



WEB COPY

Crl.RC.No.1522 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.1522 of 2022

Adithya

... Petitioner

Vs.

State rep. By
The Inspector of Police
B-2 Thiruvallur Taluk Police Station
Thiruvallur District
(Crime No.61/2022)

... Respondent

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, praying to set aside the order passed in Crl.M.P.No.3894 of 2022 dated 25.08.2022 by the learned Principal Special Judge for NDPS Act, Chennai.

For Petitioner : Mr.T.S.Sasikumar

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor

**ORDER**

This Criminal Revision Case has been filed seeking to set aside the order passed in Crl.M.P.No.3894 of 2022 dated 25.08.2022 by the learned Principal Special Judge for NDPS Act, Chennai, dismissing the petition filed under Section 167(2) Cr.P.C.

2. The learned counsel for the petitioner would submit that the petitioner was arrested and remanded to judicial custody on 12.02.2022 in Crime No.61 of 2022 for the offence under Section 8(c) read with 20(b)(ii)(C), 22(c) of NDPS Act, for allegedly found in illegal possession of 1.570 Liters of Hasish Oil and 12 LSD Stamps. Thereafter, since the respondent police had not filed the charge sheet within the statutory period of 180 days from the date of arrest of the petitioner, the petitioner filed a petition before the Special Court under Section 167(2) Cr.P.C. In Crl.M.P.No.3894 of 2022 seeking mandatory bail. The said petition was dismissed by the Court below by order dated 25.08.2022 stating that on 08.08.2022, i.e. 176th day from the date of arrest of the petitioner, the learned Public Prosecutor submitted a report and prayed for extension of time for further 90 days for further investigation under Section 36 A(4) of



NDPS Act and the same was permitted by the Court on that day itself and therefore, the petition filed by the petitioner was not maintainable. He would submit that since the final report is not filed within the statutory period, the petitioner is entitled for mandatory bail under Section 167(2) Cr.P.C. but the learned Special Judge has failed to consider the provisions and dismissed the same which warrants interference.

3.The learned Additional Public Prosecutor appearing for the respondent police would submit that the contraband has been sent for Forensic Lab for ascertaining the substance and the report is yet to be received and the non filing of the charge sheet, is neither wilful nor wanton and only due to the non receipt of the test report from the Lab, they approached the Special Court and sought for extension of time for filing charge sheet under Section 36A (4) of NDPS. Further, the petitioner belongs to other State and there is a possibility of the petitioner getting abscond and protracting the trial. Hence, he prays for dismissal of the petition.

4.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent police and perused the materials on record.



5. Admittedly, the petitioner was arrested on 12.02.2022. Though the prosecution had got extension of time under Section 36A (4) of NDPS Act for filing the charge sheet, as on date, no charge sheet is filed. Though it is stated by the prosecution that the test report is yet to be received from the Lab, the non receipt of test report is not a sole ground to delay the filing of charge sheet/final report and that the test report can be filed at any stage before trial. Since the mandatory provision under Section 167(2) Cr.P.C. has not been complied with by the respondent police, the Special Court ought to have allowed the petition filed by the petitioner seeking statutory bail. This Court finds perversity in the order passed by the Special Court.

6. In view of the fact that the charge sheet was not filed within the statutory period, the order passed by the Special Court is set aside. This Court is inclined to grant bail to the petitioner subject to the following conditions:

(a) Accordingly, the petitioner is directed to deposit a sum of Rs.2,00,000/- (Rupees Two Lakh Only) to the credit of Crime No.61 of 2022 and on such deposit, the petitioner is ordered to be released on bail on execution of 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 under EC and NDPS Act, Chennai, 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) Since the petitioner belongs to Andhra Pradesh, the petitioner on his release from prison, shall appear before the respondent police daily at 10.30 a.m. and 5 p.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.



7. The respondent police is directed to file the charge sheet without any further delay within a period of one month from the date of receipt of a copy of this order. The Special Court is directed to take the charge sheet on file and proceed further in accordance with law and at any cost, the case has to be disposed of within a period of six months from today.

8. With the above directions, this Criminal Revision Case is allowed.

02.12.2022

ksa-2

Note: Issue order Copy on 05.12.2022



To

1. The Principal Special Court under EC & NDPS Act
Chennai

2. The Inspector of Police
B-2 Thiruvallur Taluk Police Station
Thiruvallur District

3. The Superintendent
Central Prison, Puzhal-II.

4. The Public Prosecutor
High Court of Madras.



WEB COPY

Crl.RC.No.1522 of 2



P.VELMURUGAN,J.

Ksa-2

Criminal Revision Case No.1522 of 2022

02.12.2022