

IN THE COURT OF JUDICIAL MAGISTRATE No. V, MADURAI

Present: E. Pravin Kumar, B.A.,B.L.,

Judicial Magistrate No.V, Madurai

Thursday, 9th day of July , 2020

Crmp.No.549/ 2020

S.Ramkishore

S/o.Sundaramoorthi(Late)

...Petitioner/Owner

vs

State rep. by Inspector of police,

Karimedu Police Station,

Crime No. 234/2020

U/sec. 302,149, 392, 397, 506(2) IPC

... Respondent/Complainant

For petitioner/accused: Mr.B.Murugan, B.A.,B.L.,Advocate (MS.1570/1992)

For Respondent/Complainant: Mrs.R.Thilagarani,M.L.,Grade II Assistant Public Prosecutor

09.07.2020.

ORDER

1. This petition is filed U/s.457 and 451 **IPC** For returning of the property viz **VIVO Y71 Cell phone-1** in R.P.R.No. 198/2020 which is implicated in Crime no. 234/2020, U/sec. 302,149, 392, 397, 506(2) IPC as interim custody to the petitioner.

2. Notice issued and the prosecution has filed their reply.

3. The learned counsel for the petitioner contends that the case property belonged to this petitioner. One of the accused in this case was a school friend of this petitioner. After the alleged occurrence in this case, one accused approached this petitioner and used his cell phone to make a call. Other than that this petitioner has no part in this case. His cell phone was implicated in this crime number and now the property is said to have been seized by the police and handed over in court. There was ample time for the prosecution to secure the evidence from the cell phone is any needed and the cell phone is not needed in any way in this case hereafter. Further the petitioner is a college student and this android phone is needed for his

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educational purpose. Hence considering the above facts the petitioner prayed that the petition may be allowed.

4. On the other hand the prosecution in their reply and arguments has stated that investigation is pending in stage. This property in this case is to be sent to expert opinion (voice test). Further the case is transferred from Law and Order to crime police station, hence there is delay in sending the cell phone for expert opinion. Hence the prosecution strongly objected to return the property to this petitioner and prayed that the petition may be dismissed.

5. This court has taken into consideration the facts and circumstances of the case, the gravity of offence and the evidential value of the property which is the subject matter of this petition. Further the case is under investigation stage. As one of the accused has used this cellphone to talk which is also admitted by the petitioner, the arguments that the cell phone is needed to be forwarded for voice test to obtain expert opinion takes relevance. Hence considering all the above facts this court is not inclined to return the property at this stage of the case.

6. Hence considering all the above facts and materials and in the interest of justice this return of property application is dismissed. Further, the prosecution is directed to take steps to forward the cellphone to obtain expert opinion without further delay.

7. Thus, this petition stands dismissed.

Sd/- E.Pravinkumar
Judicial Magistrate No. V,
Madurai.