



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	27.02.2020
Date of Judgment	24.06.2020

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Crl.RC(MD)No.158 of 2020**

Karthick, M/22
S/o.Iyyampillai

:Revision Petitioner/Petitioner/A1

Vs.

State represented by
Inspector of Police,
NIB CID,
Madurai, Madurai District.
(Crime No.75 of 2019)

: Revision Respondent/
Respondent/Complainant

Prayer: Criminal Revision filed under section 397 and 401 of the Criminal Procedure Code, against the order passed in Cr.MP No.160 of 2020 in C.C No.21 of 2020 by the Principal Special Court for EC and NDPS Act cases, Madurai, dated 24.01.2020.

For Petitioner

: Mr.V.Kathirvelu,
Senior counsel
for Mr.K.Prabhu

For Respondent

: Mr.APG. Ohm Chairma Prabhu
Government Advocate (Crl Side)

J U D G M E N T

This Criminal Revision is directed against the order passed in Cr.MP No.160 of 2020 in C.C No.21 of 2020 by the Principal Special Court for EC and NDPS Act cases, Madurai, dated 24.01.2020.

2.The case of the prosecution is that on 05.06.2019 at about 10.40 am, on the secret information received from the informant, the respondent police conducted vehicle check up on Thiruvadhavaur-Melur Main Road, near Andipatti Wine Shop, where they intercepted the vehicle TN-59-0330 Pulzer Motor cycle, which was driven by A2, while the petitioner was riding as a pillion rider and on search,



the petitioner was in possession of 23 kgs of Ganja in a white colour gunny bag. The petitioner was arrested on 05.06.2019. The petitioner filed bail application before the Additional District Judge, Principal Special Court for EC and NDPS Act cases, Madurai. after a lapse of 180 days. The trial Judge dismissed the petition on the ground that charge sheet has been filed in Cr.1.MP No.160 of 2020 in C.C. No.21 of 2020. Aggrieved by the same, the petitioner/A1 is before this court.

3.Heard both sides and perused the materials available on record.

4.The learned Senior counsel appearing for the petitioner/A1 submitted that on the date of filing the bail petition, there is no charge sheet filed or pending before the trial court and once the charge sheet was not filed within the stipulated period, the accused shall entitle to release on bail under section 167(2) Cr.PC. For that, the learned counsel appearing for the petitioner submitted a ruling of the Hon'ble Supreme Court rendered in **Criminal Appeal No.1218 of 2018, dated 24.09.2018 (Achpal @ Ramswaroop and another Vs. State of Rajasthan)**.

5.On the other hand, it is argued on the side of the respondent/State that the petitioner/A1 is not entitled to get statutory bail since final report was filed before the concerned court on 25.11.2019 within the statutory period and subsequently, it was returned on 06.01.2020 due to some corrections and the same was re-presented on 10.01.2020 and thereafter, the case was taken on file by the trial court and the charge sheet has been filed within the statutory period and hence, the petitioner/A1 is not entitled to statutory bail and prays that the criminal revision has to be dismissed. For that, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted a ruling reported in **(1994)4 SCC 602 (Hitendra Vishnu Thakur and others Vs. State of Maharashtra and others)**. In that case, it has been held in para 30 as follows:-

"30.In conclusion, we may (event the cost of repetition) say that an accused person seeking bail under Section 20(4) has to make an application to the court for grant of bail on grounds of 'default' of the prosecution and the court shall release the accused on bail after notice to the public prosecutor uninfluenced by the gravity of the offence or the merits of the prosecution case since Section 20(8) does not control the grant of bail under Section 20(4) of TADA and both the provisions operate in separate and independent fields. It is, however, permissible for the public prosecutor to resist the grant of bail by seeking an extension under clause (bb) by filing a report for the purpose before the court. However, no extension shall be granted by the court without notice



to an accused to have his say regarding the prayer for grant of extension under clause (bb). In this view of the matter, it is immaterial whether the application for bail on ground of 'default' under Section 20(4) is filed first or the report as envisaged by clause (bb) is filed by the public prosecutor first so long as both are considered while granting or refusing bail. If the period prescribed by clause (b) of Section 29(4) has expired and the court does not grant an extension on the report of the public prosecutor made under clause (bb), the court shall release the accused on bail as it would be an indefeasible right of the accused to be so released. Even where the court grants an extension under clause (bb) but the charge-sheet is not filed within a extended period, the court shall have no option but to release the accused on bail if he seeks it and is prepared to furnish the bail as directed by the court. Moreover, no extension under clause (bb) can be granted by the Designated Court except on a report of the public prosecutor nor can extension be granted for reasons other than those specifically contained in clause (bb) which must be strictly construed."

6. In the instant case on hand, the petitioner/A1 was remanded to judicial custody on 05.06.2019 and the final report was filed before the concerned court on 25.11.2019 and it was returned on 06.01.2020 and subsequently it was re-presented on 10.01.2020. Hence, in this case, charge sheet was filed within the statutory period. In the case of **Hitendra Vishnu Thakur and others Vs. State of Maharashtra and others [(1994) 4 SCC 602]**, it is held that it is immaterial whether the application for bail on ground of default is filed or the report by the Public Prosecutor seeking extension of time is filed first so long as both are considered, while granting or refusing bail. In this case, within the statutory period, charge sheet was filed. Hence, it is immaterial whether the petitioner has filed bail application first or the respondent filed charge sheet first. In this case, it is to be noted that the charge sheet was filed within the statutory period. Further, on perusal of the ruling submitted by the learned Senior counsel appearing for the petitioner/A1, it reveals that on the statutory period, no charge sheet was filed. Hence, the ruling submitted by the learned Senior counsel appearing for the petitioner/A1 is not applicable to this case. Further, it is admitted that the returned charge sheet was re-presented on 10.01.2020 and on the same day, the petitioner/A1 filed the bail petition under section 167(2) Cr.P.C.

7. Taking into consideration of the above facts, this court is of the considered view that the learned trial Judge has rightly
of the considered view that the learned trial Judge has rightly
is not necessary to interfere into the findings of the trial court.



8. In the result, this criminal revision fails and the same is **dismissed.**

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Sd/-

Assistant Registrar ()

/ /2020

Sub Assistant Registrar(CS)

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To,

1. The Principal Special Court
for EC and NDPS Act cases, Madurai.
- 2 The Inspector of Police,
NIB CID,
Madurai, Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.RC(MD) No.158 of 2020
24.06.2020

VB (12.08.2020) 4P 4C