



Crl.R.C.No.116 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2023

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THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.R.C.No.116 of 2023

Dineshkumar

... Petitioner

Vs.

State by
The Inspector of Police,
P-2, Otteri Police Station,
Chennai.
Crime No.490 of 2022

... Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the order passed in Crl.M.P.No.5897/2022 dated 29.11.2022 by the learned Principal Special Judge, Special Court under EC NDPS Act Cases at Chennai by allowing this Criminal Revision Case.

For Petitioner : Mr.T.S.Srinivasan

For Respondent : Mr.V.Meganathan
Government Advocate (Crl.Side)



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ORDER

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This Criminal Revision Case is filed challenging the impugned order passed by the learned Principal Special Judge, Special Court under EC NDPS Act Cases, Chennai, in Crl.M.P.No.5897/2022 dated 29.11.2022.

2. The learned counsel for the petitioner submitted that the petitioner is A2 in the case registered by the respondent police in Crime No.490 of 2022 for the offences under Section 8(c) r/w.20(b)(ii)(c) of NDPS Act and he was arrested and remanded to judicial custody from 24.05.2022. The respondent police had not filed Final Report within the statutory period of 180 days as mandated under Section 167(2) of Cr.P.C. Hence, the petitioner filed statutory bail petition before the Trial Court in Crl.M.P.No5897/2022, which was dismissed on the ground that the respondent police filed a petition on 18.11.2022 under Section 36A(4) of NDPS Act, for extension of time for filing Final Report. It was unsustainable. Hence, seeking to set aside the impugned order passed by the Trial Court and to grant of statutory bail.



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3. The learned Government Advocate (Crl.Side) for the respondents submitted that the respondent police filed a petition under Section 36A (4) of NDPS Act, on 18.11.2022. As on date, no order has been passed in the petition for extension of time for filing the Final Report, but the petition filed to enlarge the petitioner on bail was dismissed.

4. I have considered the submissions made by the learned counsel and perused the materials on record.

5. On a perusal of the records, the fact reveals that the petitioner is A2 in Crime No.490 of 2022. The respondent police registered a case against the petitioner for the offences under Section 8(c) r/w.20(b)(ii)(c) of NDPS Act and he was arrested and remanded to judicial custody on 24.05.2022. The respondent police seized the contraband of 44 kgs of Ganja, which is of commercial quantity. After investigation, the respondent police has not filed Final Report within the statutory period of 180 days. Hence the petitioner filed a petition under Section 167(2) of Cr.P.C., in Crl.M.P.No.5897 of 2022



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for statutory bail on 22.11.2022. Further, the fact reveals that the respondent police filed a petition under Section 36A(4) of NDPS Act, only on 179th day i.e., on 18.11.2022 for extension of time for filing Final Report. The Trial Court refused to grant bail to the petitioner, since the extension petition filed by the respondent police has been pending. Therefore, on the date of deciding the bail petition filed by the petitioner, the time for filing Final Report was not extended. Therefore, in view of the dictum laid down by the Constitution Bench of our Honourable Supreme Court in the case of ***Sanjay Dutt Vs. State Through B.I.Bombay (II) (1994(5) SCC page 410)*** which has been reaffirmed by subsequent judgment of the Hon'ble Supreme Court in ***State of Madhya Pradesh Vs. Rustam***, reported in ***1995 SCC Crl.830***, if an accused filed a petition for statutory bail, on the expiry of the period contemplated under the proviso to sub Section (2) of Section 167 of Cr.P.C., and offering him to release on bail, no charge sheet had been filed by the respondent police, then the accused has to be released on bail and the right conferred upon him under the aforesaid provision of Cr.P.C., must be enforced. Merely dismissing such petition on the ground of receiving



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petition for extension of time and kept the same pending without passing any order on that petition, would frustrate the right of the accused. Therefore, in view of the above discussions, the order of the Trial Court is unsustainable and the same is liable to be set aside.

6. Accordingly, this ***Criminal Revision Case is allowed*** and the impugned order is set aside and the petitioner/accused is enlarged on statutory bail on the following conditions:

(i) The petitioner shall execute a bond for a sum of ***Rs.25,000/- (Rupees Twenty Five Thousand only)*** along with two sureties, each for a likesum to the satisfaction of the ***learned Principal Special Judge, Special Court under EC NDPS Act Cases, Chennai.***

(ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Trial Court may obtain a copy of their Aadhaar card or Bank pass book to ensure their identity: and



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(iii) The petitioner shall appear before the
Trial Court as and when required.

24.01.2023

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To

- 1.The Principal Special Judge, Special Court under EC & NDPS Act Cases,
Chennai
- 2.The Inspector of Police,
P-2, Otteri Police Station,
Chennai.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai-104.



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V.SIVAGNANAM, J.,

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