



Crl.R.C.No.2188 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

Crl.R.C.No.2188 of 2023

Kamalakanta Dalai

... Petitioner

Vs.

State rep. by  
The Inspector of Police,  
Sedarapet Police Station,  
Puducherry.  
Crime No.21/2023.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order passed in Crl.M.P.No.3759 of 2023 dated 21.11.2023 on the file of III Additional District Court, Puducherry and direct the respondent to return the property “Cellphone” blue colour Samsung A53 5G/128 which was seized in connection with the Crime No.21 of 2023, on the file of the respondent police to the petitioner.

For Petitioner : Ms.S.Radhika

For Respondent : Mr.K.S.Mohandass,  
Public Prosecutor (Puducherry)



ORDER

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The petitioner/1<sup>st</sup> Accused in S.C.No.51 of 2023 facing trial for offences under Sections 20(b)(ii)(B) r/w.8(c) of the NDPS Act and Section 77 of Juvenile Justice (Care and Protection of Children) Act, 2015 r/w Section 34 IPC, before the learned III Additional Sessions Judge, Pondicherry.

2. The petitioner filed a petition in Crl.M.P.No.3759 of 2023 seeking return of Cellphone blue colour Samsung A53 5G/128, which was seized by the respondent Police in Crime No.21 of 2023, before the learned III Additional Sessions Judge, Pondicherry. The learned Judge, by order, dated 21.11.2023 dismissed the return of property petition, against which, the present revision has been filed.

3.The contention of the petitioner is that the petitioner has installed all his contact details, bank particulars, other details and applications for his daily uses in his mobile phone. Further, no offence is committed using the mobile phone. The mobile phone was seized by the respondent police on



30.04.2023, 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.

4.The case of the prosecution is that the petitioner is using this mobile phone for commission of offence, which was seized along with other property, when he was arrested. After completion of investigation charge sheet has been filed and the trial came to be commenced.

5.The learned Public Prosecutor (Puducherry) for the respondent Police submitted that the petitioner was found in possession of 1.5 Kgs of Ganja for the purpose of illegal sale. Thereafter, the accused was arrested, his confession statement recorded, FIR in Crime No.21 of 2023 for offence under Sections 8 20(b)(ii)(B) r/w.8(c) of the NDPS Act and Section 77 of Juvenile Justice (Care and Protection of Children) Act, 2015 r/w Section 34 IPC registered against the accused person on 30.04.2023. The contraband



was seized along the petitioner's mobile phone and produced before the trial Court as Case Property in C.P.No.11 of 2023. Further, if the petitioner got the property, he will go to his native place of Odisha and also will continue in the same kind of offence.

6.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.

7.Considering the submissions made and on perusal of the materials available on record, 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.

8. Accordingly, this Criminal Revision Case is allowed and the impugned order dated 30.04.2023 passed by the learned III Additional District Court, Puducherry in Crl.M.P.No.3759 of 2023 is set aside. In view of the same, the learned III Additional District Court, Puducherry is directed to return the mobile phone blue colour Samsung A53 5G/128 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 III Additional District Court, Puducherry;



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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.

18.03.2024

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

rpl

To

1.The Inspector of Police,  
Sedarapet Police Station,  
Puducherry.

2.The III Additional District Court, Puducherry.

3.The Public Prosecutor,  
High Court, Madras.



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M.NIRMAL KUMAR, J.

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