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Crl.O.P.No.26281 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.No.26281 of 2022

Latha

... Petitioner

Vs.

State by:

The Inspector of Police,
V-4, Rajamangalam Police Station,
Chennai.
(Crime No.257 of 2022)

... Respondent

PRAYER : This Criminal Original Petition has been filed to set aside the order dated 29.09.2022 in Crl.M.P.No.4654 of 2022 passed by the learned Principal Special Court under EC & NDPS Act, Chennai.

For Petitioner : Mr.R.Radhapandian for
Mr.T.Shanmugaboopathi

For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been preferred to set aside the order dated 29.09.2022 in Crl.M.P.No.4654 of 2022 passed by the learned Principal Special Court under EC & NDPS Act, Chennai.



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2. Heard the learned counsel for the petitioner and the learned

Additional Public Prosecutor appearing for the respondent.

3. The petitioner is the third accused in the FIR in Crime No.257 of 2022. She has been charged for the offence under Section 22(c) of NDPS Act. She has filed a petition under Section 167(2) Cr.P.C seeking to enlarge her on statutory bail.

4. The learned counsel for the petitioner submitted that the petitioner is in judicial custody from 25.03.2022 and she is in prison for more than 180 days; the respondent has not filed the charge sheet so far; therefore, she is entitled for statutory bail and she filed a petition in Crl.M.P.No.4654 of 2022 for seeking statutory bail; however, the learned Principal Special Judge has chosen to dismiss the petition for the reason that on 181st day, the petition has been filed (i.e) on 21.09.2022; but the prosecution has filed a petition under Section 36A(4) of the NDPS Act on 179th day (i.e) on 19.09.2022 for seeking extension of further 90 days for completing the investigation. In view of the above stated reasons, the statutory bail was denied and the petition of the petitioner was dismissed.

5. The learned Additional Public Prosecutor submitted that in the event



of prosecution filed a petition under Section 36A(4) for extension of time for filing the charge sheet, the appropriate procedure would be to enquire both the petition for extension and the petition filed for statutory bail simultaneously and then can pass orders on the same. In support of the above contention, he cited the following judgments of the Hon'ble Supreme Court:

(i) In the case of ***Uday Mohanlal Acharya Vs. State of Maharashtra, reported in (2001) 5 SCC 453***, the relevant paragraph is extracted hereunder:

"21. The next question to be considered is as to what will happen in a case where before any order directing release on bail is passed or before the bail bonds are furnished a challan is filed? It is well settled that once challan is filed, no sooner the court concerned applied its mind, cognizance shall be deemed to have been taken. Thereafter the power to remand the accused is under other provisions of the Code, including sub-section (2) of Section 309 thereof. A Constitution Bench of this Court in the case of Sanjay Dutt while considering correctness of Division Bench decision of this Court in the case of Hitendra Vishnu Thakur & Ors. Vs. State of Maharashtra & Ors., (1994) 4 SCC 602, laid down the law in paragraphs 48 and 49 of the judgment which read thus:-

"48. We have no doubt that the common stance before us of the nature of indefeasible right of the accused to be released on bail by virtue of Section



20(4)(bb) is based on a correct reading of the principle indicated in that decision. The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by [Section 167](#) but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because [Section 167](#) Cr.P.C. ceases to apply. The Division Bench also indicated that if there be such an application of the accused for release on bail and also a prayer for extension of time to complete the investigation according to the proviso in [Section 20\(4\)\(bb\)](#), both of them should be considered together. It is obvious that no bail



can be given even in such a case unless the prayer for extension of the period is rejected. In short, the grant of bail in such a situation is also subject to refusal of the prayer for extension of time, if such a prayer is made. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order. (See [Naranjan Singh Nathawan v. State of Punjab](#), AIR 1952 SC 106; [Ram Narayan Singh v. State of Delhi](#), AIR 1953 SC 277 and [A.K. Gopalan v. Government of India](#), AIR 1966 SC 816).

49. This is the nature and extent of the right of the accused to be released on bail under Section 20(4)(bb) of the TADA Act read with [Section 167 Cr.P.C.](#) in such a situation. We clarify the



decision of the Division Bench in Hitendra Vishnu Thakur, accordingly, and if it gives a different indication because of the final order made therein, we regret our inability to subscribe to that view."

(ii) In the case of ***M.Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence, reported in (2021) 2 SCC 485***, the relevant paragraphs are extracted hereunder:

"25.3 However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the [CrPC](#).

25.4 Notwithstanding the order of default bail passed by the Court, by virtue of Explanation I to [Section 167\(2\)](#), the actual release of the accused from custody is contingent on the directions passed by the competent Court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the Court, his continued detention in custody is valid."

6. However it is learnt that the petitioner has not filed the counter for



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the petition filed by the prosecution under Section 36A(4) of NDPS Act. Since the petition for extension of time was pending at the time when the petitioner has filed the petition for statutory bail, I feel it is appropriate to remand the petition back to the file of the learned Principal Special Judge in order to consider it afresh along with the petition filed under Section 36A(4) of the NDPS Act.

7. In the result, this Criminal Original Petition is allowed and the order passed in Crl.M.P.No.4654 of 2022 dated 29.09.2022 by the learned Principal Special Court under EC & NDPS Act, Chennai, is set aside and the matter is remanded back for fresh consideration along with the petition in Crl.M.P.No.4626 of 2022 filed by the prosecution.

Index: Yes/No
Speaking / Non Speaking Order
gsk

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R.N.MANJULA, J

gsk

To

- 1.The Principal Special Court under EC & NDPS Act,
Chennai.
- 2.The Inspector of Police,
V-4, Rajamangalam Police Station,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

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