



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.5756 of 2022

1.Navash @ Sudu
2.Muhamad Bashil @ Bashil.
3.Muhamad Asath

...Petitioners

-Vs-

State Representd by
The Inspector of Police,
Harur Police Station,
Dharmapuri District.
Crime No.716 of 2021.

..Respondent

Prayer : Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, praying to set aside the returned surety memo dated 24.02.2022 passed by the Special Judge for EC/NDPS Act Cases, Salem in C.M.P.Sr.433 of 2022 in C.M.P.No.86 of 2022 dated 14.02.2022 passed by the learned Additional District Judge & Presiding Officer, Special Court under EC & NDPS Act Cases, Salem and to direct the learned Special Judge for EC & NDPS Act Cases, Salem to take the said surety memo and to consider the same.

For Petitioners : Mr.M.N.Balakrishnan

For Respondent : Mr.V.Meghanathan
Govt.Advocate(Crl.side)

O R D E R

This Criminal Original Petition has been filed to set aside the returned surety memo dated 24.02.2022 passed by the Special Judge for EC/NDPS Act Cases, Salem in C.M.P.Sr.433 of 2022 in C.M.P.No.86 of 2022 dated 14.02.2022 passed by the learned Additional District Judge & Presiding Officer, Special Court under EC & NDPS Act Cases, Salem and to direct the learned Special Judge for EC & NDPS Act Cases, Salem to take the said surety memo and to consider the same.



2. Learned counsel for the petitioners would submit that the petitioners are the accused in Crime No.716 of 2021 registered by the respondent police for offence under Section 8(c) r/w 20 (b)(ii)(B) of NDPS Act and they were arrested on 31.10.2021. He would further submit that since the respondent police did not file the final report within a period of 90 days, the petitioners had applied for bail under Section 167(2) of Cr.P.C and the learned Judge, by order dated 14.02.2022 in C.M.P.No.86 of 2022 had directed the release of the petitioners on bail with a condition to the petitioners to execute a personal bond for a sum of Rs.10,000/- with two sureties and also directed that the sureties should be Blood Related sureties and they should produce documents to prove their ownership of the property. He would further submit the blood relatives of the petitioners have furnished sureties for the petitioners, however, the learned Judge had returned the sureties stating that they should file documents in proof of property and the VAO certificate to be obtained in English and to be counter signed by Tahsildar in English and the certificate had to be translated by a proper interpreter. He would further submit that the condition imposed by the learned Judge to produce the documents is onerous. He would also submit that when a petitioner is granted statutory bail under Section 167(2) of Cr.P.C, the only requirement for getting default bail is that the petitioner is in jail for more than 60 or 90 days as the case may be and that the investigation has not been completed. He would further submit that the Court had to see whether the accused is prepared to furnish surety and abide by anyother condition to be imposed on the petitioner. He would submit that the close relatives of the petitioners have furnished sureties, however, their relatives were directed to produce property documents which would amount to denial of indefeasible right accrued on the petitioner. The petitioner, on account of non-filing of the charge sheet, gets an indefeasible right to default bail and the accused becomes entitled to default bail once the accused applies for default bail.

3. Learned Government Advocate(Crl.side) for the respondent would submit that the petitioners were arrested on 31.10.2021 and since the final report was not filed, they were granted default bail under Section 167(2) of Cr.P.C. He would fairly submit that the order passed by the learned Judicial Magistrate while returning the surety memo, the conditions 1 and 2 imposed in written dated 24.02.2022 of the surety memo filed by the accused is liable to be set aside.

4. Heard the learned counsel for the petitioners and learned Government Advocate(Crl.side) for the respondent and perused the materials available on record.



5. The petitioners have been granted default bail. The right to default bail arises when the investigating agency is not able to complete the investigation and file the final report within the stipulated period as the case may be as has been held in catena of judgments by the Hon'ble Apex Court and also by this Court and such a right is an indefeasible right. The accused, thus, does derive such a benefit due to the failure on the part of the investigating agency/prosecution. Right to default bail has been recognised as a fundamental right in a plethora of judgments cannot be equated with the discretionary right of the Court, wherein the Court, in its discretion, may impose any condition as may be deemed fit so as to enlarge the accused on bail.

6. In the case of Saravanan Vs State rep by the Inspector of Police reported in 2029 SCC 101, the Hon'ble Apex Court had held that imposing onerous condition would frustrate the very object and purpose of default bail under Section 167(2) of Cr.P.C, the Court has to only see whether the accused is prepared to furnish bail.

7. In this case, as stated above, the petitioners themselves are ready to furnish the surety and their blood relatives are also ready to furnish bail. In such circumstances, directing the petitioners to deposit property documents is onerous, which would frustrate the indefeasible right accrued on the petitioners.

8. In view of the above, the order dated 24.02.2022 in C.M.P.Sr.433 of 2022 in C.M.P.No.86 of 2022 passed by the learned Special Judge for EC/NDPS Act Cases, Salem stands set aside. The learned Judge is directed to accept the sureties without insisting for property documents and pass necessary orders.

9. Accordingly, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

nr/nti

To

1. The Special Judge for EC/NDPS Act Cases,
Salem.



2. The Additional District Judge & Presiding Officer,
Special Court under EC & NDPS Act Cases,
Salem.

3. The Inspector of Police,
Harur Police Station,
Dharmapuri District.

4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.N.Balakrishnan, Advocate, S.R.No.18286

Cr1.O.P.No.5756 of 2022

SPD[co]
NSK 25/03/2022