



Crl.RC.No.1164 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.07.2024

CORAM:

THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

Crl.RC.No.1164 of 2024

Kirshnaprasath

...Petitioner

Vs.

The Inspector of Police,
Virugambakkam Police Station,
Chennai District.
(Crime No.155 of 2024)

...Respondent

Criminal Revision case filed under Section 397 & 401 of Cr.P.C. to set aside the order passed in Crl.M.P.No.9224 of 2024 dated 06.06.2024 passed by the learned 23rd Metropolitan Magistrate Court Saidapet and further direct the learned Court to return the petitioner's mobile Phone Apple I Phone – 1164 GB White New 230107.

For Petitioner : Mr.P.Muthamizhselvakumar

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)



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ORDER

WEB COPY This Criminal Revision petition has been filed to set aside the order passed in Crl.M.P.No.9224 of 2024 dated 06.06.2024 passed by the learned 23rd Metropolitan Magistrate Court Saidapet and consequently to direct the trial Court to return the petitioner's mobile phone.

2. The case of the petitioner is that, the petitioner is the owner of Apple Iphone bearing Model No.230107, which was seized by the respondent in pursuance of the FIR registered in Crime No.155 of 2024 for the alleged offence u/s. 353, 328 of IPC r/w 8(c) and 20(b)(ii)(B), 25 and 29(1) of the NDPS Act. Thereafter, the petitioner was enlarged on bail. Seeking return of mobile phone of the petitioner, he filed a petition u/s.451 Cr.P.C. in Crl.M.P.No.9224 of 2024 before the trial court, and the trial court dismissed the same, vide impugned order. Challenging the same, the present Criminal Revision Petition is filed.

3. Learned counsel for the petitioner submitted that keeping the mobile phone in trial Court would not serve any purpose to anyone and the



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trial Court ought to have returned the petitioner's phone by taking photographs, however, without doing so, dismissing the claim made by the petitioner is wholly unsustainable. He further submitted that the petitioner will produce the mobile phone as and when required for the purpose of trial and that he will not alienate the case property till the adjudication/trial is completed. Accordingly, he prayed for appropriate orders.

4. Per contra, learned Government Advocate (Crl. Side) appearing for the respondent submits that the petitioner is involved in Crime No.155 of 2024 for the alleged offence u/s. 353, 328 of IPC r/w 8(c) and 20(b)(ii)(B), 25 and 29(1) of the NDPS Act and further if the said mobile phone is released, it may be used for similar purpose of trafficking of narcotic substances and the involvement of the petitioner would be known only after the investigation is completed and, appreciating all the aforesaid facts, the trial court had rejected the claim for return of mobile phone and, therefore, no interference is warranted with the said decision and, accordingly, seeks dismissal of the present revision.



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

6. The genesis of the present case is that the accused was found to be in possession of 45 Grams of Ganja and 8 Tapantadal tablets, when they were apprehended by the law enforcing agency and, the mobile phone was used for the purpose of perpetrating the crime and, therefore, the mobile phone was seized. Pending trial, petition for return of mobile phone was filed, which has been rejected against which the present revision has been preferred.

7. Admittedly there is no quarrel that the petition u/s 451 Cr.P.C. has been filed before the trial court, which exercises jurisdiction and that the petition has been filed by the petitioner, who claims to be owner of the cell phone and only after investigation it could be elicited whether the petitioner was involved in the offence. Since the complicity of the petitioner in the offence would be clear only after completion of investigation, it would not



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be in the interest of the prosecution to have the mobile phone given interim custody to the petitioner, as the mobile phone is a material object, which is connected with the commission of the offence and rightly appreciating the aforesaid fact, the trial court had rejected the plea of the petitioner for interim custody of the mobile phone, which cannot be said to be perverse, arbitrary or illegal and, therefore, the said order does not deserve any interference of this Court. However, it is open to the petitioner to file a petition seeking return of mobile phone before the trial Court, after the investigation is completed.

8. Accordingly, the Criminal Revision Petition fails and the same is dismissed.

08.07.2024

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Index	: Yes/No
Speaking order	: Yes/No
NCC	: Yes/No



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M.DHANDAPANI, J.

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To

1. The 23rd Metropolitan Magistrate Court,
Saidapet
2. The Inspector of Police,
Virugambakkam Police Station,
Chennai District.
3. The Public Prosecutor,
Madras High Court,

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