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Crl.R.C.No.1831 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2024  
PRONOUNCED ON : 09.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1831 of 2024

Mohammed Asif

... Petitioner

Vs.

The State Represented by Its Inspector of Police,  
D3- Ice House Police Station,  
Chennai-600005.

... Respondent

PRAYER: Criminal Revision Petition filed under Section 438 r/w 442 of BNSS,  
to call for the records pertaining to the order dated 20.09.2024 in  
Crl.M.P.No.9838 of 2024 by the Principal Special Court under EC & NDPS  
Act, Chennai and set aside the same.

For Petitioner : Mr.P.Santhosh

For Respondent : Mr.Hasan Mohammed Jinnah,  
State Public Prosecutor assisted by  
Mr.A.Damodaran,  
Additional Public Prosecutor

ORDER



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Challenging the order of dismissal dated 20.09.2024 in Crl.M.P.No.9838 of 2024 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai, the petitioner, who is the owner of the mobile phone *viz.*, OnePlus Nord CE 2 Lite 5G, seized in Crime No.129 of 2024, is before this Court with the present revision, for return of property.

2.The learned counsel for the petitioner submitted that the petitioner is the owner of the mobile phone *viz.*, OnePlus Nord CE 2 Lite 5G and a third party to the case. He further submitted that A1 in this case is the mother of the petitioner and the petitioner is no way connected with the offence. The respondent Police registered an FIR in Crime No.129 of 2024 on 07.05.2024 for the offences under Sections 8(c) r/w 20(b)(ii)(B) and 29(1) of Narcotic Drugs and Psychotropic Substances Act against the petitioner's mother Rahamath Nisha/A1 and Saiyath Mushtaq Basha/A2 and seized the above said mobile phone from the petitioner's mother/A1. He further submitted that the petitioner is a college student and he requires the said mobile phone for his day to day usage more particularly for his education. Since he hails from a poor family and his financial condition is such that, he cannot buy another new mobile phone. Hence he filed a petition for return of property before the Trial Court but the



Trial Court negated the petitioner's contention since the case is under investigation stage and if the mobile phone is returned to the petitioner, it may be used to commit similar kind of offences, is not proper. According to the learned counsel for the petitioner, though the mobile phone of the petitioner projected as part of the crime and it was used by the petitioner's mother in creating Whatsapp group for trafficking and peddling contraband, there is nothing to show that the investigation is on that line. On the other hand, the mobile phone was not sent for forensic examination to collect any electronic evidence.

3.The learned State Public Prosecutor appearing for the respondent Police filed counter and submitted that on 07.05.2024 at about 16.00 hours, the Sub Inspector of Police attached to the respondent Police received secret information that the petitioner's mother and another accused were illegally transporting Ganja and peddling the same within her jurisdiction. The Sub Inspector of Police informed her higher officials, got permission and had gone to Ramasamy Street near Kanmani Hospital where she found A1 and A2 came in two wheeler viz., Honda Activa bearing Reg.No.TN-06-AC-3911, parked the two wheeler in front of the hospital and were standing with Velvet colour bag and black colour bag. On seeing the Police team, they attempted to escape from the scene, but



they were caught by the Police team and the Police team informed their right and conducted search. From the petitioner's mother, 279 grams of ganja and from A2, 1.100 kilograms of ganja, in total 1.27 kilograms of ganja, two mobile phones one OPPO and another Oneplus, cash of Rs.30,300/- and two wheeler all seized. Thereafter, the accused arrested and produced before the learned Principal Special Judge who received the seized articles and assigned case property number in A.No.610 of 2024 and B.No.358 of 2024, dated 13.05.2024. Thereafter, the samples were sent for forensic examination who confirmed it as ganja. He further submitted that the petitioner's mother from the year 2017 onwards, actively involved in criminal activities and she has got five previous cases under the NDPS Act, out of which, three cases are pending trial, one case is under investigation and in one case, investigation completed, charge sheet filed, but yet to be taken on file. The Trial Court dismissed the return of property petition for the reason investigation not completed.

4.The learned State Public Prosecutor vehemently opposed the petitioner's petition for return of property in a NDPS Act Case invoking Sections 457 and 451 of Cr.P.C. As per the Act, the seized articles are 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.It is not in dispute that the petitioner is the owner of the mobile phone and he is not an accused in this case. It is also not in dispute that the petitioner's mobile was seized along with the contraband from A1, mother of the petitioner. Though the petitioner's contention is that he is a college student and he uses the mobile phone on daily basis, from the materials produced by the prosecution it is seen that from the year 2017 onwards, A1 actively involved in criminal activities and she has got five previous cases under NDPS Act, out of which, three cases are pending trial, one case is under investigation and in one case,



investigation completed, charge sheet filed, but yet to be taken on file.

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10.In view of the above scenario and considering the specific objection made by the prosecution that the petitioner's mother using the petitioner's mobile had created Whatsapp group for trafficking and peddling ganja and the mobile phone used as conveyance in commission of offence, this Court is not inclined to return the mobile phone of the petitioner at this stage despite the petitioner is not an accused in this case.

11.During and on completion of investigation, if it is found that the mobile phone not used and the case does not proceed on electronic evidence more particularly the mobile phone of the petitioner, in such a case, the petitioner is entitled for return of his mobile phone.

12.In the result, this criminal revision case stands dismissed for the present confirming the impugned order, dated 20.09.2024 in Crl.M.P.No.9838 of 2024 passed by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai.



Crl.R.C.No.1831 of 2024

09.01.2025

Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes/No

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To

- 1.The Principal Special Judge,  
Principal Special Court under EC & NDPS Act,  
Chennai.
- 2.The Inspector of Police,  
D3- Ice House Police Station,  
Chennai-600005.
- 3.The Public Prosecutor,  
High Court, Madras.



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Crl.R.C.No.1831 of 2024

M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN  
Crl.R.C.No.1831 of 2024

09.01.2025