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Crl.RC No.261 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 16.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

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Babu

... Petitioner

Vs.

The State: Rep. by the Inspector of Police,
T-8, Guduvancherry Police Station,
Tambaram City, Chengalpattu District,
Crime No.313 of 2022

... Respondent

Prayer: Criminal Revision Petition filed under Section 397(1) & 401 Cr.P.C. to set aside the order in Crl.M.P.No.583/2023 by the Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai on 03.02.2023 and enlarge the petitioner on bail in Crime No.313 of 2022 on the file of the respondent, pending investigation.

For Petitioner : Mr.K.Karthik

For Respondent : Mr.V.Meganathan,

Government Advocate (Crl. Side)



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ORDER

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This petition has been filed to set aside the order passed in Crl.M.P.No.583/2023 by the Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai on 03.02.2023 and enlarge the petitioner on bail in Crime No.313 of 2022.

2. The case of the prosecution is that the petitioner/A1 along with other accused were found in possession of 1.222 kgs of Hahish Oil and 100 grams of Ganja and hence, the respondent police registered a case in Crime No.313/2022 for the offence punishable under Sections 8(c) and 20(b)(ii)(B) of NDPS Act against them and also arrested them on 02.08.2022 and remanded to judicial custody.

3. The petitioner filed a petition in Crl.M.P.No.583/2023 before the Trial Court under Section 167(2) of Cr.P.C. to grant statutory bail to him. The above petition was dismissed by the Trail Court, Vide order dated 03.02.2023. Challenging the above order, the present Criminal Revision Case has been filed.



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4. The learned counsel for the petitioner submitted that the petitioner was arrested and remanded to judicial custody on 02.08.2022. He further submitted that the respondent police has not completed the investigation within the statutory period and hence, the petitioner filed a petition before the Trial Court, after completion of 182 days from the date of arrest, seeking Statutory bail. However, without considering the legal aspects, the Trial Court has erred in dismissing the bail petition and hence, the above order has to be set aside. He also submitted that the co-accused were granted bail by this Court and hence the petitioner may also be granted bail.

5. Mr.V.Meganathan, learned Government Advocate (Crl.Side) takes notice for the sole respondent and submitted that the investigating officer has not completed the investigation within the statutory period and hence, he filed a petition in Crl.M.P.No.540/2023 to extend time for filing report and it is pending for consideration before the Court.



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

7. A perusal of the records show that the respondent police registered a case in Crime No.313/2022 for the offence punishable under Sections 8(c) and 20(b)(ii)(B) of NDPS Act against four persons and the petitioner is arrayed as A1 and the petitioner and other accused were arrested and remanded to judicial custody on 02.08.2022. The investigating officer has not filed final report, within the statutory period of 180 days, as mandated under Section 167(2) of Cr.P.C. The records further reveal that the respondent police filed a petition under Section 36A(4) of NDPS Act in Crl.M.P.No.540/2023 to extend time for filing final report and it was also pending at the time of passing impugned order before the Court.

8. The Trial Court, in its order, observed as follows.

" this court is inclined to consider the petition under Section 36A(4) of NDPS Act, which is



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filing for further extension of statutory period of completing the investigation. At the same time, the petition which is filed under Section 167 Cr.P.C. is liable to be dismissed".

Hence, it is clear that the Trial Court, without passing any order in the petition in Crl.M.P.No.540/2023, for extending time for completion of investigation, has dismissed the Statutory Bail Petition filed by the petitioner, which is unsustainable.

9. At this juncture, it is worthwhile to point out that, as per 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 re-affirmed by subsequent judgment of the Supreme Court in **State of Madhya Pradesh Vs. Rustam**, reported in **1995 SCC Crl.830**, if an accused filed an application, on the expiry of the period contemplated under the proviso to sub section (2) of Section 167 Cr.P.C., and offering him to release him on bail, no charge sheet had been filed by the respondent



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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. Therefore, in view of the above discussions, the order of the trial court is unsustainable and the same is liable to be set aside.

10. Accordingly, this Criminal Revision Case is allowed by setting aside the impugned order passed by the Trial Court in Crl.M.P.No.583 of 2023 in Crime No.313/2022, dated 03.02.2023 with the following conditions.

(i) The petitioner is directed to be enlarged on bail on condition that the petitioner *shall execute a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties each for a like sum to the satisfaction of the learned the Judicial Magistrate-II, Chengalpattu.*

(ii) the petitioner and the sureties shall affix their photographs and left thumb impression in the surety bond and the Court concerned may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;



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(iii) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(iv) **the petitioner shall report before the respondent police as and when required for interrogation.**

(v) the petitioner shall not abscond either during investigation or 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 has 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]***; and;

(vii) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

16.02.2023

Note: Issue order copy on 20.02.2023

Index:Yes/No
Internet:Yes/No
mst



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WEB COPY **To**

1. The Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai.
2. The Judicial Magistrate No.II, Chengalpattu.
3. The Superintendent, Central Prison, Puzhal.
4. The Public Prosecutor, High Court, Madras.



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V.SIVAGNANAM, J.

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