

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12..03..2021

CORAM :

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

Cr1.O.P.No.980 of 2021

Sheik Mohammed Madar

... Petitioner

-Versus-

The State Rep. By
Inspector of Police,
D-3, Ice House Police Station,
Chennai.
[Crime No. 1414 of 2020]

.... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in Crime No.1414 of 2020 pending investigation on the file of the respondent police.

For Petitioner : Mr. V.Paarthiban

For Respondent : Mrs.M.Prabhavathi

ORDER

(The case was heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 01.09.2020 in connection with a case registered in Crime No.1414 of 2020 for the offence punishable under Sections 8(c), 22 (c), 20(b)(ii)(B) and 29(1) of The Narcotic Drugs and Psychotropic Substances Act, 1985, seeks bail.

2. There are totally four accused in this case and the petitioner has been arrayed as A2. The allegation is that on 31.08.2020, on a secret information that, banned narcotic substances are being sold at VR Pillai Street, at about 07.00 p.m., when the respondent police on suspicion intercepted the petitioner and A2 and A3 and made search on the accused persons, A1 was found in possession of 77.65 grams and 95.95 grams of MDMA Tablets apart from 207 grams of Catamine, A2 was found in possession of 30 grams of MDMA Tablets and A3 was found in possession of 11.31 grams of Charas Tablets. Therefore, A1 to A3 were arrested on 01.09.2020 and the contraband substances were recovered. Thereafter, on the confession of A1 to A3, A4 was made as accused. A1 to A3 were remanded to judicial custody on the same day.

3. The learned counsel for the petitioner would submit that the petitioner was arrested and remanded to judicial custody on 01.09.2020 and he has been in judicial custody for the past more than 180 days. The petitioner is innocent of the alleged offence and he has been falsely implicated in this case.

4. The learned counsel would further submit that even assuming that the petitioner was found in possession of a commercial quantity of a banned narcotic substances, the statutory period 180 days for filing the final report got expired as early as on 28.02.2021 within which period neither the final report was filed nor any petition was filed seeking extension of time. Therefore, according to the learned counsel, the petitioner is entitled for statutory bail.

5. The learned Additional Public Prosecutor would on the other hand submit that the petitioner was arrested on 01.09.2020 and therefore, the statutory period of 180 days statutory for filing the final report expires only on 02.02.2021 and on 01.03.2021 itself a petition has been filed by the respondent seeking extension of time under proviso to Section 36(A)(iv) of the NDPS Act and the same is still pending.

6. At the same time, while disputing the contention of the learned Additional Public Prosecutor, the learned counsel for the petitioner would submit that the petitioner was arrested and remanded to judicial custody on 01.09.2020 and if the date on which the petitioner was remanded to judicial custody is excluded, the statutory period of 180 days will expire on 28.02.2021. However, admittedly, a petition seeking extension of time came to be filed only on 01.03.2021, which was after the expiry of 180 days of statutory period, by that time, the petition filed by the petitioner seeking bail was pending before this court. He would, therefore, submit that if at all the respondent police wanted to seek extension of time, they should have filed the petition before the expiry of the statutory period, but, no petition was filed within such time. Therefore, the petitioner is entitled for statutory bail, the learned counsel for the petitioner contended.

7. I have considered the rival submissions carefully.

8. From a careful perusal of the available records, it could be seen that the petitioner was arrested and remanded to judicial custody on 01.09.2020 and if the day on which the petitioner was remanded to judicial custody is excluded, the statutory period of 180 days expired on 28.02.2021. In this case, admittedly, the respondent had chosen to file a petition seeking extension of time for filing the final report only on 01.03.2021 which was after the expiry of the statutory period of 180 days available for filing the final report.

9. The law is now well settled that an application seeking extension of time for completing the investigation should be filed before the expiry of the statutory period for filing the final report. Recently, the Hon'ble Supreme Court of India in **M. Ravindran**

v. The Intelligence Officer, Directorate of Revenue Intelligence, 2020 SCC OnLine SC 867 has held as follows:-

"54. The observations made in *Hitendra Vishnu Thakur* (supra) and *Sanjay Dutt* (supra) to the effect that the application for default bail and any application for extension of time made by the Public Prosecutor must be considered together are, in our opinion, only applicable in situations where the Public Prosecutor files a report seeking extension of time *prior* to the filing of the application for default bail by the accused. In such a situation, notwithstanding the fact that the period for completion of investigation has expired, both applications would have to be considered together. However, where the accused has already applied for default bail, the Prosecutor cannot defeat the enforcement of his indefeasible right by subsequently filing a final report, additional complaint or report seeking extension of time.

