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Criminal Original Petition No.1168 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Original Petition No.1168 of 2024

and

Crl.M.P.No.811 of 2024

Mohammed Azarudeen
S/o.Haaja Kamaludeen

... Petitioner

Vs.

The Deputy Superintendent of Police,
NIB-CID, Chennai.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for entire records in Crl.M.P.No.7938 of 2023 in CNR No.TNCHOA-008789-2023 in C.C.No.410 of 2023 in Cr.No.54 of 2022, on the file of Special Judge, I Additional Court under NDPS Act, Chennai and to set aside the order.

For Petitioner : Mr.S.P.Yuvaraj Prabu
for Mr.K.Shivakumar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER



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This Criminal Original Petition has been filed challenging the order passed by the Court below in CrI.M.P.No.7938 of 2023 in CNR No.TNCHOA-008789-2023 in C.C.No.410 of 2023 in Cr.No.54 of 2022, dated 20.11.2023, dismissing the petition filed u/s.91 Cr.P.C. wherein the petitioner had sought for production of certain documents from the service provider in order to establish his defence.

2. Heard Mr.S.P.Yuvaraj Prabu, learned counsel for petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for respondent.

3. The petitioner is facing trial before the Court below for offence u/s.8(c) r/w 22(C) of the NDPS Act. The case of the prosecution is that he was in illegal possession of 800 gms. of Methamphetamine and he was arrested and remanded to judicial custody on 01.11.2022 after the seizure. The petitioner wanted to establish that no such seizure had taken place as claimed by the prosecution on 31.10.2022 and in fact, the petitioner was taken to the police station and kept for one day and thereafter, the case was foisted. To establish this defence, the petitioner wanted to call for certain materials from the service provider to identify the tower location,



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incoming and outgoing call records, CDRs *etc.* from 31.10.2022 till 01.11.2022.

4. The respondent resisted this petition on the ground that the details that have been sought for by the petitioner could not be collected by the respondent since the service provider did not maintain the same beyond a period of one year. The respondent further stated that the petitioner is trying to drag on the proceedings.

5. The Court below, on considering the facts and circumstances of the case and the rival submissions, came to a conclusion that the petitioner cannot seek for a document even before examination of prosecution witnesses and the case is only at an initial stage. Therefore, if at all the petitioner wants production of documents it can be done only at the stage of defence. Aggrieved by the order passed by the Court below, the present petition has been filed before this Court.

6. This Court had an occasion to deal with the scope of Section 91 Cr.P.C. in CrI.O.P.No.555 of 2021, dated 11.02.2021. While dealing with the said issue, this Court held that while considering an application u/s.91



Cr.P.C., the Court has to only see if the document sought for has any relevance and that those documents are necessary for the accused to defend himself effectively. This Court further held that the stage at which such an application can be filed will depend upon the facts and circumstances of each case and it is unnecessary that in every case the accused has to wait till the completion of examination of the prosecution witnesses and thereafter, call for the documents at the stage of defence.

7. In the instant case, the petitioner is refuting the so-called seizure from him on the date of occurrence. Therefore, the petitioner wants the details to be called for from the service provider to establish that he was not there at the scene of crime. These documents are essential to establish the defence of the petitioner and since the service provider maintains these records only for a short period, it is essential to call for those documents. The marking of these documents can be considered at the appropriate stage.

8. In the light of the above discussion, the order passed by the Court below in CrI.M.P.No.7938 of 2023 in CNR No.TNCHOA-008789-2023 in C.C.No.410 of 2023 in Cr.No.54 of 2022, dated 20.11.2023, is hereby set aside. The Court below is directed to call for the documents



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that have been sought for by the petitioner from the service provider and get their response.

This Criminal Original Petition is allowed with the above direction.

Consequently, connected miscellaneous petition is closed.

24.01.2024

Speaking Order/Non-speaking Order

Index :Yes/No

Neutral citation: Yes/No

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To

1.The Deputy Superintendent of Police,
NIB-CID, Chennai.

2.The Public Prosecutor,
High Court, Madras.

N.ANAND VENKATESH, J.

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