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Crl.R.C.No.2399 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2025

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.2399 of 2024

S.Manivannan

... Petitioner

Vs.

The State rep by Inspector of Police,
Elavanasoor Kottai Police Station,
Ulundurpettai, Kallakurichi District.
(Crime No.129 of 2024).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 438 r/w 442 of BNSS, to set aside the order passed in Crl.M.P.No.2861 of 2024 dated 27/08/2024 on the file of the Judicial Magistrate No.I, Ulundurpettai and consequently direct the respondent to return the property of vehicle bearing Registration No.TN 15 9609 (Engine No.HA10ERFHC83899, Chassis No.MBLHA10BFFHC58771) Hero Motor cycle to the petitioner.

For Petitioner : Ms.R.Jeevitha

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



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ORDER

This Criminal Revision Case has been filed challenging the impugned order, dated 27.08.2024 in Crl.M.P.No.2861 of 2024 passed by the learned Judicial Magistrate No.I, Ulundurpet dismissing the petitioner's petition filed under Section 497 & 503 of BNSS for return of Hero Motor Cycle bearing Reg.No.TN 15 9609.

2.The petitioner is the third accused in Crime No.129 of 2024 registered for offences under Sections 8(c), 20(b)(ii)(A) and 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985 for alleged illegal possession of 150 grams of ganja along with two other accused. During the course of investigation, the vehicle of the petitioner bearing Registration No.TN-15-9609 was seized, since it was used for the transportation of the contraband. The petitioner sought for the return of vehicle, which was opposed by the State. The learned Additional District Judge, Salem, dismissed the said petition on the ground that since the vehicle was involved in the offences under the NDPS Act, the vehicle is liable for confiscation and therefore, it cannot be returned.



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3.The learned counsel for petitioner would submit that there are no previous cases against the petitioner; that the respondent Police had not initiated any confiscation proceedings; that the petitioner's vehicle is kept idle in the Police Station ever since the date of seizure, namely, 02.05.2024 and subjected to the vagaries of weather, which would diminish its value and hence, prayed for return of vehicle on stringent conditions.

4.The learned Government Advocate (Crl. Side), on instructions, would submit that the petitioner is arrayed as A3 and there are no previous cases against the petitioner. He would further submit that the confiscation proceedings have not been initiated so far.

5.Considering the fact that though the seizure was made on 02.05.2024, no steps have been taken for confiscation; that the vehicle is subjected to vagaries of the weather; that the petitioner is the owner of the vehicle and that there are no previous cases pending against the petitioner, this Court is inclined to grant interim custody of the vehicle to the petitioner.



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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.Accordingly, this Criminal Revision Case is allowed and the impugned order dated 27.08.2024 passed by the learned Judicial Magistrate No.I, Ulundurpet in Crl.M.P.No.2861 of 2024 is set aside. In view of the same, the respondent Police is directed to return the vehicle viz., Hero Motor Cycle bearing Reg.No.TN 15 9609 to the petitioner on the following conditions:



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(i)The petitioner shall execute a bond for a sum of Rs.20,000/-
(Rupees Twenty Thousand only) with two sureties for a likesum to the
satisfaction of the learned Judicial Magistrate No.I, Ulundurpet;

(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 Judicial Magistrate
No.I, Ulundurpet, 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 respondent and by the court below.

(v)The return of property would be subject to the result of the
confiscation proceedings, if any initiated by the respondent in future.

07.01.2025

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No
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SUNDER MOHAN, J.

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To

- 1.The Judicial Magistrate No.I,
Ulundurpet.
- 2.The Inspector of Police,
Elavanasoor Kottai Police Station,
Ulundurpettai, Kallakurichi District.
- 3.The Public Prosecutor,
Madras High Court.

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