 787 of 2023, 562 of 2023 and 1241 of 2023. In view of the above circumstances, this Court is inclined to allow this criminal revision with conditions.



WEB COPY



14. In the result, this Criminal Revision Case is allowed and the order dated 18.10.2023 made in Crl.M.P.No.2409 of 2023 on the file of the Principal Special Court for NDPS Act Cases, Madurai is set aside. The vehicle bearing registration No.TN 22 CH 3280 Toyota Innova car is ordered to be returned to the petitioner on interim custody subject to the confiscation proceedings to be taken by the concerned department or by the Court on the following conditions:

(i) The petitioner shall execute a bond for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) with two sureties each for a like sum to the satisfaction of the Principal Special Court for NDPS Act Cases, Madurai;

(ii) The petitioner shall produce the original R.C.Book and shall file notarized No Objection Affidavit of other legal heirs of Tmt.Rani;

(iii) The Trial Court may prepare a Panchanama with regard to the vehicle bearing registration No.TN 22 CH 3280 and such Panchanama can be used in evidence;

(iv) The photograph of the vehicle should be taken in different angles and the photographs with Compact Disc should be kept in the bundle;

(v) The petitioner shall produce the vehicle in



WEB COPY

CrI.R.C(MD)No.1251 of 2023



question before the trial Court on first working day of every month at 10.30 a.m. until further orders;

(vi) The petitioner shall not dispose or alienate the vehicle till the disposal of the case or till the disposal of the confiscation proceedings if any taken;

(vii) The petitioner shall co-operate with the trial Court for disposal of the case and to complete the confiscation proceedings.

15. The order passed in this revision will not be a bar to the authorities concerned in proceeding with the confiscation proceedings.

05.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

1. The Principal Special Court for NDPS Act Cases,
Madurai.
2. The Inspector of Police,
PEW – Thoothukudi Police Station,
Thoothukudi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.R.C(MD)No.1251 of 2023

P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
Crl.R.C(MD)No.1251 of 2023

05.03.2024