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Crl.R.C.No.1696 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1696 of 2023

H.AL Zameer

... Petitioner

Vs.

State by

Inspector of Police,

F-1, Chindatripet Police Station,

Chennai.

Crime No.199 of 2022.

... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.4175 of 2023 on 01.08.2023 by the Principal Special Court under EC & NDPS Act, Chennai and direct the respondent Police to return the petitioner Mobile phone namely iphone 13 and two wheeler vehicle bearing TN 01 BM 8184 Chasis No.MD626AK31N2A02030 Engine No.AK3AN2501966 (TVSNTORQ125 SUPER SQUADEDITIN) black colour to the petitioner.

For Petitioner : Mr.M.Jaikumar

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

The petitioner, who is an accused in Crime No.199 of 2022, for offence under Sections 8(c) r/w 22(b), 25 and 29(1) of the Narcotic



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Drugs & Psychotropic Substances Act, 1985 filed a petition under Section 451 of Cr.P.C., in CrI.M.P.No.4175 of 2023 in C.C.No.440 of 2022 in Crime No.199 of 2022 before the learned Principal Special Court under EC & NDPS Act, Chennai seeking return of his two wheeler, viz., bearing registration No.TN 01 BM 8184 NTORQ Black and Apple red colour cell phone-1. The Court below dismissed the return of property petition *vide* impugned order, dated 01.08.2023. Aggrieved over the same, the present Criminal Revision Case.

2.The learned counsel for the petitioner submitted that in the FIR, it has been recorded by the respondent Police that motor bike bearing registration No.TN 01 BM 8184 and iphone 13 have been seized from the petitioner and the same have also been produced before the Court below and the same has been recorded in the property register as B.No.284/2022. The only reason for dismissal of the petitioner's petition by the Court below is that the petitioner had not produced any document to show that he is the owner of his vehicle and his mobile phone. The reason cited by the Court below for dismissing the petition filed by the petitioner is not sustainable. For the purpose of his business, the mobile



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phone and the vehicle are essential. The investigation in the above case completed, charge sheet filed. The motor bike and the mobile phone are not relied upon material objects. Hence, he prayed for setting aside the order of the Court below.

3.The learned Additional Public Prosecutor appearing for the respondent Police filed counter and submitted that there are totally three accused, the petitioner is A1. In this case, investigation completed and the charge sheet filed before the Court below and the same is pending at the stage of trial in C.C.No.440 of 2022 and the case is posted for appearance of the accused on 16.11.2023. He further submits that at the time of arrest of the petitioner, he produced one box of Nitrazepam tablet IP Nitravet-1 and the respondent seized the petitioner's two wheeler and his mobile phone which were used for sale of contraband. Hence, the motor bike and the mobile phone cannot be returned to the petitioner which fact was considered by the Court below. Now, there is no change in circumstances, hence, strongly opposed the criminal revision case.



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4.Considering the submissions and on perusal of the materials, it is seen that the seized motor bike bearing registration No.TN 01 BM 8184 NTORQ Black and Apple red colour cell phone-1 and other articles produced before the Court below and the same recorded in property register as B.No.284/2022. For safe custody, the articles returned to the respondent Police. Now, the investigation completed, charge sheet filed and the same taken on file as C.C.No.440 of 2022. It is submitted that in this case, the contraband seized from the petitioner/A1 had been taken out from the said motor bike, hence, the return of motor bike will not be proper at this stage. Hence, this Court is not inclined to return the motor bike to the petitioner for the present.

5.As regards the seizure of Apple red colour cell phone-1 is concerned, from the seizure, there is nothing to show that this mobile phone was anyway used in dealing with the contraband. In the charge sheet, there is no reference to the same as submitted. Hence, this Court is inclined to return the Apple red colour cell phone-1 alone to the petitioner.



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6.In view of the aforesaid reasons, this Court set asides the impugned order passed by the learned Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.4175 of 2023 in C.C.No.440 of 2022 Crime No.199 of 2022 in respect of Apple red colour cell phone-1 alone. Accordingly, this criminal revision case is partly-allowed.

7.Hence, the respondent Police is directed to give custody of the mobile phone namely Apple red colour cell phone-1 to the petitioner after causing necessary photographs and panchnama, within a period of 7 days from the date of compliance of the below mentioned condition Nos.(i) to (iii):

(i)The petitioner shall execute a personal bond for a sum of Rs.5,000/- (Rupees Five Thousand only), with two sureties each for a like sum to the satisfaction of the Principal Special Court under EC & NDPS Act, Chennai. The petitioner and the sureties shall affix their photographs and give the copies of their Aadhar card.

(ii)The petitioner shall not tamper or alienate the mobile phone in question till the completion of trial.



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(iii)The petitioner shall take photograph of the mobile phone and attest the same.

(iv)The petitioner shall produce the mobile phone as and when directed to do so by the Court below.

02.11.2023

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Speaking Order/Non-Speaking Order

vv2/mp

To

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

2.The Inspector of Police,
F-1, Chindatripet Police Station,
Chennai.

3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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