



Crl.R.C.No.759 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.No.759 of 2023

J.Raja

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Petitioner

Vs

State of Tamil Nadu
Rep.by Inspector of Police,
Kadambathur Police Station,
Tiruvallur District.

...

Respondent

Prayer: Criminal Revision Case filed under section 397 r/w 401 of Cr.P.C. to set aside the order in Crl.M.P.No.849 of 2023 dated 16.02.2023 passed by the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai and return the I Phone 11, Model No.128 GB (IMEI No.356581105293921) to the petitioner.

For Petitioner : Mr.G.Balachandar

For Respondent : Mr. R.Vinothraja,
Government Advocate (crl.side)



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ORDER

Challenging the order dated 16.02.2023 passed in Crl.M.P.No.849 of 2023 by the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai and to return the I Phone 11, Model No.128 GB (IMEI No.356581105293921) to the petitioner, the criminal revision case has been filed.

2.The learned counsel for the petitioner submitted that the petitioner is not an accused in this case and he is the owner of the I Phone 11, Model No.128 GB (IMEI No.356581105293921), which was used by his son/4th accused and the same was seized by the respondent police and produced before the Court in B.No.217/2022. The respondent police has registered a case in crime No.76 of 2022 under Sections 8(c), 20(b)(ii)(B), 22(b), 22(c), 25 and 29(1) of NDPS Act against the petitioner's son/A4 and 11 others for selling contrabands viz., LSD Stamps – 25 Nos. MDMA Tablets 26 Nos, Methcrystal 1 gram, YABA Tablets – 1590 tablets and 2.5 Kgs of ganja near Kadambathur Railway Station, Rajiv Gandhi Nagar. The 4th



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accused/petitioner's son was released on bail by this Court in
Crl.O.P.No.21250 of 2022 on 19.09.2022.

3.The learned counsel for the petitioner further submitted that the petitioner is not an accused in this case and he is not having previous bad antecedents and he is the owner of the seized phone. He filed a petition in Crl.M.P.No.849 of 2023 under Section 451 Cr.P.C. seeking return of I Phone 11, Model No.128 GB (IMEI No.356581105293921) before the Principal Special Court under EC & NDPS Act, Chennai and the same was dismissed on 16.02.2023.

4.Further, the learned counsel for the petitioner submitted that the phone is not involved in any previous case of offence of similar in nature. The phone has been kept under the custody of the court and if the phone is kept in unusual, the same would depreciate its value and user capacity. The petitioner is ready to give appropriate guarantee as well as security for return of phone and also he will produce the phone as and when required either before the



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respondent police or before the trial court. Hence, he prayed to return the phone and he is ready to obey any condition imposed on him by this Court.

5. The learned Govt. Advocate (Crl.side) appearing for the respondent objected to return of mobile phone stating that the petitioner is the father of the fourth accused and the case is under investigation. If the phone is returned to the petitioner, it may affect the investigation and he may not produce the same and the phone may also use in similar nature of offence. He fairly conceded that there is no previous cases against the petitioner and he has no bad antecedents and the seized phone is also not involved in any other offence.

6. Heard both sides and perused the entire materials available on record.

7.A perusal of the records would reveal that the respondent police has registered a case in crime No.76 of 2022 under Sections 8(c), 20(b)(ii)(B), 22(b), 22(c), 25 and 29(1) of NDPS Act against the petitioner's son/A4 and 11 others for selling contrabands viz., LSD Stamps – 25 Nos. MDMA Tablets 26



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Nos, Methcrystal 1 gram, YABA Tablets – 1590 tablets and 2.5 Kgs of ganja near Kadambathur Railway Station, Rajiv Gandhi Nagar. The petitioner is the owner of the phone, which was used by his son/4th accused and the same was seized by the respondent police and produced before the Court in B.No.217/2022. The 4th accused/petitioner's son was released on bail by this Court in Crl.O.P.No.21250 of 2022 on 19.09.2022.

8.Further, on perusal of records, it is seen that the petitioner is the owner of seized phone and he is ready to give guarantee and security for returning the phone. Further, the Hon'ble 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.



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9.Considering the nature of offence and also taking into account the fact that the phone is not involved in any other case similar in nature previously and also the petitioner is not having any previous bad antecedents, this Court is inclined to grant interim custody of cell phone to the petitioner.

10.In the result, this Criminal Revision Case is allowed and the impugned order dated 16.02.2023 passed in Crl.M.P.No.849 of 2023 by the learned Principal Special Court under EC & NDPS Act, Chennai, is hereby set aside and the interim custody of the I Phone 11, Model No.128 GB (IMEI No.356581105293921) is ordered to be handed over to the petitioner, who is the owner of the phone on the following conditions;

- i. the petitioner shall prove his ownership of the phone by producing relevant records;
- ii. the petitioner shall execute a personal bond for a sum of Rs.75,000/-(Rupees Seventy Five Thousand only) before the Principal Special Court Under EC & NDPS Act, Chennai, and the learned Judge shall not insist for production of solvency certificate.
- iii.The Court may prepare a panchnama in Judicial Form No.82 with regard to the phone and such panchanama can



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be used in evidence.

- iv. the petitioner may take photograph of the phone 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 phone in any manner;
- vi. the petitioner shall give an undertaking that he will not use the phone for any illegal activities in future;
- vii. the petitioner shall also produce the phone as and when required before the court below and before the respondent police.

Index: yes/no

Internet: yes/no

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sms

To

1. The learned Principal Special Judge,
Special Court under EC & NDPS Act,
Chennai.

2. The Inspector of Police,
Kadambathur Police Station,
Tiruvallur District.

3. The Public Prosecutor,
Madras High Court.

V. SIVAGNANAM, J.



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