

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.03.2018

DELIVERED ON : 13.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.1461 of 2017
and
Crl.M.P.No.14512 of 2017

Venkatesh ... Petitioner

Vs

The State, Rep. by
Inspector of Police,
NIB CID, Salem,
Salem District. ... Respondent

Prayer: Criminal Revision Case filed under Section 397(1) and 401 of the Criminal Procedure Code, to call for the records and to set aside the order dated 03.10.2017 passed by the III Additional District Judge, Special Judge for EC Act cases, Salem (FAC) in CMP.No.426 of 2017 and enlarge the petitioner on statutory bail.

For Petitioners : Mrs.Sumithra Vasudevan

For Respondent : Mr.G.Ramar
Government Advocate (Crl.Side)

JUDGMENT

This revision has been filed under Section 397(1) and 401 of the Criminal Procedure Code to call for the records and set aside the order dated 3.10.2017 passed by the learned III Additional District Judge, Special Judge for EC Act Cases, Salem, in C.M.P.No.426 of 2017 in Crime No.32 of 2017 of NIB CID, Salem for offence under Sections 8(c) read with 20(b)(ii) (c) of the NDPS Act.

2. It is the case of the petitioner that he is in judicial custody from 25.3.2017 for the allegation that he was in possession of 28 Kgs. Of Ganja, which is commercial quantity.

The petitioner filed a bail petition before the learned III Additional District Judge, Special Judge for EC Act Cases, Salem, who by order dated 3.10.2017 dismissed the bail petition.

3. It is the case of the petitioner that no Magistrate shall authorize the detention of the accused person in custody for total period exceeding 180 days, if the case involved commercial quantity. It is added that the petitioner was into judicial custody on 25.3.2017 and he applied for bail on 22.9.2017, i.e., after 182 days.

4. Per contra, it is the case of the respondent that if it is not possible to complete the investigation within 180 days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation. It is further stated that the respondent had filed charge sheet on 20.9.2017 and the same was taken on file vide C.C.No.35 of 2017, dated 7.11.2017. He opposed the petition for bail alleging that if the petitioner is released on bail, he will tamper the evidence and threaten the witnesses and thus cause hardship to the respondents in effectively completing the investigation.

5. I heard Mrs.Sumithra Vasudevan, learned counsel for the petitioner and Mr.G.Ramar, learned Government Advocate (Criminal side) for the respondent and perused the documents available on record.

6. It is seen from the order passed by the Court below that though the charge sheet is dated 20.9.2017, it was filed before the Court below only on 22.9.2017 after getting approval of the Special Public Prosecutor. However, in the order passed by the Court below it is stated as the charge sheet itself was filed on 20.9.2017. When the charge sheet itself was approved by the Special Public Prosecutor on 22.9.2017, it is not known as to how the charge sheet could have been filed on 20.9.2017. This Court, on consideration of the said discrepancy, called for explanation from the Court below and the explanation offered by the Court below vide letter dated 12.3.2018 is to the effect that "due to pressure of work and by oversight in the bail order the date of filing of charge sheet was wrongly mentioned as 20.9.2017 instead of 22.9.2017."

7. Section 167(2) of Cr.P.C. empowers the Magistrate to authorize the detention of an accused person, otherwise than in the custody of the police, up to 90 days, when the investigation relates to the offence punishable with death, imprisonment of life or imprisonment for a term of not less than 10 years and 60 days, where the investigation relates to any other offence.

8 Section 36A(4) of NDPS Act, which is a Special Act, provides a different period for the purpose of detention. According to Section 36A(4) of NDPS Act, in respect of persons accused of an offence punishable under Section 19 or Section 24 or Section 27(a) or for offence involving commercial quantity, the references in Sub- Session (2) of Section 167 of Cr.P.C. to 90 days, should be construed as reference to 180 days. Thus, by dint of Section 36-A (4) of the Act, the period of 90 days mentioned in proviso to Section 167(2) Cr.P.C. has been extended to 180 days in respect of persons accused of the offences noted above. Thus, if the offence alleged involves commercial quantity, then the period for which an accused person could be remanded to custody pending investigation is statutorily extended up to 180 days as against 90 days as per the proviso to Section 167(2) of Cr.P.C. Therefore, the Special court, while remanding the person accused of any offence under the Act is required to consider as to whether there are materials to prima facie indicate accused having committed any offence enumerated in Section 36A(4) of the Act, or whether the offence involves the commercial quantity. If the person is accused of having committed any of the offence enumerated in Section 36A(4) of the Act or if the offence involves the commercial quantity, there is no difficulty in holding that such person could be remanded to judicial custody up to a period of 180 days pending investigation.

9. According to the aforesaid provision, in an offence involving commercial quantity, the police is obliged to file report under Section 173 Cr.P.C. within a period of 180 days and if it is not possible for the police to complete the investigation within the said period of 180 days, they may seek extension of the period up to one year on the report of the public prosecutor indicating the progress of the investigation and the specific reasons for detaining the accused beyond the period of 180 days. In default of filing such charge sheet within a period of 180 days, the accused would have an indefeasible right to be released on bail. Thus, the learned Special Judge was grossly in error in dismissing bail application of the petitioner on the ground that the challan has been filed within the statutory period, whereas it has been admittedly filed on the expiry of 180 days.

10. In the case on hand, charge sheet admittedly has been filed after the expiry of 180 days and nothing has been placed on record to show that the Public Prosecutor had submitted a report and based on the same, the time period had been extended to one year. Therefore, the petitioner has an indefeasible right to be released on bail.

11. In such view of the matter, the following order is

passed:

- (i) This revision is allowed and the order dated 3.10.2017 made in C.M.P.No.426 of 2017 by the learned III Additional District Judge, Special Judge for EC Act Cases, Salem, is quashed.
- (ii) The petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond in a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned III Additional District Judge, Special Judge for EC Act Cases, Salem, and on further condition that the petitioner shall appear before the said Court on all the working day at 10.30 a.m. until further orders.
- (iii) It is made clear that the petitioner should not indulge any such activities hereafter and if anything adverse is brought to the notice of this Court, the prosecution is entitled to file appropriate application for cancellation of bail.
- (iv) Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

vs

To

1. The III Additional District Judge,
Special Judge for EC Act Cases, Salem.

2. The Inspector of Police, NIB CID, Salem, Salem District.

+1cc to Mr.B.Vasudevan, Advocate SR.No.24086

Cr1.R.C.No.1461 of 2017
and

Cr1.M.P.No.14512 of 2017

VBA (CO)
GMY (02/04/2019)