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Crl.R.C.No.795 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.No.795 of 2023

Praveenkumar

...

Petitioner

Vs

State Rep by

The Inspector of Police,

D-1 Thiruthani Police Station,

Crime No.651 of 2022.

...

Respondent

Prayer: Criminal Revision Case filed under section 397 r/w 401 Cr.P.C.to call for the records relating the order dated 06.03.2023 made in Crl.M.P.No.634 of 2023 in Crime No.651 of 2022 on the file of the learned Principal Special Court under EC & NDPS Act, Chennai and set aside the same and direct the respondent herein to return the Apple I Phone XR.

For Petitioner : Mr.S.Senthilvel

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



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ORDER

Challenging the order dated 06.03.2023 passed in Crl.M.P.No.634 of 2023 by the learned Principal Special Court under EC & NDPS Act, Chennai, the criminal revision case has been filed.

2.The case of the prosecution is that on 17.12.2022 at about 09.15 hours, after receiving the secret information about illegal transport of Narcotic substances, the respondent police along with the police team went to the scene of occurrence (i.e.) nearby Mathur Gate. At that time, the three accused persons came from that place with two wheelers Activa bearing Reg.No. TN – 20-CB- 2006 and Dio bearing Reg.No.TN-20-DY-6334, immediately, the respondent police caught hold of the accused persons and during the enquiry, came to know that the accused persons namely, Santhoshkumar/A1, Manokaran / A2 and Dhanush/A3. On searching the said accused persons, found in possession of 1.400 kgs Ganja and the same was seized along with Activa bearing Reg.No.TN-20-CB-2006 and iphone – 1 from A1, Dio bearing Reg.No.TN-20-DY-6334 from A2 under the cover of seizure mahazar in the



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presence of witnesses. Then, the respondent police have arrested the accused persons (A1 to A3). Based on the above, a case was registered in Crime No.651 of 2022 under Sections 8 (c), r/w 20 (b)(ii)(B) of NDPS Act, 1985 & 328 IPC against the accused 1 to 3 on 17.12.2022 and on the same day, the respondent Police have produced the arrested accused 1 to 3 before the Judicial Magistrate No.II, Thiruthani and remanded to Judicial custody and produced the seized materials before the Principal Special Court for EC/NDPS Act Cases, Chennai in A.No.235 of 2023 & B.No.225 of 2023.

3.The learned counsel for the petitioner 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.634 of 2023 under Section 451 & 457 of Cr.P.C. seeking return of Apple I phone XR before the Principal Special Court under EC & NDPS Act, Chennai and the same was dismissed on 06.03.2023.



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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 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 friend of the first 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 first accused and the seized Apple I phone also not involved in any other offence.

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



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7.A perusal of the records would reveal that on 17.12.2022 at about 09.15 hours, after receiving the secret information about illegal transport of Narcotic substances, the respondent police along with the police team went to the scene of occurrence (i.e.) nearby Mathur Gate. At that time, the three accused persons came from that place with two wheelers Activa bearing Reg.No. TN – 20-CB- 2006 and Dio bearing Reg.No.TN-20-DY-6334, immediately, the respondent police caught hold of the accused persons and enquired them, they came to know that the accused persons namely, Santhoshkumar/A1, Manokaran / A2 and Dhanush/A3 and found in possession of 1.400 kgs Ganja and the same was seized along with Activa bearing Reg.No.TN-20-CB-2006 and iphone – 1 from A1, Dio bearing Reg.No.TN-20-DY-6334 from A2 under the cover of seizure mahazar in the presence of witnesses. Then, the respondent police have arrested the accused persons and registered a case in Crime No.651 of 2022 under Sections 8 (c), r/w 20 (b)(ii)(B) of NDPS Act, 1985 & 328 IPC against the accused 1 to 3 on 17.12.2022. Thereafter, produced the accused 1 to 3 before the Judicial



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Magistrate No.II, Thiruthani and produced the seized materials before the Principal Special Court for EC/NDPS Act Cases, Chennai in A.No.235 of 2023 & B.No.225 of 2023.

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.

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.



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10. In the result, this Criminal Revision Case is allowed and the impugned order dated 06.03.2023 passed in Crl.M.P.No.634 of 2023 by the learned Principal Special Court under EC & NDPS Act, Chennai, is hereby set aside and the interim custody of the Apple I Phone XR 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 her ownership of the phone by producing relevant records;
- ii. the petitioner shall execute a personal bond for a sum of Rs.60,000/-(Rupees Sixty 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 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;



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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

sms

13.06.2023

To

1.The learned Principal Special Court under EC & NDPS Act,
Chennai – 600 104.

2.The Inspector of Police,
D-1 Thiruthani Police Station,
Crime No.651 of 2022.

3. The Public Prosecutor,
Madras High Court.

V. SIVAGNANAM, J.



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