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Crl.R.C.No.2414 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.2414 of 2024

Mohan Santhosh Durai

... Petitioner/Owner of the property

vs.

State rep. by

The Inspector of Police,

Pennagaram Police Station,

Dharmapuri District.

...Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 438 r/w 442 of BNSS, to set aside the order passed in C.M.P.No.1687 of 2024 dated 12.12.2024 in Crime No.169 of 2024 on the file of the Special Court under EC & NDPS Act Cases at Salem.

For Petitioner : Mr.K.Subburaj

For Respondent : Mr.S.Udaya Kumar

Government Advocate (Crl.Side)

ORDER

The revision challenges the dismissal of the petitioner's application for return of his vehicle four wheeler Honda Creta Car bearing Registration No.TN-29-CD-6984.



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2. The petitioner is an accused in Crime No.169 of 2024 registered for offences under Sections 8(c) r/w. 20(b)(ii)(B) of NDPS Act for alleged possession of 1.200 kgs. of Ganja along with three other accused. During the course of investigation, the vehicle of the petitioner bearing Registration No.TN-29-CD-6984 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.

3.The learned counsel for petitioner would submit that the petitioner is a first time offender; that the case against him has been falsely registered; that his vehicle is kept idle in the police station ever since the date of seizure, namely, 23.12.2022 and subjected to the vagaries of weather, which would diminish its value and hence, prayed for return of vehicle.



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4. The learned Government Advocate (Crl. Side), on instructions, would submit that the petitioner is arrayed as A1 and there are no previous cases against the petitioner. He would further add that the confiscation proceedings have not been initiated against the petitioner so far.

5. Considering the fact that though the seizure was made on 23.12.2022, no steps have been taken for confiscation; that the vehicle is subjected to vagaries of the weather 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.

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



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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 12.12.2024 passed by the learned Additional District Judge/Presiding Officer, Special Court under EC & NDPS Act Cases, Salem in C.M.P.No.1687 of 2024 in Crime No.169 of 2024 is set aside. In view of the same, the respondent is directed to return the vehicle viz., four wheeler Honda Creta Car bearing Registration No.TN-29-CD-6984 to the petitioner on the following conditions:



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(i) The petitioner shall execute a personal bond for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) with two sureties for a likesum to the satisfaction of the learned Additional District Judge/Presiding Officer, Special Court under EC & NDPS Act Cases, Salem;

(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 Additional District Judge/Presiding Officer, Special Court under EC & NDPS Act Cases, Salem, 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.



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

02.01.2025

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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To

1.The Additional District Judge/Presiding Officer,
Special Court under EC & NDPS Act Cases, Salem.

2.The Inspector of Police,
Pennagaram Police Station,
Dharmapuri District.

3.The Public Prosecutor,
High Court, Madras.

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