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Crl.R.C.No.1625 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1625 of 2023

Vishnu Kancharla

... Petitioner

Vs.

State rep. by
The Inspector of Police,
T-9 Maraimalai Nagar Police Station,
Chengalpet.
Crime No.07/2023.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 29.03.2023 made in Crl.M.P.No.1475 of 2023 on the file of the Principal Special Court under EC & NDPS Act, Chennai and consequently return the Cell Phone.

For Petitioner : Mr.R.Parthiban

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl. Side)

ORDER

The petitioner filed a petition in Crl.M.P.No.1475 of 2023 seeking return of Xiaomi 11i, which was seized by the respondent Police in Crime



No.07 of 2023 for offences under Sections 8(c) r/w 20(b)(ii)(B) and 25 of the NDPS Act before the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai. The learned Principal Special Judge, by order, dated 29.03.2023 dismissed the return of property petition, against which, the present revision has been filed.

2.The contention of the petitioner is that the petitioner has been falsely implicated in this case and he was arrested. During his arrest, his mobile phone was seized by the respondent police. His mobile phone contains all his vital details of bank and other online transactions and also his contact details. The petitioner had also stored other important information in his mobile phone which is required for day-to-day usage. Further, no offence is committed using the mobile phone. The mobile phone was seized by the respondent police on 06.01.2023, the respondent police verified the mobile phone and know the details found in the phone. Hence, the mobile phone is no longer required and the detention of mobile phone without usage for long time would make the mobile phone unusable. Hence, prayed for return of mobile phone.



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3.The learned Government Advocate (Crl. Side) appearing for the respondent Police filed counter and submitted that on 06.01.2023 at about 07.00 a.m., the Sub Inspector of Police attached to the respondent Police was on duty, he received secret information about the illegal sale of ganja, then he along with the Police team went to the scene of occurrence i.e., Potheri VGN Southern Avenue Apartment near, at that time, the petitioner came there by Tata Nexon car bearing Reg.No.TS 15 EX 6225. Based on the secret information, the Sub Inspector of Police and his team conducted search and found 5.100 kgs of ganja and the same was seized under seizure mahazar along with MI phone and the said vehicle. Thereafter, the accused was arrested, his confession statement recorded, FIR in Crime No.7 of 2023 for offence under Sections 8(c), 20(b)(ii)(B) and 25 of NDPS Act registered against the accused on 06.01.2023 and the same was submitted to the Inspector of Police for further investigation. Thereafter, the petitioner was produced before the learned Judicial Magistrate No.II, Chengalpet for remand and he was sent to judicial custody on 06.01.2023. The seized vehicle produced before the learned Principal Special Court under EC &



NDPS Act, Chennai and on 30.01.2023 the samples of contraband sent to the Forensic Lab, Chennai for chemical analysis. After completion of investigation, based on the statement of witnesses, material evidence, on 28.08.2023, charge sheet filed against the accused before the Principal Special Court under EC and NDPS Act, Chennai and the same is yet to be taken on file.

4.He further submitted that the petitioner has already filed a petition before the learned Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.1475 of 2023 seeking return of Xiaomi mobile phone and the same was dismissed on 29.03.2023. Challenging the same, the present Criminal Revision Case has been filed. He further submitted that this Court in Crl.R.C(MD)No.41 of 2019, dated 16.06.2023 had given directions to the Special Court with regard to disposal of the conveyance articles seized under the NDPS Act. In view of the above, he prays for dismissal of the criminal revision case.

5.Considering the submissions made and on perusal of the materials



available on record, it is seen that in this case investigation completed, charge sheet filed before the Special Court but it is yet to be taken on file. It

is common that nowadays Smart phones are used not only for verbal communication and it has other usage like storage of details, information and used for online transactions including the bank transactions. Hence, it has become inseparable device and further detention without usage for long time would make it unusable. Added to it, the Apex Court in the case of ***Sainaba vs. The State of Kerala and another in Criminal Appeal No.2005/2022 [SLP (CRL.) No.72080/2022]*** by following the judgment of the Apex Court in the case of “***Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 283***” released the vehicle which was involved in the NDPS Act. Further, the learned Government Advocate (Crl. Side) objected return of property by referring to the order of this Court in Crl.R.C.(MD).No.41 of 2019 dated 16.06.2023, but it is seen that in the said order, the decision of the Apex Court in ***Sainaba's*** case has not been referred to. In view of the decision of the Apex Court on this point as laid down which is binding under Article 141 of the Constitution of India, this Court is inclined to allow return of property.



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6. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 29.03.2023 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.1475 of 2023 is set aside. In view of the same, the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai is directed to return the mobile phone Xiaomi 11i to the petitioner, on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.5,000/- (Rupees Five Thousand only) with one surety to the satisfaction of the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai;

(ii) The petitioner shall also give an undertaking that he will produce the mobile phone as and when required by the respondent and by the court below.

28.02.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To

- 1.The Inspector of Police,
T-9 Maraimalai Nagar Police Station,
Chengalpet.
- 2.The Principal Special Judge,
Principal Special Court under EC & NDPS Act,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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