



Crl.R.C.No.1529 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.1535 of 2024

Kalyani Sundari

... Petitioner

Vs.

State, Rep. By
Inspector of Police,
T-4, Shankar Nagar Police Station,
(Crime No.451 of 2023)

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C., to set aside the order of dismissal passed by the learned Special Judge under EC & NDPS Act at Chennai in the petition filed under Sections 451 and 457 of Cr.P.C., for Return of Property in Crl.M.P.No.7735 of 2024, dated 29.07.2024 in Cr.No.451 of 2023, on the file of the respondent and return the mobile phone seized in the case registered by the respondent in Crl.No.451 of 2023.

For Petitioner : Mr.Azaghup Senthil Kumar

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 29.07.2024 in Crl.M.P.No.7735 of 2024, passed by the learned Special Judge under EC & NDPS Act at Chennai, the petitioner, who is the owner of the mobile phone, is before this Court with the present Revision.

2. Mr.Azaghup Senthil Kumar, the learned counsel appearing for the petitioner would submit that the petitioner is the owner of the mobile phone, bearing Model No.“One Plus 8T”, 'IMEI No.864721055986935', filed a petition in Crl.M.P.No.7735 of 2024, before the learned Special Judge under EC & NDPS Act at Chennai, and the same was dismissed by the trial Court. He further submitted that the petitioner is no way connected with the offence. A1 being the friend of the petitioner taken her Mobile for some urgency, since his mobile was not working. The petitioner undertakes to produce the phone before the trial Court as and when required.

3. Mr.Hasan Mohammed Jinnah, the learned State Public Prosecutor would submit that on 16.08.2023, at about 08.00 a.m., the respondent police received secret information about the sale of Ganja near Pozhichalur Burial Ground. The respondent went to the scene of



occurrence along with his team and found two persons viz., Mariya Antony Selvam / A1 and Ajay/A2 were standing there on suspicious manner. They were questioned and latter from them 1.200 Kgs of Ganja and three Mobile Phones, "Vivo Vis Pro" "iPhone" and "One Plus 8T" were seized. The seized articles were produced before the Court in A.No.1185/2023, B.No.771/2023, dated 26.09.2023. The petitioner, who is friend of Mariya Antony Selvam/A1 filed a petition before the trial Court seeking return of mobile phone. The trial Court dismissed the petition for the reason investigation not completed.

4. 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.

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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 in **Mohanlal's case**, the Apex Court finding is that, despite issuance of the Standing Order No.1/1989 and the subsequent Standing Orders, dated 10.05.2007 and 16.01.2015, no uniform practice and procedures followed by State or Central Agencies in the matter of drawing of samples at the time of



seizure, storage of drugs in safes and vaults, not placed in double-locking system and piquant situation arose by which accumulation of huge quantities of the seized drugs and narcotics increased and the chances of their pilferage for re-circulation in the market, hence put in place certain procedures and guidelines to the Investigation Agency, Magistrate, Central and State Governments, and ordered formation of Drug Disposal Committee to monitor the same. No direction with regard to the conveyance considered and issued. Further, the Notification No.G.S.R.899(E), dated 23.12.2022 issued in terms of Section 52-A of the NDPS Act. The question whether there is any legal embargo in view of confiscation proceedings under Sections 60 to 63 of the NDPS Act and whether petition seeking return of property under Sections 451 and 457 can be entertained and decided has been dealt in detail by the Karnataka High Court Division Bench in ***Rathnamma v. State rep., by PSI, Channagiri Police Station, Davabagere District*** in ***CRL.P.No.3571/2021***, which was in conflict to the Division Bench Judgement of the Kerala High Court in ***Shajahan Vs. Inspector of Excise and Others*** reported in ***2019 SCC Online Ker 3685***, hence the matter was referred to a Larger Bench by the Kerala High Court and the Kerala High Court in the case of ***Pradeep B. Vs. The District Drug Disposal Committee***



