



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Third day of August Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice M.DHANDAPANI

CRIMINAL ORIGINAL PETITION No.14115 of 2021

M.ARUL

[PETITIONER / ACCUSED]

Vs

STATE REP BY
THE INSPECTOR OF POLICE,
NIBCID, COIMBATORE.
CRIME NO. 61/2020

[RESPONDENT]

For Petitioner : M/S.V.KRISHNAMOORTHY Advocate

For Respondent : MR. A.GOPINATH, Govt. Advocate (Crl. Side)

PETITION FOR BAIL 439 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who was arrested and remanded to judicial custody on 10.12.2020 for the alleged offences punishable under Sections 8(c) r/w 2(c) and 29(1) of NDPS Act in Crime No.61 of 2020, on the file of the respondent police, seek bail.

2. It is the case of the prosecution that the the defacto complainant Tr.V. Nagaraju SI/EXE, CISF Unit ASG, Coimbatore International Airport lodged a complaint before Inspector of Police, Peelamedu Police Station in which it is stated that one passenger namely Mr. Kaliyamoorthy Nagarathinam was to travel to Sharjah at 14:15 hours by Flight No.G9414 and two persons, viz., Arul/A1 and Alibhai/A2 are said to have approached him and handed over an empty VIP suit case with a request to hand over the same to an unknown person in Sharjah. During physical check it was found that there was 1.200 grams of contraband in the said suitcase, which resulted in the filing of the complaint before the respondent/police. Thereafter the case was registered on 05.12.2020 at about 16:15 hours and the seized

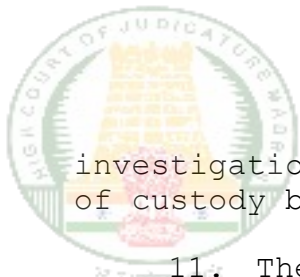


materials were produced before the Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act cases vide P.R.No.178 of 2020 dated 07.12.2020. During the course of investigation the Inspector of Police sent the samples for chemical analysis to the Forensic Science Department and the report was received stating that the the seized contraband is Metamfetamine and the petitioner was arrested on 10.12.2020 and his confession statement was recorded and he was produced before the Additional District Judge/Presiding Officer, Special Court for Essential Commodities Act Cases, Coimbatore and was remanded to Judicial custody. Subsequently the petitioner filed application before this Court in Crl.O.P.No.8591 of 2021 and the same was dismissed on 01.06.2021. Subsequently the petitioner/A1 and A2 filed bail application in Crl.M.P.No.627 of 2021 before the Special Court for EC Act cases, Coimbatore and the same was also dismissed. Challenging the same the petitioner filed another application in Crl.M.P.No.677 of 2021 and the same was dismissed on the ground that earlier petition was dismissed by this Court. Hence the present petition.

3. The learned counsel for the petitioner submitted that the petitioner is an innocent person and he has been falsely implicated in this case. He further submits that the respondent herein have filed a petition under Section 36(4) (a) of NDPS Act for extension of period of limitation to file charge sheet and the learned Judge has also granted 3 months time. Subsequently the bail application filed by the petitioner was dismissed. It is therefore submitted that since the respondent has sought for extension of time to complete the investigation beyond the statutory period, he prays for grant of bail to the petitioner. He further submits that in respect of accused persons for an offence the prescribed period for completion of investigation is 90 days beyond which the accused are entitled for statutory bail. However, without issuing notice to the petitioners, the court below has extended the time for investigation, though the petitioners were arrested on 11.12.20 and are in custody. The grant of extension of time for completing the investigation without notice to the petitioner is wholly unsustainable and is not in accordance with law.

In support of his contention the learned counsel for the petitioner relied upon the Judgment of Kerala High Court passed in Roopesh T.U.vs State of Kerala (Bail Appln No.4204 Of 2020), wherein a learned single Judge of the Kerala High Court held as under :-

10. In Sanjay Kumar Kedia @ Sanjay Kedia (Supra), considering the requirements of sub-section (4) of Section 36A of the NDPS Act, following the decision in Hitendra Vishnu Thakur's case(supra) found that a bare perusal of the application for extension shows that it has been filed by the investigation officer and does not indicate, even remotely, any application of mind on the part of the public prosecutor. It further does not indicate the progress of the



investigation, nor the compelling reasons which required an extension of custody beyond 180 days.

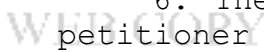
11. The maximum period of 90 days fixed under 167(2) of the Cr.P.C has been increased to 180 days for several categories of offences under the NDPS Act, but the provisio authorizes a yet further period of detention which may, in total, go upto one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are :

(1) a report of the Public Prosecutor, (2) which indicates the progress of the investigation, and (3) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days (4) after notice to the accused.

12. The question to be decided is whether the two applications at Annexures-3 and 5 for extension that had been filed by the public prosecutor seeking an extension beyond 180 days met the aforesaid necessary conditions, keeping in mind the above cited precedents. And whether the applicant was notified about seeking such extension, Lastly, it needs to be considered whether the Designated Court had considered the requirements prior to along the extension. BA 4204/2020.

13. As regards the serving of notice on the accused before considering the prayer for extension, all that is required as per the 'notice' contemplated in the decision in Hitendra Vishnu Thakur's case (supra) before granting extension for completion of investigation is not to be construed as a "written notice" to the accused and that only the production of the accused at the time of consideration of the report of the Public Prosecutor for grant of extension of the period for completing the investigation was being considered, would be sufficient notice to the accused. The applicant was not present while Annexure-4 Order was pronounced. The order mentions the presence of only the Investigating Officer in person. There is no mention of the presence of either the accused or his counsel. Not even the presence of the Prosecutor is mentioned. Hence, the order is not in accordance with the dictum in the above cited decisions."

4. Per Contra the learned Government Advocate appearing for the respondent submits that the prosecution has filed an application u/s 36(A) 4 of NDPS Act for extension of time for filing charge sheet and the same was taken on file on 05.06.2021 in C.M.P.No.625 of 2021 and 3 months time for filing charge sheet was granted. Subsequently the petitioner/A1 and A2 filed bail application in Crl.M.P.No.627 of 2021 before the Special Court for EC Act cases, Coimbatore and the same was dismissed. Challenging the same the petitioner filed another application in Crl.M.P.No.677 of 2021 and the same was dismissed on the ground that earlier petition was dismissed by this court.

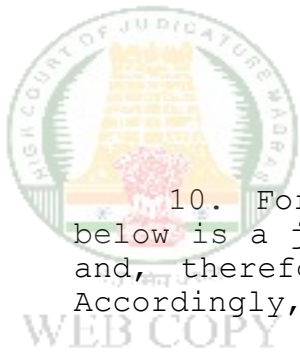
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10. For the reasons aforesaid, the order passed by the court below is a just and reasonable order and also a well considered order and, therefore, no interference is warranted with the said order. Accordingly, this petition fails and the same is dismissed.

-sd/-
23/08/2021

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 INSPECTOR OF POLICE,
NIBCID, COIMBATORE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

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

CRL OP.14115/2021

Date :23/08/2021

RW 20/09/2021