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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.O.P No.3228 of 2023

Lokesh, M/A-31-Y
Son of Jayachandran

.. Petitioner/Accused-4

.Vs.

State rep.by
The Inspector of Police
Denkanikottai Police Station
Krishnagiri District.
(Crime No.530 of 2021

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order in CMP.No.566 of 2022 dated 05.01.2023 passed by the Special Judge for EC/NDPS Act Cases, Salem and enlarge the petitioner on bail in Cr.No.530 of 2021 on the file of the Inspector of Police, Denkanikottai Police Station, Krishnagiri District.

For Petitioner : Mr.B.Vasudevan

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.side)



ORDER

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This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the statutory bail petition filed by the petitioner in CMP.No.566 of 2022, dated 05.01.2023.

2.Heard Mr.B.Vasudevan, learned counsel for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl.side) for respondent.

3.The respondent police registered an FIR in Crime No.530 of 2021 for offence u/s.8(c) r/w 20(b)(ii)(c), 209(i) and 25 of the NDPS Act, 1985 against four accused persons. The petitioner is arrayed as A.4.

4.In the course of investigation, the petitioner was arrested on 17.12.2021 and he was remanded to judicial custody. The matter involves commercial quantity and hence, the prosecution can file the final report until the expiry of 180 days. The 180th day expired on 14.06.2022. The petitioner filed a statutory bail petition u/s.167 (2) Cr.PC., on 17.6.2022 and on the same day, the respondent also filed a final report.



5.The statutory bail petition filed by the petitioner came to be dismissed by the Court below by an order dated 30.6.2022. Aggrieved by the same, the petitioner filed CrI.OP.No.29084 of 2022. This Court by an order dated 12.12.2022 set aside the order passed by the Court below on 30.6.2022 and remanded the matter back to the Court below to decide the case afresh on merits.

6.Pursuant to the above order, the Court below once again took up the petition in CMP.No.566 of 2022 and it was dismissed by an order dated 05.01.2023. Aggrieved by the same, the present criminal original Petition has been filed before this Court.

7.The respondent has filed a counter and has opposed the grant of statutory bail to the petitioner. The respondent has taken a stand that by the time, the petitioner filed the statutory bail Petition on 183rd day, final report was filed by the respondent and therefore, the petitioner is not entitled for statutory bail and the bail Petition of the petitioner can be considered only in the light of Section 37 of NDPS Act, 1985. The respondent therefore seeks for dismissal of this petition.



8. There is no dispute on the dates that have been mentioned supra. The petitioner was arrested on 17.12.2021 and the 180th day expired on 14.6.2022. The petitioner had filed the petition seeking for statutory bail on 17.6.2022 and on the same day, the respondent has also filed a final report. Thus, the respondent has filed the final report after the expiry of the 180th day and only on the 183rd day.

9. The issue that is involved in this case is squarely covered by the earlier order passed by this Court in CrI.OP(MD).No.18273 of 2021, dated 6.12.2021.

For proper appreciation, the relevant portions are extracted hereunder:

“25. As already pointed out, the investigating agency is duty bound to file their final report before expiry of 60 or 90 or 180 days, as the case may be, and on the next day i.e, 61st or 91st or 181st day only, the right to apply for statutory bail gets accrued to the accused and there must be some reasonable time limit enabling him to apply for the default bail. In Tamil Nadu, all the Courts shall ordinarily sit at 10.30.am. If the investigating agency files the charge sheet by 10.30 am, on the next day, after the expiry of the period prescribed under Section 167(2) Cr.P.C, can we say that the accused has lost his right of filing the petition for default bail subsequently, on the same day. In my considered view, the accused can exercise his right to apply the default bail on the whole day, on which, the indefeasible right to apply the statutory bail accrues to him.

26. In the case on hand, admittedly both the bail petition as well as the charge sheet were filed on 18.10.2021. As rightly contended by the learned counsel for the petitioner, the period of 180 days got expired



before 18.10.2021 and as such, the respondent police has failed to file the charge sheet within the prescribed period of 180 days. But on the other hand, the petitioner only after expiry of prescribed period of 180 days has filed the petition by invoking his indefeasible right under Section 36(A)(4) of NDPS Act r/w Section 167(2) of Cr.P.C. Hence, the observation of the learned trial Judge that she had verified with the concerned staffs of Efiling Section as to the time, at which the charge sheet was filed and that since the concerned staffs had informed that there was no practice to enter the time at which, the petitions or cases are being filed, pales into insignificance. Since the prosecution has laid the charge sheet, after expiry of period prescribed, the time of filing the charge sheet cannot be considered as a relevant criteria for deciding the statutory bail.

27.The Hon'ble Supreme Court in M.Ravindran's case, cited supra, while considering the points as to whether the indefeasible right accruing to the accused under Section 167(2) Cr.P.C gets extinguished by subsequent filing of an additional complaint by the investigating agency, after referring to the various decisions on the subject, has concluded as follows:

“18. Therefore, in conclusion:

18.1 Once the accused files an application for bail under the Proviso to Section 167(2) he is deemed to have ‘availed of’ or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under Section 167(2)Cr.P.C read with Section 36 A, NDPS Act upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigative agency.



18.2 The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the charge sheet or a report seeking extension of time by the prosecution before the Court; or filing of the charge sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.

18.3 However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a charge sheet, 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 Cr.P.C.

18.4 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.”

41. Considering the above, this Court has no hesitation to hold that the learned trial Judge has not dealt with the application filed under Section 167(2) Cr.P.C in proper legal perspective, but by considering the merits of the case dismissed the petition and as such, the impugned order is not good in law and the same is liable to be set aside”.

10. It is clear from the above judgment that where the bail Petition as well

as the charge sheet are filed on the same day and by then the statutory period



expires, the indefeasible right of the accused person to be released on bail starts kicking in. The same cannot be defeated on the ground that the final report was also filed on the same day when the statutory bail petition was filed. In this case, the petitioner became entitled for the statutory bail on 14.6.2022. The petition that was filed by him on 17.6.2022 is merely a reiteration of the right that had already accrued in favour of the petitioner on 14.6.2022. This right cannot be taken away by the prosecution by filing final report on 17.6.2022, which is the 183rd day.

11. In the light of the above discussion, the Court below was not right in dismissing the statutory bail petition and hence, the order passed by the Court below in CMP.No.566 of 2022, dated 05.01.2023 is hereby set aside.

12. The petitioner is enlarged on statutory bail subject to the following conditions:

i) The petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties (one surety shall be a blood relative) each for a like sum to the satisfaction of the learned Special Judge for EC/NDPS Act cases, Salem.



ii) the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity;

iii) the petitioner shall report before the concerned Court on every Monday at 10.30 a.m until further orders.

iv) the petitioner shall not tamper with evidence or witness.

v) the petitioner shall not abscond during trial.

vi) On breach of any of the aforesaid conditions, the learned 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]**.

vi) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

05.09.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

KP

Note: Issue order copy on **7.9.2023**



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To

- 1.The Inspector of Police
Denkanikottai Police Station
Krishnagiri District.
- 2.Special Judge for EC/NDPS Act Cases
Salem.
- 3.Central Prison, Salem.
- 3.The Public Prosecutor,
High Court of Madras,
Madras.



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N. ANAND VENKATESH., J.
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