55. It must also be added and it is well settled that issuance of notice to the State on the application for default bail filed under the Proviso to Section 167(2) is only so that the Public Prosecutor can satisfy the Court that the prosecution has already obtained an order of extension of time from the Court; or that the challan has been filed in the designated Court before the expiry of the prescribed period; or that the prescribed period has actually not expired. The prosecution can accordingly urge the Court to refuse granting bail on the alleged ground of default. Such issuance of notice would avoid the possibility of the accused obtaining default bail by deliberate or inadvertent suppression of certain facts and also guard against multiplicity of proceedings."

10. In the that case, neither the final report was filed, nor an application for extension of time for completing investigation and for filing the final report was filed within the statutory period of 180 days for filing the final report and as such the petitioner is entitled for statutory bail under Section 167(2) of the Code r/w 36-A(iv) of NDPS Act. Therefore, this court is inclined to grant bail to the petitioner subject to the following conditions:-

(a) Accordingly, the petitioner is ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Principal Special Judge, Prl. Special Court for Exclusive Trial of Cases under the NDPS Act, Chennai-104 and on further conditions that:

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioner shall report before the respondent police daily at 10.30 a.m., until further orders.

(d) the petitioner shall not commit any offences of similar nature;

(e) the petitioner shall not abscond either during investigation or trial;

(f) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(g) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala** [(2005)AIR SCW 5560];

(h) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

With the above directions, this Criminal Original Petition is ordered.

-sd/-
12/03/2021

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL SPECIAL JUDGE,
PRINCIPAL SPECIAL COURT FOR EXCLUSIVE
TRIAL OF CASES UNDER THE NDPS ACT, CHENNAI-104.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
D-3, ICE HOUSE POLICE STATION,
CHENNAI.

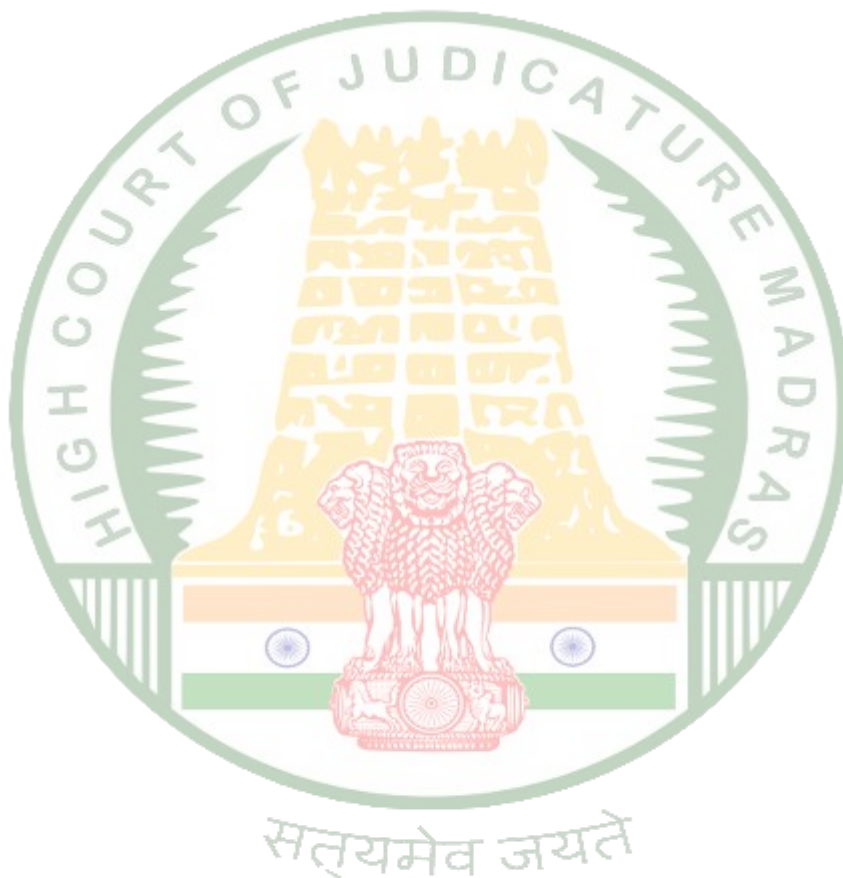
4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

CC to M/S.V.PAARTHIBAN Advocate on payment of necessary
charges

CRL OP.980/2021

Date :12/03/2021

TA-16/03/2021



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