



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16.06.2020

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Cr1.RC(MD)No.165 of 2020

1.Dinesh Pandi

2.Naveen Kumar

: Petitioners/Appellants/A1 and A2

Vs.

The State rep. by

The Deputy Superintendent of Police,

NIB CID, Madurai.

(Crime No.21 of 2019)

: Respondent/Respondent/Complainant

Prayer: Criminal Revision filed under section 397 r/w 401 of the Code of the Criminal Procedure against the order passed by the Principal Special Court for EC and NDPS Act cases, Madurai, in Cr.M.P No.3199 of 2019, dated 04.09.2019 and quash the same and consequently enlarge them on bail in connection with the case in Crime No.21 of 2019.

For Petitioners : Mr.R.Anand

For Respondent : Mr.V.Neelakandan

Additional Public Prosecutor

J U D G M E N T

This criminal revision is directed against the order passed by the Principal Special Court for EC and NDPS Act cases, Madurai, in Cr.M.P No.3199 of 2019, dated 04.09.2019.

2.According to the prosecution, based on the secret information, on 16.02.2019 at 6.45 hours, when the police party intercepted the Car TN-30-P-1492, they seized Ganja weighing 105 kgs from the petitioners/A1 and A2. In this connection, a case in Crime No.21 of 2019 has been registered against the petitioners for the alleged offence under section 8(C) r/w 20(b)(ii)(c), 27A and 25 of NDPS Act. Since the respondent police is not able to complete the investigation within 180 days, they filed Cr.MP No.3199 of 2019 before the Additional District Judge/Presiding Officer, Principal Special Court for EC & NDPS Act cases, Madurai, seeking extension of time to file charge sheet. The said petition was allowed on



04.09.2019 and one month time is granted for completing investigation from 15.08.2019. Aggrieved over the same, the petitioners/A1 and A2 are before this court.

3. Heard the learned counsel appearing on either side and perused the materials available on record.

4. The learned counsel appearing for the petitioners/A1 and A2 submitted that the respondent has failed to file the charge sheet within 180 days as mandated by section 36A(1)(b) of NDPS Act and according to the said provision, the Court concerned cannot authorise the detention beyond the said period in the event of non-filing of the charge sheet, as a result, on expiry of 180 days and the petitioners/A1 and A2 shall be released on bail, however, prior to that, the prosecution also on the strength of proviso appended with section 36A(4) of the said Act, moved an application seeking extension of time for filing the final report and on the first day after the expiry of 180 days of the confinement, the petitioners filed the statutory bail application, but the trial court without appreciating so many points in favour of the petitioners wantonly dismissed the above statutory bail application and hence, the legal right of the petitioners was affected and the extension of time filed by the prosecution did not comply the necessary conditions as stated under section 36A(4) of NDPS Act and hence, the petitioners are entitled to statutory bail. For that, the learned counsel appearing for the petitioners/A1 and A2 submitted the following rulings:-

(i) (2001)5 SCC 453 (*Uday Mohanlal Acharya Vs. State of Maharashtra*);

(ii) (2011)1 SCC (Cri) 1099 (*Sanjay Kumar Kedia alias Sanjay Kedia Vs. Intelligence Officer, Narcotics Control Bureau and another*); and

(iii) (2012)12 SCC 1 (*Sayed Mohd. Ahmad Kazmi Vs. State (Government of NCT of Delhi) and another*).

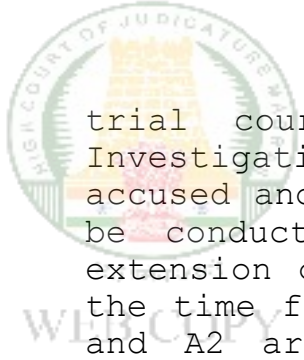
5. In **(2011)1 SCC (Cri) 1099 (*Sanjay Kumar Kedia alias Sanjay Kedia Vs. Intelligence Officer, Narcotics Control Bureau and another*)**, the Law laid down in para 23 in the case of ***Hitendra Vishnu Thakur Vs. State of Maharashtra (1994)4 SCC 602 : 1994 SCC (Cri) 1087***, held as follows:-

"23.....A Public Prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The Public Prosecutor is expected to independently apply his mind to the request of the investigating agency submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation.



