



Crl.R.C.(MD).No.735 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2022

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.R.C.(MD).No.735 of 2022

and

Crl.M.P.(MD) No.9064 of 2022

State, represented by
The Inspector of Police,
Pamban Police Station,
Ramanathapuram District.
Cr.No.171 of 2021.

... Revision Petitioner / Petitioner /
Complainant

Vs.

L.Antony Adimai

... Respondent / Petitioner / 1st Accused

PRAYER: This Criminal Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records and set aside the order of the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Cases, Pudukkottai dated 17.06.2022 in Cr.M.P.No.1253 of 2022.

For Petitioner : Mr. T.Senthil Kumar
Additional Public Prosecutor

For Respondent : Mr. M.Jegadeesh Pandian



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ORDER

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This Criminal Revision Case has been filed against the order passed by the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC and NDPS Cases, Pudukkottai, dated 17.06.2022 in Cr.M.P.No.1253 of 2022.

2. The Facts in brief:

The respondent herein is the accused in Crime No.171 of 2021 for the offences under Section 8(c) r/w. 20(b)(ii)(c) NDPS Act. During the course of investigation, the respondent was absconding. After completion of investigation, Final Report has been laid and taken on cognizance in C.C.No.37 of 2022 before the Special Court for EC and NDPS Cases, Pudukkottai. In the First Information Report, the respondent is mentioned as absconding accused. The respondent herein is the first accused, he had filed the Anticipatory Bail Application before this Court in Crl.O.P.(MD) No. 11100 of 2021 and the same was dismissed on 04.02.2022, observing that the requirement under Section 37 of NDPS Act has not been satisfied. Apart from that, it was also observed that there are serious allegations to the fact that he was involved in smuggling activities handling contra band and smuggling to Sri Lanka. Subsequent to the passing of the above said order, the respondent had approached the Special Court for EC and NDPS Cases,



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Pudukkottai, in Cr.M.P.No.1253 of 2022, seeking permission to execute the bond under Section 88 of Cr.P.C, and the same was considered by the trial Court, observing that the order passed by this Bench in Crl.R.C.(MD) No. 735 of 2022 can be made applicable to the present case and thereby permitted the respondent to execute the bond for Rs.10,000/- with two sureties for each like sum on the ground that no summon was issued to him at the time of taking cognizance.

3. Challenging the above said order, this Revision Case has been preferred by the State, stating that in the facts and circumstance of this case, the order passed by the trial Court is absolutely without jurisdiction, since contra band involved is the commercial quantity, Section 37 of NDPS Act ought to have been complied by the respondent. For the purpose of showing that in such cases jurisdiction under Section 88 of Cr.P.C cannot be exercised by the trial Court, by relying upon the judgment of the honourable Supreme Court in ***Pankaj Jain Vs. Union of India, (2018) 5 SCC 743***, observation made to the effect that Section 88 of Cr.P.C cannot be invoked as a matter of right as it is a discretionary power.



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4. The learned Additional Public Prosecutor would submit that since the respondent is facing charges for handling contra band in commercial quantities, the trial Court has no jurisdiction to exercise power under Section 88 of Cr.P.C. without complying Section 37 of NDPS Act.

5. Per contra, the learned Counsel for the respondent would submit that in the above said judgment, it has not been stated that even in respect of the offences under NDPS Act, the power under Section 88 of Cr.P.C. cannot be exercised.

6. I am not inclined to agree with the point argued by the respondent's Counsel. Even in the case of exercising jurisdiction under Section 88 of Cr.P.C, provision under Section 37 of NDPS Act must be complied. If not there will be no purpose for section 37 of NDPS Act, as rightly pointed out by the State. If such a power is fruly exercised by the trial court in respect of the special offences under the provision of NDPS Act, then accused who are absconding, who are not available for interrogation during the investigation period, may appear before the Special Court and seek exercise of power under Section 88 of Cr.P.C., will have serious consequences, which in effect will dilute the rigour and the object of Section 37 of NDPS Act. So, when



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we approach this issue from this angle, then consequential answer will be that the exercise made by the trial Court is absolutely without jurisdiction.

In the result, this Revision Case is liable to be allowed and accordingly allowed.

The trial Court is directed to secure the accused and remand him immediately pending trial. But this will not affect the right of accused to approach the concerned Court seeking regular bail. If it is filed before the trial Court, the trial Court may pass the orders on its own merits by strictly complying Section 37 of NDPS Act. Consequently, connected Miscellaneous Petition is closed.

12.12.2022

Index : Yes / No
Internet : Yes / No
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G.JLANGOVAN,J.



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To

1. The learned Special Court for EC and NDPS Cases,
Pudukkottai.
2. The Inspector of Police,
Pamban Police Station,
Ramanathapuram District
3. The Government Advocate (Crl.Side),
Madurai Bench of Madras High Court, Madurai.

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