



CRL. R.C. No.660/ 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL. R.C. NO. 660 OF 2024

Tamilselfam

.. Petitioner

- Vs -

The State, rep. by
The Inspector of Police,
T-4, Madhuravoyal Police Station

.. Respondent

Criminal Revision Cases are filed under Sections 397 r/w 401 of the Criminal Procedure Code to call for the records in CrI. M.P. No.4631 of 2023 on the file of the learned Principal Special Judge, EC & NDPS Act Cases @ Chennai and set aside the order dated 26.07.2023.

For Petitioner : Mr. K.Yuvaraja

For Respondent : Mr. A.Gopinath, GA (Crl. Side)

ORDER

Challenging the dismissal order passed by the learned Principal Special



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Judge, EC & NDPS Act Cases @ Chennai in Crl. M.P. No.4631 of 2023, dated 26.07.2023 the present Criminal Revision Petition has filed by the petitioner seeking interim custody of the One Plus IV2201 Mobile Phone and Cash of Rs.21,000/-, which are in the custody of the respondent in Crime No.87 of 2023 for the alleged offences punishable under Section 8(c) r/w 20(b)(ii)(B) of Narcotic Drugs & Psychotropic Substances Act (for short 'the Act').

2. The case of the petitioner is that One Plus IV2201 Mobile Phone and cash of Rs.21,000/- were seized by the respondent on the accusation that the petitioner was in illegal possession of ganja weighing about 1.150 Kgs. Further to the same, a case in Crime No.87 of 2023 was registered by the respondent for the offence u/s 8 (c) r/w 20 (b)(ii)(B) of the Act and upon arrest, the petitioner was produced before the Special Court and remanded to judicial custody on 9.2.2023. It is the further case of the petitioner that while the mobile phone and cash were seized in connection with the aforesaid crime, the contraband and other properties were seized and produced before the Principal Special Judge for EC & NDPS Act Cases in A. No.293/2023 and B. No.259/2023. It is the case of the petitioner that the mobile phone and cash have not been used in any offence, alleged against the petitioner by the respondent. It is the further case of the



petitioner that he is the owner of the said mobile phone and cash also belongs to him and the cash and mobile phone were taken from the petitioner purposely for foisting the case against him on the ground that the cash was used for purchasing the contraband and mobile phone was used for the said purpose. Therefore, the present petition has been filed premising the case that the said properties are in no way connected with the crime and, therefore, the petitioner seeks interim custody of the same.

3. Learned counsel for the petitioner submits that the cash and mobile phone are in no way connected with the offence and merely for the purpose of foisting the case on the petitioner, the aid of mobile phone and cash for the purpose of purchase of the contraband has been concocted by the respondent. There is no iota of evidence connecting the aforesaid materials with the commission of the offence. Therefore, the petitioner filed petition under Section 451 Cr.P.C. for interim custody of the same, pending trial, which was since dismissed, leading to the filing of the present revision petition. Learned counsel further submits that the petitioners are ready to comply with any conditions imposed by this Court and, accordingly, prays for allowing these criminal revision petition.



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4. Per contra, learned Government Advocate (Crl. Side) appearing for the respondent submits that the mobile phone was used for soliciting purchase of the contraband and the cash was used in the purchase of contraband and both the items being intricately connected with the Crime No.87 of 2023 custody as sought for by the petitioner cannot be granted, which aspect was rightly appreciated by the Special Court while dismissing the petition and the said finding being just and reasonable, no interference is warranted with the said decision and, accordingly, seeks dismissal of the present revision.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent and perused the materials available on record.

6. The issue raised in the present petition is no longer *res integra*, as similar issue, relating to release of vehicle, which was involved in an offence relating to narcotic drugs and psychotropic substances, fell for consideration before the Madurai Bench of this Court in ***Mohd. Shan – Vs – The State (Crl. RC (MD) No.116/2024 – Dated – 08.02.2024)*** and ***Harish Kumar & Anr. – Vs – The***



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State (Crl. RC (MD) Nos. 144 & 145/2024 – Dated – 9.2.2024) and appreciating the various provisions of law and the ratio laid down on the said aspect by the Courts, this Court held as under :-

