



Crl.R.C.No.1756 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.1756 of 2023

A.Kalyani Sundari

... Petitioner

Vs.

State rep. by
The Inspector of Police,
T-4 Sankar Nagar Police Station,
Tambaram, Chengalpattu District.
Crime No.451/2023.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order dated 07.10.2023 made in Crl.M.P.No.6464 of 2023 on the file of the Principal Special Court under EC & NDPS Act, Chennai.

For Petitioner : Mr.R.Thamarai Selvan

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



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ORDER

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The petitioner filed a petition in Crl.M.P.No.6464 of 2023 seeking return of I Phone 14 Pro Max, 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 29(1) 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 07.10.2023 dismissed the return of property petition, against which, the present revision has been filed.

2.The contention of the petitioner is that one Maria Antony Selvam, who is a friend of the petitioner, requested her mobile phone to do some online transactions. On the request of her friend, the petitioner gave her mobile phone, later she came to know that the said Maria Antony Selvem along with one Ajay involved in a NDPS case and the respondent police seized the mobile phone. Thereafter, the petitioner approached the respondent police and produced the cash bill to prove her ownership and informed that she is not aware about the activities of Maria Antony Selvam. Believing the words of her friend, the petitioner had given her mobile



phone. Her mobile phone contains all her vital details of bank and other online transactions and also contact details. The petitioner had also stored other important information in her 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 16.08.2023, the respondent police verified the mobile phone and aware about the details of 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.

3.The Government Advocate (Crl. Side) appearing for the respondent Police filed counter and submitted that on 16.08.2023, at about 08.00 a.m., the Sub Inspector of Police was on station duty, he received a secret information of illegal sale of ganja. Then he along with the Police team went to Pozhichalur near burial ground, at that time, the accused persons A1 and A2 were standing there on suspicious manner. The Sub Inspector of Police along with his team were conducted search and found that the accused persons in possession of 1.200 kgs of ganja for the purpose of



illegal sale. The contraband and the mobile phones viz., I phone, One Plus and VIVO-S-Pro were seized under seizure mahazar. Thereafter, the accused were arrested and their confession statements were recorded in presence of witnesses and FIR in Crime No.451 of 2023 for offence under Sections 8(c), 20(b)(ii)(B), 29(i) of NDPS Act was registered on 16.08.2023 and the accused were remanded to judicial custody on 16.08.2023. He further submitted that the seized contraband and the mobile phones produced before the Principal Special Court under EC & NDPS Act, Chennai and the samples of the contraband sent to the Forensic Lab, Chennai for chemical analysis. In this case, A1 involved in another Crime No.414 of 2022 for offence under Section 294(b), 324, 506(ii) of IPC on the file of Madhuravoyal Police Station, Anna Nagar, Chennai which is under investigation. The petitioner is the friend of A1, has filed a petition in Crl.M.P.No.6464 of 2023 under Sections 451 & 457 of Cr.P.C., seeking return of I phone 14 Pro Max before the Principal Special Court under EC & NDPS Act, Chennai and the same was dismissed vide impugned order, dated 07.10.2023. Challenging the same, the present Criminal Revision Case has been filed.



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4.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 the petitioner is not an accused in the above case. 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.

6. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 07.10.2023 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.6464 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 I Phone 14 Pro Max 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;



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(ii) The petitioner shall also give an undertaking that she will produce

the mobile phone as and when required by the respondent and by the court

below.

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Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

cse/vv2

To

- 1.The Inspector of Police,
T-4 Sankar Nagar Police Station,
Tambaram, Chengalpattu District.
- 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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