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Crl.R.C.No.1462 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.10.2024
PRONOUNCED ON : 20.12.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1462 of 2024

Ayed Anees

... Petitioner / A1

Vs.

The State of Tamil Nadu
Represented by its
The Inspector of Police,
Tambaram PEW, Tambaram City,
Chengalpattu District
(Crime No.244 of 2023)

... Respondent /
Dejure Complainant

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C., to call for the records in Crl.M.P.No.4260 of 2024 in Crime No.244 of 2023 on the file of the respondent Police, and set aside the impugned order of the learned Principal Special Judge under EC & NDPS Act Cases, Chennai, dated 10.07.2024.

For Petitioner : Mr.Kably Taiwab Khan K

For Respondent : Mr.Hasan Mohammed Jinnah
State Public Prosecutor

Assisted by
A.Damodaran
Addl.Public Prosecutor



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ORDER

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Challenging the order of dismissal dated 10.07.2024 in Crl.M.P.No.4260 of 2024, passed by the learned Principal Special Judge under EC & NDPS Act Cases, Chennai, the petitioner/A1, who is the owner of the mobile phone viz., "One Plus Nord CE 5G", registered as IMEI No.868218058243295, seized in Crime No.244 of 2023, is before this Court with the present Revision, for return of property.

2.Mr.Kably Taiwab Khan K, the learned counsel appearing for the petitioner would submit that by seizure of the mobile phone and detained by the respondent would serve no purpose and the non using of the mobile phone only make mobile valueless and unusable. He further submitted that the seized mobile phone produced before the trial Court in B.No.714 of 2023. The petitioner was arrested and latter let out on bail on 26.07.2023. Now, the investigation almost completed. The detention of the mobile phone cannot be required.

3. Mr.Hasan Mohammed Jinnah, the learned State Public Prosecutor filed his counter and submitted that on 22.06.2023 at about 14.45 hrs., the respondent police received secret information



about the illegal transportation of Ganja. Immediately, informing the higher official, the respondent gone to the scene of occurrence. At that time, two unknown persons viz., the Petitioner/Syed Aness and Mohammed Mustafa/A2 found standing in a suspicious manner. Police enquired them, seized 2.100 Kgs of Ganja and “One Plus Cell Phone” from Petitioner/A1 and 1.100 Kgs of Ganja and “Vivo Cellphone” from A2. The seized contraband and articles were produced before the Magistrate in A.No.1081 of 2023 and B.No.714/2022 on 26.07.2023. Since the petitioner is an accused, hence strongly object for return of articles.

4. Further, the learned State Public Prosecutor vehemently opposed the petition submitting that return of property in the NDPS Act Cases cannot be entertained invoking Sections 457 and 451 of Cr.P.C., and it is liable for confiscation under Section 52-A, 60, 61 and 63 of NDPS Act., unless the owner of the conveyance proves that the conveyance was used without his knowledge and connivance, he has taken all reasonable precaution against such use. In support of his contention, the learned State Public Prosecutor relied on the Judgment of the Hon'ble Apex Court in the case of **Suresh Nanda Vs. Central Bureau of Investigation** reported in **(2008) 3 SCC 674** to



stress the point that, where there is a special Act dealing with subject, resort should be to that Act instead of general Act providing for the matter connected with the specific Act. He stressed his argument mainly on ***Union of India Vs. Mohanlal and Another*** reported in **(2016) 3 SCC 379**, wherein the Apex Court has given directions for storage, seizure and sampling, handling and disposal of seized narcotic drugs and psychotropic substances. Considering the piquant situation in which accumulation of huge quantities of seized drugs and narcotics increased the chances of their pilferage for re-circulation in the market and also finding that despite Central Government Standing Order No.1/1989 and two subsequent Standing Orders, dated 10.05.2007 and 16.01.2015 giving directions, directing that no sooner seizure of any narcotic and psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the officer in-charge of the nearest police station or to the officer empowered under Section 53 of the Act and Section 52-A(2) of the Act. The sampling shall be done under the supervision of the Magistrate and the Central and State Government and its agencies within six months from the date of the order take appropriate steps to set up storage facilities for the exclusive storage of seized narcotic and psychotropic substances and conveyances, duly equipped with



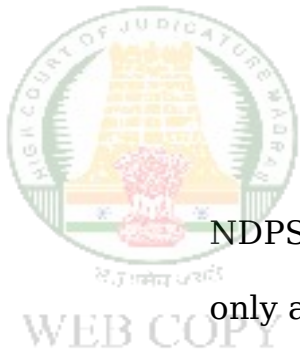
vaults and double-locking system to prevent theft, pilferage or replacement of the seized drugs. Further, the Apex Court given direction to constitute Drug Disposal Committee and disposal of seized drugs lying in the Police Malkhanas and other places used for storage of drugs and psychotropic substances.

