

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 462 OF 2022

Shwetakumari Krishna Nandan Prasad ...Petitioner
Versus
Union Of India And Anr. ...Respondents

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Mr. Maaz Ansari a/w Adv. F. Chaudhary, Advocate for the Petitioner.

Mr. Shreeram Shirsat Special P. P. a/w Mr. Amandeep Singh Sra a/w
Ms. Nishi Singhvi, Advocate for Respondent – NCB.

Mr. Arfan Sait, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 24th AUGUST, 2022.

PER COURT:

1. The petitioner has challenged the order dated 20th October, 2021 passed by the learned Special Judge NDPS, City Civil and Sessions Court, Greater Bombay rejecting the application for return of property.

2. Petitioner is prosecuted for offences punishable under Sections 8(c), 27, 29, 30 & 35 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'NDPS Act').

3. The applicant preferred application for return of the cell phones seized during investigation. The application was rejected by the Special Court under the NDPS Act vide order dated 20th October, 2021.

4. Learned Advocate for the petitioner submitted that the cell phones which were seized during investigation belongs to the petitioner. Investigation is completed and charge-sheet is filed. The custody of the cell phone is not necessary for any purpose by the investigating agency. No prejudice would be caused to the investigating agency, if the cell phones are handed over to the petitioner. As and when required the petitioner would produce the said articles before the trial Court.

5. Learned counsel for Respondent – NCB submitted that, at the time of arrest the petitioner was found in possession of the cell phones. The contraband was recovered from the room premises which was occupied by the petitioner with absconding accused. The cell phones contains details of the calls made to the co-accused. CDR has been collected. The co-accused is absconding. There is every possibility that the applicant would help absconding accused to flee from law. Reliance is placed on the decision of **Ram Prakash Sharma Vs. State of Haryana, reported in AIR 1978 SC 1282.**

6. I have perused the documents. The case of the prosecution is that on 2nd January, 2021 the information was received to the effect that, one Chand Riyaz Shaikh is going to deliver Mephedrone to unknown person. The NCB team proceeded to the spot of delivery

on 2nd January, 2021. They spotted Chand Riyaz Shaikh. 400 gms. Of Mephedrone was seized from him vide Panchanama dated 2nd January, 2021. During interrogation he disclosed that one Sayeed Shaikh is at room No.204, Crown business Hotel, Bhayandar, East. Team of NCB proceeded to hotel. Applicant was allegedly occupying room premises. She disclosed that, Sayeed Shaikh was with her since 1st January, 2021. He left the room. Search of room resulted in recovery 2.3 gms Mephedrone. Applicant was arrested. Co-accused is absconding.

7. The applicant was granted bail. While granting bail it was observed that, the element of conspiracy between applicant and accused No.1 is missing. Main culprit has decamped from the room. The Court did not find any material to bind the applicant with recovery from accused No.1. There are no criminal antecedents against petitioner. There is no material to assume that applicant has committed crime in question or if released on bail, she would commit similar offence.

8. The investigation is complete. Charge-sheet is filed. CDR from cell phones seized from applicant is recovered. Cell phones are not required. Cell phones are not required for investigation. The co-accused is absconding since one and half year. The apprehension of respondents that the petitioner would assist

absconding by using cell phone to abscond is not reasonable.

9. In these circumstances, the cell phones which were seized from the possession of the petitioner can be returned to the petitioner on certain conditions.

10. Hence, I pass the following order:

ORDER

- i. Writ Petition No. 462 of 2022 is allowed;
- ii. Impugned order dated 20th October, 2021 passed by NDPS Special Court rejecting misc. No.553 of 2021 application for return of property is set aside;
- iii. The property Viz. Cell phone i) Samsung Note Ultra 5G, mystick black in colour, IMEI : 353684120229103 ii) Samsung Galaxy S10, IMEI : 355332101706099 be returned to the petitioner on executing Supurdnama with condition that the articles will be produced before the Court as and when directed by the trial Court;
- iv. The petitioner shall not misuse the cell phones for contacting the absconding accused or tampering evidence;
- v. Writ Petition is disposed off.

(PRAKASH D. NAIK, J.)