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Crl.R.C.No.2350 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2025

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.2350 of 2024

SONU

S/o. Bansilal, No.114, K.C. Garden 4th Street,
Peravallur, Chennai.

Petitioner(s)

Vs

State Rep By, The Inspector Of Police
K-3, Aminjikarai Police Station, Chennai.

Respondent(s)

PRAYER: Criminal Revision Case filed under Section 438 r/w 442 of B.N.S.S, 2023, seeking to set aside the order passed in Crl.M.P.No.13689 of 2024 dated 07.12.2024 in C.C.No.790 of 2024 in Crime No.181 of 2024 on the file of the Principal Special Court under EC & NDPS Act, Chennai.

For Petitioner(s):

Mr Martin Manivannan For C.M.Ramakrishnan

For Respondent(s):

Mr.S.Udayakumar Govt Advocate (crl Side)

ORDER



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The revision challenges the dismissal of the petitioner's application filed under Section 497 r/w Section 503 of BNSS seeking return of Galaxy S23 Ultra 5G mobile seized by the respondent.

2. The case in Crime No.181 of 2024 was registered for the offence under Section 8 (c) r/w Section 22 (c) of NDPS Act, altered to Section 8 (c) r/w Section 21(c) of the NDPS Act. During the course of investigation, it appears that the brother of the petitioner, who was the accused in the said case, was found in possession of the mobile phone and 120 grams of cocaine was seized from him.

3. The petitioner sought for return of the said mobile phone and the same was dismissed by the learned Principal Special Court under EC & NDPS Act, Chennai, vide order dated 07.12.2024, stating that the mobile phone may be required by the prosecution for adducing additional evidence at any point of time.

4. The learned counsel for the petitioner submitted that there is nothing



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on record to show how the mobile phone was used for the commission of the alleged offence and that the mobile phone is not required to prove the alleged offence. The learned counsel further submitted that the petitioner is the owner of the mobile phone and he is not the accused and that the interim custody of the mobile phone may be handed over to him as the mobile phone cannot kept idle, which would not be of any use either to the petitioner or to the prosecution on any stringent conditions.

5. Learned Government Advocate (Crl.Side) filed a counter stating that the order of the learned Principal Special Judge, dismissing the petition is in accordance with law as the mobile phone may be used for adducing additional evidence; and that the petitioner's brother has one previous case against him.

6. Admittedly, the petitioner is not involved in the alleged offence though there is one previous case against his brother. It is not the prosecution case that the mobile phone was used for the commission of the offence and that the mobile phone has to be marked for establishing the offence. Though the learned Government Advocate stated that it may be required for adducing



additional evidence, the mobile phone cannot be kept idle at the police station, as rightly contended by the learned counsel for the petitioner and it would not be of any use either to the petitioner or to the respondent. Since the petitioner herein is the owner of the mobile phone and has produced the proof for the same, this Court is inclined to handover interim custody of the mobile phone to the petitioner.

7. Accordingly, learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai, is directed to return the mobile phone Galaxy S23 Ultra 5G to the petitioner on the following conditions:

(i)The petitioner shall execute a personal bond for sum of Rs.10,000/- [Rupees Ten Thousand only] with two sureties, for a like sum to the satisfaction of the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai;

(ii) The petitioner shall not alter, or alienate the Galaxy S23 Ultra 5G mobile phone, till the trial is completed;

(iii)The petitioner shall also give an undertaking that he will produce the Galaxy S23 Ultra 5G mobile phone as and when



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required by the respondent and by the Court below.

8. In the result, this Criminal Revision Case stands allowed setting side the impugned order, dated 28.08.2024 in Crl.M.P.No.8952 of 2024 in Crime No.67 of 2024 passed by the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai.

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Index : Yes / No

Neutral Citation

To

1.The Inspector Of Police
K-3, Aminjikarai Police Station, Chennai.

2.The Principal Special Court
under EC & NDPS Act
Chennai



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3.The Public Prosecutor
High Court of Madras
Chennai

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