5. The learned State Public Prosecutor would further submit that this Court in ***Crl.R.C(MD)No.41 of 2019*** in the case of ***Nahoorkani Vs. The State of Tamil Nadu on 16.06.2023*** held that when the conveyance is seized under NDPS Act, the return of property does not arise as contemplated under Sections 451 and 457 of Cr.P.C., and it is liable to be confiscated under Section 63 of the NDPS Act in the light of special procedure under Section 52-A of the Act. Any person claiming the ownership or right of the conveyance may approach the concerned Drug Disposal Committee directly and make claim and the Drug Disposal Committee before taking a decision on disposal of the vehicle, shall grant opportunity of hearing to the parties and pass appropriate orders on the representation made by the party in accordance with law, as expeditiously as possible, within a period of two months. Further, if any persons approach the trial Court for release of vehicle, the property already produced before the



trial Court and assigned R.P.Number then such court shall conduct enquiry and pass suitable orders, as contemplated under Section 63 of the NDPS Act or if the vehicle not produced before the Court then competent Court shall pass appropriate order by directing the petitioner to approach concerned Drug Disposal Committee for getting suitable relief. Further, in the event of trial Court / Special Court for NDPS release the vehicle under Section 451 Cr.P.C., shall initiate the confiscation proceedings and dispose the vehicle as contemplated under Section 63 of the NDPS Act.

6. Further, he relied on the order of this this Court in ***Crl.R.C.(MD)No.116 of 2024, dated 08.02.2024*** wherein this Court, following the order passed in ***Nahoorkani's*** case (*cited supra*) held that whenever a return of property is filed, the petitioner has to satisfy Sections 60, 61 and 62 of NDPS Act. In yet another case, in ***Crl.R.C(MD)No.1395 of 2023, Gomathi Vs. State***, dated 27.02.2024, this Court passed orders on the similar line of ***Nahoorkani's*** case. Further, he referred ***Crl.R.C.No.675 of 2023*** in the case of ***Salimrajan @ Salimraj Vs. State*** dated 12.07.2023 wherein this Court again followed the ***Nahoorkani's*** case. In sum and substance, he argued that any property say conveyance seized in



NDPS Act cases cannot be returned as a matter of routine and it is only after satisfying Sections 60, 61, 62, and 63 of the said Act.

7. The learned counsel appearing for the petitioner opposed the contention of the learned State Public Prosecutor and submitted that ***Mohanlal's case***, refers to Section 52-A primarily with regard to not following the Standing Order No.1/1989 and the subsequent Standing Orders, dated 10.05.2007 and 16.01.2015, which prescribed procedures to be followed while conducting seizure of contraband, sampling, safe custody and disposal finding that there is no uniform procedures followed in seizure, sampling and storing the narcotic in safe vaults and handling and disposal of seized narcotics, lying in the malkhanas or any other storage place without proper storage facility, thereby, the danger of recirculation of seized contraband into system is very much likely, hence issued directions to the Investigation Agency, Magistrate and Governments to follow guidelines. Further, submitted that this Court, following the Apex Court Judgment in ***Sainaba Vs. State of Kerala and Anr*** in ***Crl.A.No.2005/2022***, reported in ***2022 (7) KHC 2731***, wherein the Apex Court released the vehicle involved in the NDPS Act well after ***Mohanlals' case***. Hence, it cannot be said that ***Mohanlal's case*** places restrictions on



release of vehicle. The **Sainaba's case**, being the Judgment of the Apex Court this Court finding, it is binding under Article 144 of the Constitution of India entertained and allowed the return of property petition filed under Sections 451 and 457. The citations referred by the State Public Prosecutor is no more *res integra* on the point of return of property. He further added that this Court in Crl.R.C.(MD)No.41 of 2019, Crl.R.C.(MD)No.116 of 2024 and Crl.R.C.(MD)No.1395 of 2023 and in Crl.R.C.(MD)No.675 of 2022, the **Sainaba's case** was not considered. In view of the Apex Court Judgment in **Sainaba's case**, the confiscation proceedings cannot be an embargo to consider the return of property petition, but of course, the return of property petition to be considered on its own merits and hence, there is no impediment to entertain the above petition.

8. I have heard the learned counsels appearing on either side and perused the materials available on record.

9. On perusal of the records it is seen that the petitioner is an accused in this case and from him, in the scene of occurrence, the Mobile Phone along with contraband were seized and recovered and in such circumstances, the petitioner's prayer seeking to return of



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property cannot be entertained. Further, in ***Sainaba case***, the Apex Court held that if the owner of the articles not participated in the offence and no knowledge, he is entitled to claim return of property. But, in this case, the petitioner is an accused and Mobile Phone has been seized from the scene of occurrence, this Court is not inclined to entertain the Revision.

10. In the result, the Criminal Revision Case stands dismissed. However, the Petitioner/A1 is at liberty to seek return of his Mobile at the conclusion of trial.

20.12.2024

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

vv2/mpk

To

- 1.The Principal Special Judge under EC & NDPS Act Cases,
Chennai
2. The Inspector of Police,
Tambaram PEW, Tambaram City,
Chengalpattu District
3. The Public Prosecutor,
High Court, Chennai.



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M.NIRMAL KUMAR, J.

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Pre-Delivery Order made in

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