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Crl.R.C.No.273/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.NO.273 OF 2023

Jess Frazer

...

Petitioner

The State, represented by the
the Inspector of Police,
R-5, Virugambakkam Police Station,
T.Nagar
(Crime No.609 /2022)

...

Respondent

Prayer: Criminal Revision Petition filed under section 397 r/w.401 Cr.P.C.,to set aside the order passed in Crl.M.P.No.6107/2022, dated 15.12.2022 on the file of the Special Judge for EC/NDPS Act cases, Chennai and direct the respondent to release the I phone bearing IMEI No.351145708217318 which was seized in connection with Cr.No.609/2022 on the file of the respondent police to the petitioner.

For Petitioner : Mr.M. Manimaran

For Respondent : Mr. R. Vinothraja
GA (Crl.side)



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ORDER

This Criminal Revision case has been filed challenging the order of dismissal dated 15.12.2022 passed by the Special Judge for EC/NDPS Act Cases, Chennai in Crl.M.P.No.6107 of 2022 filed under section 451 of Cr.P.C. Seeking return of I Phone bearing IMEI No.351145708217318.

2. The learned counsel for the petitioner contended that the petitioner is the owner of I phone bearing IMEI No.351145708217318 seized by the respondent police for the alleged illegal transportation of 3.6 Kilograms of Ganja. A case was registered by the respondent for the offence under section 8(c) r/w.20 (b) (ii) (B) of NDPS Act against the accused persons on 12.09.2021 in Cr.No.609/2022. Pursuant to which, the i-phone bearing IMEI No.351145708217318 was seized by the respondent police and produced before the court below in B.No.279 of 2022. Seeking return of the abovesaid i phone, the petitioner filed a petition before the court below in Crl.M.P.No.6107/2022 in Crime No.609 /2022, but the court below dismissed the petition on the ground that the i phone used for sale of ganja is required for evidence and if the same is returned to the petitioner, it will affect investigation which is still pending. He



further submitted that by operating the phone only, the petitioner can continue his photography business for his livelihood and the petitioner is not involved in any previous similar type of offences. In such circumstances, he seeks to grant interim custody of the i-phone to the petitioner.

3. Further, the learned counsel for the petitioner submitted that no purpose will be served in keeping the i-phone under the custody of respondent police and if the i-phone is kept for a long time, it would become unusable and the same will diminish the value of the i-phone. The petitioner is ready to give appropriate guarantee as well as security for return of i-phone and also he will produce the i-phone as and when required either before the respondent police or before the trial court. Hence, he prayed to return the i-phone and he is ready to obey any condition imposed on him by this Court.

4. The learned Government Advocate (crl.side) for the respondent objected to return the i-phone to the petitioner and submitted that the petitioner is arrayed as A2 in this case and investigation is still pending and if the phone is returned, it will affect further investigation. However, he would fairly concede



that there is no previous case registered against this petitioner involving similar type of offence.

5. I have considered the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate (crl.side) for the respondent.

6. Perusal of records would reveal that on 12.09.2022, on receiving secret information about the illegal transportation of Narcotic substances, the respondent police went to Saligramam, K.K. Salai nearby Jawahar College. At that time, on seeing the police, the accused persons attempted to escape from that place, but they were caught hold by the respondent police. On enquiry, it was found that the accused persons A1 and A2/petitioner were found in illegal possession of 3.600 kgs of Ganja and immediately they arrested A1 and A2/petitioner and seized his I phone bearing IMEI No.351145708217318 and registered a case under sections under section 8(c) r/w. 20 (b) (ii) (b), 22 (b), 22(c), 25, 29(i) of NDPS Act 8(c) r/w.20 (b) (ii) (B) of NDPS Act on 12.09.2022 in Cr.No.609/2022. The petitioner is the owner of the above said i phone and he is arrayed as A2 in Crime No.609 of 2022 and the investigation



is still pending.

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7. Perusal of records would further reveal that the petitioner is the owner of i-phone and he is ready to give guarantee and security for returning the i-phone. If the phone is not regularly used, the phone will be damaged and the value of the same gets deteriorated. Further, the petitioner's photography business fetching income for his livelihood will be affected and the petitioner is not involved in any previous case involving similar type of offence.

8. Further, the Honourable Supreme Court in the case of Sunderbhai Ambalal Desai and others Vs.State of Gujarat in Special Leave Petition (crl.) 2745 of 2022 dated 01.10.2002 has held that in order to protect the property, the Apex Court has directed to handover the seized articles to the owner on proper Panchnama.

9. Considering the above aspects and also the ratio laid down by the Hon'ble Apex Court, this Court is of the view that keeping the phone idle, will diminish its nature and lose its value and no purpose will be served. As such, considering the nature of offence and also taking into account the fact that the



petitioner is not involved in any other case similar in nature previously, this Court is inclined to allow the Criminal Revision Case.

10. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 15.12.2022 passed in Crl.M.P.No.6107 of 2022 by the Special Judge for EC/NDPS Act Cases, Chennai is set aside. The respondent is directed to return the I phone bearing IMEI No.351145708217318 to the petitioner on the following conditions.

- i. the court below shall prepare dtailed panchnama of the i-phone
- ii. the petitioner shall prove his ownership of the i phone by producing relevant records
- iii. the petitioner shall not alienate or encumber the i-phone in any manner;
- iv. the petitioner shall execute a bond for a sum of Rs.75,000/- (Rupees seventy five thousand only) before the Special Court under EC & NDPS Act.
- v. the petitioner shall give an undertaking that he will not use the i-phone for any illegal activities in future.



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vi. the petitioner shall take photograph of the i-phone and the same shall be produced before the court.

vii. the petitioner shall also produce the i-phone as and when required before the court below and before the respondent police.

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msr

Index: yes/no

Internet:yes/no

To

1. The Special Judge for EC/NDPS Act cases, Chennai.
2. The Inspector of Police,
R-5, Virugambakkam Police Station,
T.Nagar.
3. The Public Prosecutor,
Madras High Court.



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V. SIVAGNANAM, J.

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