represented by its Chairman, Kasargod and Others in WA No.1304 of 2022, dated 19.02.2024 dealt in detail, referring to Section 52-A, guidelines given in the **Mohanlal's case** and held that jurisdictional Special Court under the NDPS Act has power to consider the grant of interim custody of the article under the Act by invoking powers under Section 457 of Cr.P.C., and answered the reference accordingly. It had also referred to the orders passed by Allahabad High Court in **Shams Tavrej v. Union of India reported in 2023 SCC OnLine AII 1154** and **Rajdhari Yadav v. State of U.P. Reported in 2022 SCC OnLine AII 583** and **Union of India v. Tejinder Singh reported in 2023 SCC OnLine Gau 729** and following **Sainaba Vs. State of Kerala (2022 (7) KHC 273)** held interim custody of a vehicle involved under the NDPS Act could be ordered. In **Sainaba's case**, the procedures contemplated and applicable in NDPS Act in consonance with Cr.P.C., are dealt in detail. The Apex Court considering both NDPS Act and Cr.P.C., held as follows:-

“5. It has been opined by the High Court that the Court is not empowered to exercise the jurisdiction under Section 451 of the Code of Criminal Procedure to release a vehicle involved under NDPS Act in interim custody.



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6.The appellant has urged inter alia that as per Section 36-C read with Section 51 of the NDPS Act, Criminal Procedure Code would be application for proceedings by a Special Court under NDPS Act and Section 451 has an inbuilt provision to impose any specific condition on the appellant while releasing the vehicle. The appellant is undoubtedly the registered owner of the vehicle but had not participated in the offence as alleged by the prosecution nor had knowledge of the alleged transaction.

7. Learned counsel seeks to rely on the judgment of this Court in Sunderbhai Ambalal Desai Vs. State of Gujarat – 2003 (2) KLT 1089 (SC) = (2002) 10 SCC 283 opining that it is no use to keep such seized vehicles at police station for a long period and it is open to the Magistrate to pass appropriate orders immediately by taking a bond and a guarantee as well as security for return of the said vehicle, if required any any point of time.

8. On hearing learned counsel for parties and in the conspectus of the facts and circumstances of the case, and the legal provisions referred aforesaid, we are of the view that this is a appropriate case for release of the vehicle on terms



and conditions to be determined by the Special Court.”

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10. It is not in dispute that the petitioner is the owner of the Mobile and not in accused in this case. A1 being the friend of the petitioner taken the Mobile Phone of the petitioner for some urgency, since his mobile was not working. In good belief, she given the Mobile Phone to A1 and the same has been seized in this case. The petitioner submitted that all her important details are in the mobile phone and further she made all transactions through her Mobile Phone. Now-a-days, it is through online almost all the transactions are carried out and hence, she needs her Mobile.

11. Hence, following the Supreme Court Judgment, in **Sainaba's case**, and the Full Bench of Kerala High Court in **Pradeep's case**, this Court finds the objection of the learned State Public Prosecutor that there is total embargo in entertaining the petition for return of property under the relevant provision of Cr.P.C., is no more *res intergra*. In view of the same, this Court is inclined to entertain and consider the grant of interim custody of Mobile Phone seized under the NDPS by invoking the power under Sections 451 and 457 of Cr.P.C consequently under Section 497 and



503 BNSS, subject to the confiscation proceedings.

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12. The lower Court following the guidelines given in ***Sunderbhai Ambalal Desai case***, take photographs, record the features of the Mobile Phone, prepare a proceeding to be used as proof in the trial, before return the Mobile Phone to the petitioner.

13. In view of the foregoing reasons, the order of dismissal dated 29.07.2024 in Crl.M.P.No.7735 of 2024, passed by the learned Special Judge under EC & NDPS Act at Chennai, is set aside and this Revision is allowed with a direction to the learned Principal Sessions Judge, to return the Mobile Phone, bearing Model No.“One Plus 8T”, 'IMEI No.864721055986935', in favour of the petitioner on the petitioner submitting an undertaking on the following terms and conditions:-

i. The petitioner shall furnish a personal bond for a sum of Rs.5,000/- (Rupees Five Thousand Only) with one surety, undertaking to produce the Mobile Phone as and when directed by the trial court.

ii. The petitioner shall not sale, mortgage or



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transfer the ownership of the Mobile Phone during the pendency of the case.

iii. Any other condition, if any, to be imposed by the trial court.

20.12.2024

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

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To

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

M.NIRMAL KUMAR, J.



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Pre-Delivery Order made in

Crl.R.C.No.1535 of 2024

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