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Crl.R.C.No.421 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.RC.No .421 of 2023

E.Lokesh
Petitioner

...

Vs.

State : Inspector of Police,
V.5 Thirumangalam Police Station,
Chennai.
Crime No.182 of 2022
Respondent

...

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the Order passed by the learned Principal Special Judge for EC & NDPS Act Cases, Chennai in Crl.M.P.No.801 of 2023 dated 16.02.2023.

For Petitioner

: Mr.P.Veera Narayanan



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For Respondent : Mr.R.Vinothraja
Government Advocate (Crl.Side)

ORDER

Challenging the Order passed by the learned Principal Special Judge for EC & NDPS Act Cases, Chennai in Crl.M.P.No.801 of 2023 dated 16.02.2023 and to return the Apple I Phone XR Mobile, the present revision has been filed.

2. It is the case of the prosecution that on 29.05.2022, on secret information, when the respondent police were on patrol duty at V.R.Mall parking area, they found A2 and A3 in possession of DOB Stamps and based on their confession statement, the respondent police seized Apple I Phone XR Mobile belonging to the petitioner and a case in Crime No.182 of 2022 was registered under Sections 8 [c] read with 22[c], 29[1] and 25 of NDPS Act.

3. The respondent police seized the Apple I Phone XR of the



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petitioner. The petitioner is not an accused in this case and the contraband recovered from the accused persons is in between quantity. The petitioner is paying EMI for his mobile. The petitioner filed a petition in C.M.P.No.801 of 2023 before the Trial Court to return Apple I Phone XR to the petitioner. But it was dismissed, vide order dated 16.02.2023 on the ground that the petitioner has not mentioned in his petition as to how the phone has gone to the hands of the accused and based on the objections raised by the prosecution. Hence, challenging the above said order, the petitioner filed the present Revision case.

4. The learned counsel for the petitioner submitted that the petitioner is the owner of the Apple I Phone XR. He further submitted that the petitioner has to pay EMI for Apple I Phone XR and if the mobile is kept for unused for a long time, it cannot be used and its value will be diminished and the petitioner is ready to give appropriate guarantee as well as security for return of Apple I Phone XR and also he will produce the Apple I Phone XR, as and when required either before the respondent police or before the



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Trial Court. Hence, he prayed to return the vehicle to the petitioner.

5. The learned Government Advocate [Criminal Side] appearing for the respondent submitted that the petitioner is owner of the Apple I Phone XR and since the above said I Phone was used by the accused while selling ganja illegally and hence, he objected to return the Apple I Phone XR to the petitioner. He further submitted that the Apple I Phone XR is not involved in any previous case of similar nature.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate [Criminal Side] appearing for the respondent and I have perused the materials on record.

7. A perusal of the records shows that, the respondent police registered a case in Crime No.182 of 2022 for the offences under Sections 8 [c] read with 22 [c], 29 [1] and 25 of NDPS Act with regard to illegal sale of Ganja. Further, it reveals from the records that the petitioner is the owner of the Apple I Phone XR and it was seized by



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the respondent police. The Trial Court dismissed the petition in C.M.P.No.801 of 2023, filed by the petitioner, on the ground that the petitioner has not mentioned in his petition as to how the phone has gone to the hands of the accused and on the objections raised by the prosecution. It is the contention of the learned counsel for the petitioner that the petitioner is ready to give guarantee and security for returning the Apple I Phone XR and if the Apple I Phone XR is being kept unused, it would cause damage to the iPhone.

8. At this juncture, it is relevant to rely upon a decision of the ***Hon'ble Supreme Court in Sunderbhai Ambalal Desai and others Vs. State of Gujarat in Special Lave Petition (Crl.)2745 of 2022 dated 01.10.2002*** wherein the Hon'ble Supreme Court 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.



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9. Considering the above aspects and also as per the ratio laid down by the Hon'ble Apex Court, this Court is of the view that, keeping the Apple I Phone XR idle, will diminish its nature and lose its value and no purpose will be served. As such, considering the nature of offence, this Court is inclined to allow the Revision Petition.

10. Accordingly, this Criminal Revision Case is allowed and the impugned order passed by the Trial Court is set aside. The respondent police is directed to return the Apple I Phone XR to the owner on the following conditions :

- i. the petitioner shall prove his ownership of the Apple I Phone XR by producing relevant records;
- ii. the petitioner shall execute a personal bond for a sum of Rs.50,000/- (Rupees fifty thousand only) before the learned Principal Special Judge for EC & NDPS Act Cases, Chennai and the learned Judge shall not insist on production of solvency



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certificate.

- iii. the Court may prepare a panchnama in Judicial Form No.82 with regard to the Apple I Phone XR and such panchanama can be used in evidence.
- iv. the petitioner shall take photograph of the Apple I Phone XR and certified under Section 65B of the Central Act 1 of 1972 and such photographs may be used as secondary evidence.
- v. the petitioner shall not alienate or encumber the Apple I Phone XR in any manner;
- vi. the petitioner shall give an undertaking that he will not use the Apple I Phone XR for any illegal activities in future,
- vii. the petitioner shall also produce the Apple I Phone XR as and when required before the court below and before the respondent police.

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To

1. The Principal Special Judge for EC & NDPS Act Cases,
Chennai
2. The Inspector of Police,
V.5 Thirumangalam Police Station,
Chennai.
3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

VTC

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