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Crl.R.C.No.518 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

CORAM

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.R.C.No.518 of 2023

A.S.Babu

... Petitioner

Vs.

State rep. by
Inspector of Police,
T-2 Chrompet Police Station,
Chennai.

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the order of dismissal passed by the learned Principal Special Judge under EC & NDPS Act at Chennai in Crl.M.P.No.1458 of 2023 dated 10.03.2023 in Cr.No.11 of 2023 (on the file of the Respondent).

For Petitioner : Mr.R.C.Paul Kanagaraj

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



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ORDER

This Criminal Revision Case has been filed to set aside the order dated 10.03.2023 passed in Crl.M.P.No.1458 of 2023 by the learned Principal Special Judge under EC & NDPS Act, Chennai.

2. The case of the prosecution is that on 09.01.2023 at about 14.00 hours, the *defacto* complainant namely Tr.Anthony Sagaya Bharath the Sub Inspector of Police, attached to T-2 Chrompet Police Station, Chennai received a secret information and the Sub Inspector of Police along with his police party went to the scene of occurrence i.e., Chrompet Bus Stop. At that time, two unknown persons were standing in suspicious manner, hence the respondent police enquired them and found A-1 & A-2 in illegal possession of 10 kg of dry ganja [which comes under Intermediate quantity]. Thereafter, the respondent police arrested A-1 & A-2 and recorded their confession and also seized the case properties from the scene of occurrence in the presence of witnesses and a case was registered in T-2



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Chrompet Police Station, Chennai in Cr.No.11 of 2023 u/s 8(c) r/w 20(b), (ii)(B), 29(1), 25 of the NDPS Act against the accused [A1 & A2] on 09.01.2023 at about 14.00 hours by the Sub Inspector of Police and same was submitted. The then Inspector of Police taken up the case for investigation.

3. During the pendency of the investigation, the petitioner, who is the father of A2 filed a petition before the Principal Special Court under EC & NDPS Act, Chennai, in Crl.M.P.No.1458 of 2023 under Sections 451 of Cr.P.C. for return of I phone-14 bearing IMEI No.350654412679052, 350654412260622 and the learned Magistrate by an order dated 10.03.2023 dismissed the same. Challenging the said order, the petitioner has filed the present revision before this Court.

4. The learned counsel for the petitioner submitted that the petitioner, who is the father of A2, is the owner of the I-phone-14 bearing IMEI No.350654412679052, 350654412260622. He further submitted that in this



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case the respondent police arrested the accused person for having possession of 10 Kgs of dry ganja and registered the case. The petitioner is not an accused and his son used his phone and while arresting the accused, the police has also seized the mobile phone. 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 unused 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.

5. The learned Government Advocate (Crl.Side) submitted that the petitioner is the owner of the I-Phone-14 bearing IMEI No.350654412679052, 350654412260622 and it was seized along with 10 Kgs of Ganja. He further submitted that the petitioner is not an accused and



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he is the father of the 2nd accused 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.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and I have perused the materials on record.

7. On a perusal of the records, it reveals that the petitioner is the owner of the I-Phone-14 bearing IMEI No.350654412679052, 350654412260622 and it was seized by the respondent police and registered a case under sections under section 8(c) r/w. 20 (b) (ii) (B) & 25 of NDPS Act on 09.01.2023 in Cr.No.11/2023. The petitioner is the owner of the above said i phone and the investigation is still pending.

8. Perusal of records would further reveal that the petitioner is the



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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 is not involved in any previous case involving similar type of offence.

9. 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.

10. 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.



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11. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 10.03.2023 passed in Crl.M.P.No.1458 of 2023 by the Principal Special Judge for EC & NDPS Act, Chennai is set aside. The respondent police is directed to return the I phone bearing IMEI No.351145708217318 to the petitioner on the following conditions.

- (i) The Court shall prepare detailed panchanama 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.1,00,000/-(Rupees One Lakh only) before the Special Court under EC & NDPS Act, Chennai.
- (v) The petitioner shall give an undertaking that he will not use the i-phone for any illegal activities in future.
- (vi) The petitioner shall take photograph of the i-phone and the same shall be produced before the court.



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(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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Index: Yes/No
Internet: Yes/No
rpl

To

1. The Principal Special Judge for EC & NDPS Act,
Chennai.
2. The Inspector of Police,
T-2 Chrompet Police Station,
Chennai.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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V.SIVAGNANAM, J.,

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