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Crl.R.C.No.137 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.137 of 2023

R.Sivaraja

... Petitioner

Vs.

State rep. by the
Inspector of Police,
M-4, Redhills Police Station,
Chennai 600 057.
(in crime No.1402/2021)

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the order passed in Crl.MP No.4250/2022 dated 04.11.2022 on the file of the II Additional Special Judge for NDPS cases.

For Petitioner : Mr.V.K.Sathiamurthy

For Respondent : Mr.V.Meganathan

Government Advocate (Crl.Side)

ORDER



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This Criminal Revision Case has been filed to set aside the order passed in Crl.MP No.4250/2022 in C.C.No.41/2021 dated 04.11.2022 by the learned II Additional Special Judge, Special Court for exclusive Trial of Cases under NDPS Act, Chennai.

2. The case of the petitioner in brief is as follows:

The petitioner is A2 in a case registered by the respondent police in Crime No.1402/2021 in C.C.No.41 of 2022 on the file of Special Court for exclusive Trial of Cases under NDPS Act, Chennai. The petitioner was working as Police Constable in the police Department and he was implicated in this crime, based upon the confession statement given by A6 and A7. Admittedly, no contraband has been recovered from the physical possession of the petitioner. The respondent police arrested all the accused, except this petitioner, and filed a charge sheet, showing the petitioner as absconding accused. In such circumstances, the petitioner filed a petition in Crl.M.P.No.1989/2022 before the Trial Court, invoking Section 88 of Cr.P.C, seeking to get a bond from the petitioner. But, the Trial Court, vide



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order dated 01.06.2022, dismissed the petition, stating that from the petitioner no contraband had been recovered and further, the conditions envisaged under order 37 of NDPS Act, was not complied with and hence, declined to get bond from the petitioner under Section 88 of Cr.P.C. The petitioner again filed a petition in Crl.M.P.No.4250/2022 to permit him to appear before the Court in C.C.No.41/2022 and to execute a bond and sureties for his appearance. That application was also dismissed on 04.11.2022. Challenging the same, this Criminal Revision Petition has been filed.

3. The learned counsel for the petitioner submitted that Section 88 Cr.P.C. is akin to Section 70(2) Cr.P.C. and if any person alleged to be implicated as accused in a case, he should appear before the Court or through his Counsel and he should recall the warrant. Section 88 Cr.P.C. being akin with Section 70(2) Cr.P.C., a Magistrate has power to get bond from the petitioner under Section 88 Cr.P.C. and to release the petitioner. But the Trial Court, without considering the above legal aspect, has



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dismissed the petition filed by the petitioner and hence, the same has to be set aside.

4. The learned Government Advocate (Crl.Side) appearing for the respondent submitted that the Trial Court has rightly dismissed the petition. He further submitted that, on the date of presenting the petition, the petitioner has not appeared before the Trial Court and then only, he was shown as absconding accused in the final report. He further submitted that the petitioner either obtained anticipatory bail or appeared before the Court and hence, invoking Section 88 of Cr.P.C. will not come into play and hence, the Trial Court has rightly dismissed the petition and pleaded for dismissal of the Criminal Revision Case.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) and I have perused the materials on record.

6. A perusal of the records shows that the respondent police



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registered a case in Crime No.1402/2021 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of NDPS Act and the respondent police filed a Final Report against A1 to A7, which was taken on file as C.C.No.41/2022 the file of the Special Court under NDPS Act, Chennai. It is the contentions of the petitioner that he is arrayed as A2 in this case; at time of registering FIR, he was not shown as accused; and no contraband was recovered from him, however, only based on the confession statement of A6 and A7, he was implicated in this case. Further, while filing Final Report, the petitioner was shown as absconding accused and other accused were arrested and are in judicial custody. In such circumstances, the petitioner filed a petition in Crl.M.P.No.4250/2022 before the Trial Court, seeking permission to execute a bond and sureties for his appearance and it was dismissed. Challenging the above order, the petitioner filed the present Criminal Revision Petition.

7. At this juncture, it is worthwhile to extract the proviso to Section



70(2) of Cr.P.C. and Section 88 of Cr.P.C., which runs follows.

" 70. Form of warrant of arrest and duration.

(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is cancelled by the Court, which issued it, or until it is executed."

88. Power to take bond for appearance

When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial .

A plain reading of Section 70 Cr.P.C. shows that, it speaks about the Form of Warrant of arrest and duration of Warrant. Likewise, Section 88 Cr.P.C. speaks about the Power to take bond for appearance of a person. Further, the above Provisions clearly speak that the Court empowered to issue summon or warrant for appearance of any person, if the person not appeared before the Court and if necessary, the Court may require such person to execute a bond. The Proviso to Section 88 of Cr.P.C. does not give any



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right to any person insisting the Court to get bond from him for any offence, just for his appearance before the Court. The Court Officer has to decide, whether a warrant is competent under Section 88 of Cr.P.C. or not. Under these circumstances, I find no merit in the argument placed by the learned counsel for the petitioner. Hence, this Court is of the view that the order passed by the Trial Court does not warrant any interference by this Court and the Criminal Revision Case is liable to dismissed.

8. Accordingly, this Criminal Revision Petition is dismissed, confirming the impugned order passed by the Trial Court in Crl.M.P.No.4250/2022 dated 04.11.2022.

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Index: Yes/No
Internet: Yes/No
mst



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To
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1. The II Additional Special Judge, Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.
2. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

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