He is not merely a post office or a forwarding agency. A Public Prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the Public Prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The Public Prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the Public Prosecutor. The report of the Public Prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the Public Prosecutor."

6. On the other hand, on the side of the respondent/State, it is argued that A1 is a habitual offender and several cases were pending against him and in this case, the period of investigation lapsed on 15.08.2019 and therefore, the respondent has filed petition for extension of time for filing charge sheet before the



trial court and the investigation is not completed and the Investigating Officer is taking steps to trace out the absconding accused and further on the basis of the call records, enquiry is to be conducted to find out the network and hence, petition for extension of time was filed and the trial court correctly extended the time for filing the charge sheet and hence, the petitioners/A1 and A2 are not entitled to statutory bail and prays that the criminal revision has to be dismissed.

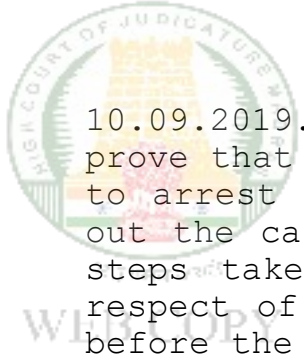
7. In this case, A1 and A2 were arrested and remanded to judicial custody from 16.02.2019. The respondent filed a petition in Cr.MP No.3199 of 2019 for extension of time for filing charge sheet before the trial court under section 36A(4) of NDPS Act on 14.08.2019. The petitioners/A1 and A2 filed petition in Cr.MP No.3239 of 2019 for statutory bail under section 167(2) of Cr.P.C before the trial court on 16.08.2019. In Cr.MP No.3199 of 2019 on the prosecution side, it is stated that the accused Paraman and Muthu are absconding and they have to be secured and further one cell phone is to be recovered from the accused Naveenkumar and it is necessary to conduct enquiry in respect of who alleged to be committed the offence through cell phone and it is not possible for the Investigating Officer to conduct the investigation within 180 days and hence, the petition for extension of time for filing the charge sheet was filed.

8. At this juncture, it is necessary to refer section 36A(4) of the NDPS Act, which would run thus:-

"(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the reference in sub section (2) of 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof of "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days."

PRIVIDED that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period upto one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days."

9. In this case, on the side of the prosecution, it is stated that the Investigating Officer seeks time to secure the absconding accused and to find out the call details, who abetted the accused to commit the offence, the Investigating Officer filed petition for extension of time before the trial court. The trial court allowed the petition for extension of time by granting one month time. The respondent filed the charge sheet before the trial court on



10.09.2019. No document was filed on the side of the prosecution to prove that what are all the steps taken by the Investigating Officer to arrest the absconding accused and the enquiry conducted to find out the call details. But without filing the documents to show the steps taken to arrest the absconding accused and the enquire in respect of the call details, the respondent filed the charge sheet before the trial court.

10. On careful perusal of the records, it reveals that the respondent has not complied the condition under section 36A(4) of the NDPS Act. It is the main contention of the petitioners that due to the extension of time and non-compliance of the condition by the prosecution, the valuable right of the petitioners has been taken away. In this case, A4 is concerned, he was let on free under section 88 of Cr.P.C and A3 died. The prosecution filed the petition for extension of time to defeat the right of the petitioners. Hence, it is held that the impugned order passed by the trial court is not correct and accordingly, it is liable to be set aside.

11. In the result, this criminal revision is allowed. The order passed by the Principal Special Court for EC and NDPS Act cases, Madurai, in Cr.M.P No.3199 of 2019, dated 04.09.2019 is set aside.

Sd/-

Assistant Registrar (AS)

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/ /2020

Sub Assistant Registrar(CS)

To

1. The Principal Special Court for
EC and NDPS Act Cases, Madurai.
2. The Deputy Superintendent of Police,
NIB CID, Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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