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Crl.O.P.Nos. 19542 & 19546 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos. 19542 & 19546 of 2022

Crl.O.P.No.19542 of 2022

Madhan Kumar

... Petitioner

Vs

State, Rep by
Inspector of Police,
V4, Rajamangalam Police Station,
Chennai.

(Crime No.931 of 2021)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order passed in Crl.M.P.No.3659 of 2022 dated 04.08.2022 on the file of the Principal Special Court under EC and NDPS Act at Chennai.

Crl.O.P.No.19546 of 2022

Balamurugan

... Petitioner

Vs

State, Rep by
Inspector of Police,
S-10, Pallikaranai Police Station,
Chennai.

(Crime No.1426 of 2021)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order passed in Crl.M.P.No.2952 of 2022 dated 14.07.2022 on the file of the Principal Special Judge, Special Court under EC and NDPS Act at Chennai.

For Petitioner



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Crl.O.P.Nos. 19542 & 19546 of 2022

in Crl.O.P.No.19542 of 2022 : Mr.M.S.Ramesh
For Petitioner
in Crl.O.P.No.19546 of 2022 : Mr.M.Illiyas
For Respondent
(in both Crl O.Ps) : Mr.E.Raj Thilak
Additional Public Prosecutor

COMMON ORDER

Crl.O.P.No.19542 of 2022 has been filed to set aside the order dated 04.08.2022 passed in Crl.M.P.No.3659 of 2022 on the file of the Principal Special Court under EC and NDPS Act at Chennai.

2. Crl.O.P.No.19546 of 2022 has been filed to set aside the order dated 14.07.2022 passed in Crl.M.P.No.2952 of 2022 on the file of the Principal Special Judge, Special Court under EC and NDPS Act at Chennai.

3. The petitioner, in Crl.M.P.No.19542 of 2022, is an accused in Crime No.931 of 2021 for the offence under Section 22(C) of NDPS Act on the file of the respondent. The petitioner was arrested and remanded to judicial custody on 16.12.2021, in pursuant to the registration of the FIR in Crime No.931 of 2021. After completion of 180 days on 14.06.2022, the petitioner filed a petition in Crl.M.P. No.2785 of 2022 seeking mandatory bail as contemplated under Section 167(2) of Cr.P.C before the Principal Special Judge for EC and NDPS Act, Chennai and it was dismissed on



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22.06.2022 on the ground that already the prosecution filed a petition seeking extension of time for completion of investigation and the same was allowed and extended time for 60 days as contemplated under Section 36A(4) of NDPS Act. The petitioner filed second application for bail on the very same ground in Crl.M.P.No.3655 of 2022 on 02.08.2022. However, the respondent, even after extension of time to complete the investigation, failed to complete the investigation and not filed a final report. Even as early as on 29.07.2022, i.e., 56th day, before the completion of previous extension in which already extended, the respondent filed under Section 36A(4) of NDPS Act for further extension of time. After filing the petition for default bail, the said application was numbered in Crl.M.P.No.3655 of 2022 and both were heard on the same day, after notice to the petitioner. Both the petitions were argued and the Court below dismissed the petition for default bail and extended the time for another 90 days for completion of investigation. Thereafter, the respondent completed the investigation and filed final report and the same has been taken cognizance in C.C.No.190 of 2022.

4. The learned counsel appearing for the petitioner raised the



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ground that the respondent already filed a petition for extension of time and the same has not even numbered and without ordering notice to the petitioner, the same was allowed, thereby extended the time for 60 days for completion of investigation. Again, the respondent filed a petition for extension of time, in which the petitioner was not issued any notice and he was not heard.

5. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in ***(2011) 1 SCC (CrI) 1099*** in the case of ***Sanjay Kumar Kedia Alias Sanjay Kedia Vs. Intelligence Officer, Narcotics Control Bureau and another***. The Hon'ble Supreme Court of India held as follows :

“12. The maximum period of 90 days fixed under Section 167(2) of the Code of Criminal Procedure has been increased to 180 days for several categories of offences under the Act but the proviso authorises a yet further period of detention which may in total go up to one year, provided the stringent conditions provided therein are satisfied and are complied with.



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The conditions provided are

- (i) a report of the Public Prosecutor*
- (ii) which indicates the progress of the investigation*
- (iii) specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days and*
- (iv) after notice to the accused.”*

6. In the case on hand, it is seen that though the application for extension of time was allowed, without even numbering and without ordering notice to the petitioner, the respondent failed to file a final report within stipulated time. However, again the respondent filed a petition in Crl.M.P.No.3659 of 2022 on 29.07.2022 itself i.e., on 56th day for extension of time to complete the investigation. However, it was not numbered on that day. On receipt of the application filed under Section 167(2) of Cr.P.C for default bail, both the petitions were numbered simultaneously and both were heard by the Trial Court. Therefore, the petitioner had knowledge about the petition for extension of time to complete the investigation and he was also heard.

7. The Trial Court, on hearing both sides, dismissed the petition seeking default bail filed under Section 167(2) of Cr.P.C and allowed the petition filed under Section 36A(4) of NDPS Act and thereby extended



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further time of 90 days for completion of investigation and to file final report. Therefore, the petitioner was heard on notice and he had knowledge about the petition for extension of time. Therefore, the Trial Court rightly dismissed the petition for bail filed under Section 167(2) of Cr.P.C. and allowed the petition for extension of time.

8. In view of the above, this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, Crl.O.P.No.19542 of 2022 is dismissed.

9. Insofar as Crl.O.P.No.19546 of 2022 is concerned, which is filed, to set aside the order passed in Crl.M.P.No.2952 of 2022 dated 14.07.2022 on the file of the Principal Special Judge, Special Court under EC and NDPS Act at Chennai, the petitioner was arrested and remanded to judicial custody on 25.12.2021. 180 days was completed on 22.06.2022. Whereas, the respondent filed a petition for extension of time under Section 36A(4) of NDPS Act on 21.06.2022 viz., 179th day itself. It was allowed and thereby extended further time of 30 days for completion of investigation and to file final report. During that period, the respondent completed the



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investigation and filed final report on 20.07.2022. In the meanwhile, the petitioner filed a petition in Crl.M.P.No.2952 of 2022 under Section 167(2) of Cr.P.C on default bail. The Court below rightly dismissed the petition on the ground that the petitioner is not entitled for default bail, since already the respondent filed a petition under Section 36A(4) of NDPS Act for extension of time and the same was allowed by extending 30 days for completion of investigation.

10. In view of the above, this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, Crl.O.P.No.19456 of 2022 is dismissed.

19.09.2022

Internet: Yes
Index: Yes/No
Speaking/Non speaking order
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G.K.ILANTHIRAIYAN, J

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To

1. The Inspector of Police,
V4, Rajamangalam Police Station,
Chennai.

2. The Inspector of Police,
S-10, Pallikaranai Police Station,
Chennai.

3. The Public Prosecutor,
High Court, Madras.

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