



Crl.R.C(MD)No.127 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.01.2025

Pronounced on : 09.04.2025

CORAM:

**THE HONOURABLE MR.JUSTICE P.VADAMALAI**

**Crl.R.C(MD)No.127 of 2025**

Ramsurya

... Petitioner

Vs.

The State of Tamil Nadu rep. by  
The Inspector of Police,  
Koodalpudur Police Station,  
Madurai City.  
Crime No.471 of 2024

... Respondent

**PRAYER** : This Criminal Revision Case has been filed under Sections 438 r/w 442 of BNSS, to call for the records pertaining to the order passed in Cr.M.P.No.3956 of 2024 on the file of the Principal Special Court for Narcotic Drugs and Psychotropic Substance Act Cases, Madurai dated 03.01.2025 and set aside the same by allowing the revision petition.

For Petitioner : Mr.P.Suresh

For Respondent : Mr.M.Vaikkam Karunanithi  
Government Advocate (Crl.side)



## ORDER

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This Criminal Revision Case is filed against the order, dated 03.01.2025 passed in Crl.M.P.No.3956 of 2024 on the file of the Principal Special Court for NDPS Act Cases, Madurai for return of Apple brand iPhone 11 Mobile (White Colour) bearing IMEI No.355435973622748, which was seized by the respondent police in Crime No.471 of 2024.

### **2.The brief facts of the case:**

It is alleged that on 24.08.2024 at 9.30 a.m., while the respondent police were inspecting the vehicles near Ayyanar Kovil, Kosakulam, Madurai, where the suspects came in their vehicles, they were transporting ganja weighing about 1.250 kg. Respondent police seized the ganja, aruval and vehicles bearing registration Nos. TN 59 CK 0779, TN 31 CH 6793, TN 64 Z 3730 and also three Apple Brand iPhones. For the alleged occurrence, a case was registered in Crime No.471 of 2024 by the respondent police against them for the offence under Sections 8(c), 20(b)(ii)(B), 25, 29(1) of NDPS Act and U/s.25(1)(a) of Arms Act, 1959. The petitioner, who is said to be the owner of the Apple brand iPhone 11 Mobile (White Colour) bearing IMEI No.355435973622748, has filed the petition in Crl.M.P.No.3956 of 2024 before the Principal Special Court for NDPS Act Cases, Madurai for return of



property on interim custody. After hearing both, the petition was dismissed by the said Court on 03.01.2025.

3. Aggrieved by the order of dismissal, the revision petitioner preferred this Criminal Revision Case.

4. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the records in this Criminal Revision Case.

5. The learned counsel appearing for the revision petitioner has submitted that the petitioner is arrayed as Accused No.2 in this case. The petitioner is falsely implicated in this case and his mobile iPhone was seized by the respondent police and the same has been kept idle in the respondent's police station without any maintenance. If the mobile phone is kept idle for a long time, the battery would get damaged and the phone would not be functioned and it would loss its value. The respondent police has not followed the guidelines issued by the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai** case. The trial Court has not considered the guidelines in case of return of property as settled by the High Courts and Hon'ble Supreme Court. The respondent police has not initiated any confiscation proceedings.



In support of his arguments, the learned counsel has relied on the judgment of the Hon'ble Supreme Court in Crl.A.No.87 of 2025 (**Bishwajit Dey /v/ The State of Assam**) and the order of this court passed in Crl.R.C.(MD) No.1251 of 2023 dated 05.03.2024.

6. The learned Government Advocate (Crl.side) for the respondent objected and contended that the mobile was used by the accused for transportation of contraband and remanded before the trial Court in RPR.No.445 of 2024. The petitioner is the accused who was found with possession of contraband. The contraband and phone were seized. If the interim custody of the mobile is ordered, the petitioner may alter the physical conditions of the same and change the specifications and would erase all material records. The cellphone has not yet been sent to the Forensic Science Laboratory for examination. Therefore, he strongly opposed this petition.

7. On hearing both side, it is clear that the petitioner is arrayed as second accused in this case. The petitioner's Mobile Phone was seized under the NDPS Act and the same has been in police custody. It is also clear that the property in question was remanded before the trial Court under RPRNo.445/2024. As submitted by the petitioner side, the Hon'ble Supreme Court in **Crl.A.No.87 of 2025 (Bishwajit Dey /v/ The State of Assam)** has



held that merely keeping the seized property idle will serve no purpose and in case of return, it will be useful for the owner. However, on perusal of the said ruling, it is clear that the Hon'ble Supreme Court has strictly observed and held in paragraph Nos.29 and 30 as follows:

*“29. Though seizure of drugs/substances from conveyances can take place in a number of situations, yet broadly speaking there are four scenarios in which the drug or substance is seized from a conveyance. Firstly, where the owner of the vehicle is the person from whom the possession of contraband drugs/substance is recovered. Secondly, where the contraband is recovered from the possession of the agent of the owner i.e., like driver or cleaner hired by the owner. Thirdly, where the vehicle has been stolen by the accused and contraband is recovered from such stolen vehicle. Fourthly, where the contraband is seized/recovered from a third-party occupant (with or without consideration) of the vehicle without any allegation by the police that the contraband was stored and transported in the vehicle with the owner's knowledge and connivance. In the first two scenarios, the owner of the vehicle and/or his agent would necessarily be arrayed as an accused. In the third and fourth scenario, the owner of the vehicle and/or his agent would not be arrayed as an accused.*

*30. This Court is of the view that criminal law has not to be applied in a vacuum but to the facts of*



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*each case. Consequently, it is only in the first two scenarios that the vehicle may not be released on superdari till reverse burden of proof is discharged by the accused-owner. However, in the third and fourth scenarios, where no allegation has been made in the charge sheet against the owner and/or his agent, the vehicle should normally be released in the interim on superdari subject to the owner furnishing a bond that he would produce the vehicle as and when directed by the Court and/or he would pay the value of the vehicle as determined by the Court on the date of the release, if the Court is finally of the opinion that the vehicle needs to be confiscated.”*

From the above observations, the Hon’ble Supreme Court clearly observed in the case of return of property seized on the allegation that the property was used for commission of offence under NDPS Act cases might not be released on interim custody to the owner, who is arrayed as accused until reverse burden is discharged.

8. In this case, the petitioner himself has admitted that he is arrayed as Accused No.2. On perusal of FIR, the name of the petitioner is found place as Accused No.2. If so, as held by the Hon’ble Supreme Court the property would not be released till reverse burden of proof is discharged by the petitioner. In this case, it is alleged that by using the seized iPhone, the



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petitioner transported ganja and the iPhone is necessary for the purpose of investigation, who are all involved in the serious nature of crime. There is no averment by the petitioner that his iPhone was not used for the alleged transportation of ganja, nor any material produced to substantiate the same. Hence, this Court is of the view that the seized property/iPhone will not be released on interim custody as sought by the petitioner and hence, the impugned order of the trial Court does not warrant any interference. Therefore, this criminal revision case is liable to be dismissed.

9. In the result, this Criminal Revision Case is dismissed.

**09.04.2025**

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

VSD

To

1.The Principal Special Judge for NDPS Act Cases,  
Madurai.

2.The Inspector of Police,  
Koodalpudur Police Station,  
Madurai City.  
Crime No.471 of 2024

3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**P.VADAMALAI, J.**

VSD

Pre - Delivery Order made in  
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**09.04.2025**