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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.22185 of 2023

K.Dineshkumar @ Dinesh

.. Petitioner/Accused 1

vs.

- 1.Mrs.Franvin Dani
Inspector of Police
N4 Fishing Harbour P.S.
Chennai 600 013.
- 2.Mr.Selvakumar
Sub Inspector of Police
(Special Team if the Joint Commissioner)
N.1, Royapuram P.S
Chennai-600 013.
- 3.Mr.Boobalan
Sub Inspector of Police
N4 Fishing Harbour P.S.
Chennai 600 013.
- 4.Mr.Srinivasan
Constable, N-4, Fishing Harbour P.S
Chennai 600 013.
- 5.Mr.Senthilkumar
Constable (Asst. Commissioner Spl.Team)
N-1, Royapuram P.S.
Chennai 600 013.
- 6.Mr.Saravanan
Constable (Asst. Commissioner Spl.Team)
N-1, Royapuram P.S.
Chennai 600 013.
- 7.Mr.Thilagamithra



Constable N-4, Fishing Harbour P.S.
Chennai 600 013.

.. Respondents

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PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 28.11.2022 passed by the Principal Special Judge, principal Special Court under E.C and NDPS Act, Chennai in CrI.MP.No.4989 of 2022.

For Petitioner : Mr.M.G.Martinmanivannan

For Respondents : Mr.A.Gopinath
Government Advocate (CrI.Side)
for R1

ORDER

This petition has been filed challenging the order passed by the Court below in CrI.MP.No.4989 of 2022, dated 28.11.2022 dismissing the application filed under Section 91 Cr.PC, to direct the respondents to produce the official mobile numbers and to produce the call details and mobile tower locations of the respondents in the application.

2.Heard Mr.M.G.Martinmanivannan, learned counsel for the petitioner and Mr.A.Gopinath, learned Government Advocate (CrI.Side) for the 1st respondent.

3.The case of the prosecution is that A1 and A2 were found to be in possession of 23 numbers of MDMA Ecstasy tablets weighing about 11 grams.



Hence, they were arrested and remanded to judicial custody on 26.2.2022. The quantity that was seized from the accused persons is a commercial quantity.

4.The petitioner took a stand that a false case has been foisted against the petitioner and that no such seizure took place from the petitioner and to establish the same, the petitioner wanted certain documents to be called for by filing an application under Section 91 Cr.PC.

5.The Court below dismissed the application mainly on the ground that the petitioner cannot file such an application even before the examination of witnesses on the side of the prosecution and that the petitioner must wait till the stage of defense to file such an application. Aggrieved by the same, the present petition has been filed before this Court.

6.When the matter came up for hearing on 27.9.2023, it was brought to the notice of this Court that the discharge petition filed by the petitioner and the other accused persons is pending and no final orders have been passed. In view of the same, this Court wanted to get the particulars regarding the discharge petitions filed and thereafter pass final orders in this petition. This Court also took into consideration the earlier order passed in CrI.OP.No.17344 of 2023, dated 3.8.2023, wherein, this Court had directed the Court below to pass final orders in the discharge petition within a time frame. This Court accordingly called for a report from the learned Principal Special Judge, Chennai.



7.A report has been received and it is seen that both the discharge petitions filed by A1 and A2 in CrI.MP.No.2411 of 2023 and CrI.MP.No.2648 of 2023 was disposed of by an order dated 9.11.2023 and it was dismissed. The case is now at the stage of framing of charges.

8.In the light of the above development, this court can proceed further to deal with the order passed by the Court below and pass final orders in this petition.

9.The petitioner (A1) has stated that on 25.6.2022, respondents 2, 5 and 6 called this petitioner on his Whatsapp number between 7.00 to 8.30 pm., and wanted the petitioner to come near Foreshore Estate. The petitioner did not act as per the directions and therefore, the police officials came to the house of the petitioner. At that time, the petitioner was staying along with his friend inside the house and they were taken to the police station and they were kept in the Police Station till 8.00 am., on 26.6.2022. Thereafter, they were shifted to a different place to B2 Esplanade Police Station at about 10.30 am. It is alleged that arrest took place on the ground that the contraband was seized from the petitioner and another. The petitioner wanted to prove this sequence of events by calling for the mobile tower details of the respondents who took the petitioner from his house on 25.6.2022.

10.The Court below has dismissed the application mainly on the ground that even the examination of the witnesses has not yet commenced on the side of the prosecution and therefore, the petitioner has to wait till the stage of defense.



11.The petitioner wants the information to be called for and collected since according to the petitioner, the mobile company will delete the records in two years. Therefore, if the information sought for by the petitioner is not furnished immediately, the petitioner will lose the opportunity to call for these details in future.

12.An application under Section 91 Cr.PC can be filed at any stage of the proceedings depending upon the facts and circumstances of each case. The petitioner is facing a serious offence and wants to establish that he was taken into custody even on 25.6.2022 by some of the respondents who are police officials and whereas it was sought to be projected as if, the contraband was seized from the petitioner on 26.6.2022 and thereafter he was arrested and remanded to judicial custody. The petitioner is questioning the very seizure on the ground that it was a made up case by the police. To establish the same, the petitioner is seeking for production of certain details from the mobile operator.

13.It is not necessary for this Court to go into the allegations that have been levelled by the petitioner in this case. Ultimately, if the details sought for by the petitioner is called for and it is marked before the Court at the appropriate time, the same will become a piece of evidence. According to the petitioner, he will be able to establish his defense if those particulars are brought before the Court and is marked as documents. Considering the fact that these details will be available only for a period of two years and thereafter it will be effaced, there is a necessity to call for those details at the earliest. Already more than 1½ years has crossed and



therefore, the details sought for by the petitioner can be called for from the mobile operator. These documents can be marked at the appropriate time during trial.

14.In the light of the above discussion, this Court is inclined to interfere with the order passed by the Court below in CrI.MP.No.4989 of 2022, dated 28.11.2022 and the same is quashed. There shall be a direction to the Court below to call for the documents sought for by the petitioner from the mobile operator. Those documents/response shall be marked during the course of trial at the appropriate time.

15.In the result, this criminal original petition is allowed and there shall be a direction to the Court below to complete the proceeding in C.C.No.460 of 2022, within a period of three months from the date of receipt of copy of the order.

27.02.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
kp



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7. Mr. Thilagamithra
Constable N-4, Fishing Harbour P.S.
Chennai 600 013.
8. The Public Prosecutor,
High Court of Madras,
Madras.



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N. ANAND VENKATESH,. J.

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