“9. From the above decision it is clear that it is only the owner of the vehicle, who could claim for interim custody of the property, viz., conveyance, by filing petition before the Special Court u/s 451 Cr.P.C. and upon such petition being filed, subject to fulfillment of the conditions stipulated u/s 60 (3) and proviso to 63 (2) of the NDPS Act, it is for the Special Court to pass appropriate orders. It is further made clear that it is only the Special Court, which is conferred with powers and jurisdiction to decide a petition filed u/s 451 Cr.P.C. with regard to interim custody of the property, viz., the conveyance, by following the mandate contemplated u/s 60 and 63 of the NDPS Act and by virtue of the procedure contemplated u/s 451 Cr.P.C. and strict adherence to Section 451 Cr.P.C. would not be applicable but for the provisions of Sections 60 (3) and 63 (2) of the NDPS Act.

10. Coming to the facts in issue, there is no quarrel that the petitions u/s 451 Cr.P.C. have been filed before the trial court, which exercises jurisdiction and that the petitions have been filed by the petitioners, who claim to be owners of the respective vehicles. Therefore, the first arm with regard to jurisdiction and ownership stands fulfilled, but the second are with regard to the owner of the vehicle satisfying that the



Court by proving that the vehicle was used without his knowledge or connivance has not been established, as the vehicle was seized from the petitioners, who are the owners of the vehicle, along with the contraband and the names of the petitioners are shown as accused in the FIR. Therefore, without the petitioners absolving themselves from the offence by establishing that they have not trafficked contraband, seeking interim custody of the vehicle would not be permissible, as their complicity in the offence stands intricately connected with the said vehicle and it would not be in the interest of the prosecution to have the vehicle given interim custody to the petitioners, as the vehicles are material objects, which are connected with the commission of the offence.

11. In the above backdrop of the factual scenario, even Section 60 (3) of the NDPS Act would not stand attracted to the case of the petitioners for seeking interim custody of the vehicles, as they cannot prove that they had no knowledge or connivance about the offence which had been committed, as their names find place in the FIR. Rightly appreciating the aforesaid position of law, the trial court had rejected the plea of the petitioners for interim custody of the vehicles, which cannot be said to be perverse, arbitrary or illegal and, therefore, the said order does not deserve any interference at the hands of this Court.”



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7. In the case on hand, the petitioner claims ownership of the mobile phone and cash, but the pivotal objection on the part of the respondent is that the said mobile phone and cash were used for the purchase of the contraband and, therefore, they are vital to the prosecution and leaving the mobile phone with the petitioner would jeopardize the case of the respondent as the mobile phone could be tampered with. Further, in the same length, it is submitted that the cash, if returned to the custody of the petitioner would be utilised for similar clandestine activities.

8. It is to be pointed out that Section 451 Cr.P.C. could be invoked by a person for return of property and the Court, considering the nature of the property and perishability, could order return of the property subject to conditions. In the case on hand, the items, which have been seized are a mobile phone and cash. Though mobile phone and cash though are not perishable items, but definitely, the mobile phone, which has been seized, could be tampered with and the evidence therein would be lost. Similarly, the cash which has been seized could also be utilised and there would be no material evidence to substantiate the seizure at the time of trial and no amount of guarantee could be transposed as evidence against the cash. Further, it is the case of the respondent



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that the cash is the proceeds of the sale of ganja and unless the same is disproved by any material, return of cash to the petitioner would not be proper. The petitioner has not produced any material to show that the amount of cash is not the proceeds of the sale of ganja and such being the case, the court below, rightly appreciating the aforesaid facts, has rejected the prayer for return of the property, which findings are based on materials and proper appreciation of the materials available on record and, therefore, this Court is not inclined to interfere with the order impugned herein.

9. Therefore, rightly, the petition for return of property filed by the petitioners were dismissed by the Court below and the findings rendered therein to arrive at the subjective decision, being rational, reasonable and legal, no interference is warranted with the well considered decision rendered by the court below. Accordingly, these Criminal Revision Petition fails and the same is dismissed.

05.04.2024

Index : Yes / No



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GLN

To

1. The Principal Special Judge
Special Court under EC & NDPS Act
Chennai.
2. The Inspector of Police
T-4, Maduravoyal Police Station
3. The Public Prosecutor
High Court, Madras.



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M.DHANDAPANI, J.

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