



Crl.R.C.No.2062 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.2062 of 2023

M.Supriya

... Petitioner

Vs.

State rep. by
The Inspector of Police,
T-1 Ambattur Police Station,
Chennai.
Crime No.601/2023.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records of the Principal Special Court under EC and NDPS Act, Chennai and set aside the order made in Crl.M.P.No.5874 of 2023 dated 13.10.2023 and order return of the above said Cell Phone namely Samsung Mobile Galaxy S23 bearing serial number 351824510444233 concerned in Crime No.601 of 2023 on the file of the Inspector of Police, T1 Ambattur Police Station, Chennai to the custody of the petitioner herein.



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For Petitioner : Mr.A.Murugavel

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

ORDER

The petitioner filed a petition in Crl.M.P.No.5874 of 2023 seeking return of Samsung Galaxy S23 Mobile Phone, which was seized by the respondent Police in Crime No.601 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 13.10.2023 dismissed the return of property petition, against which, the present revision has been filed.

2.The contention of the petitioner is that the petitioner is the wife of A1/Madhan in the above case. The petitioner is not an accused in the above case. Since her husband's mobile was not working, the petitioner's mobile phone was used by him for a short while. During his arrest, the petitioner's mobile phone was seized by the respondent police. Her mobile phone



contains details of bank and other online transactions and also her contact details. The petitioner had also stored other important information in her mobile phone which is required for her day-to-day usage. Further, no offence is committed using the mobile phone. The mobile phone was seized by the respondent police on 22.06.2023, 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.

3.The learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that the petitioner is the wife of A1/Madhan in the above case. 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.5874 of 2023 seeking return of Samsung Galaxy S23 mobile phone and the same was dismissed on 13.10.2023. 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.

4.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 and the mobile phone was used by her husband, who is arrayed as A1 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 period 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



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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.

5. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 13.10.2023 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.5874 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 Samsung Galaxy S23 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

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

cse/vv2



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To

- 1.The Inspector of Police,
T-1 Ambattur Police Station,
Chennai.
- 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.

cse/vv2

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