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Crl.R.C.No.241 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.02.2023

PRONOUNCED ON: 02.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.241 of 2023

Harikrishnan @ Hari ... Petitioner
/vs/

Inspector of Police
T-3 Korattur Police Station,
Chennai.(Cr.No.1166 of 2021) ... Respondent

PRAYER : Criminal Revision Case has been filed under Sections 397 & 401 of Code of Criminal Procedure to set aside the order passed in Crl.M.P.No.344 of 2023 dated 02.02.2023 in C.C.No.122 of 2022 by the learned Principal Special Judge for NDPS Act, Chennai by allowing this revision petition.

For Petitioner ... Mr.T.S.Sasikumar
For Respondent ... Mr.V.Meganathan
Govt.Advocate (Crl.side)

ORDER

Challenging the impugned order dated 02.02.2023 passed in Crl.M.P.No.344 of 2023 in C.C.No.122 of 2022 by the learned Principal Special Judge for EC & NDPS Act, Chennai, the present criminal revision case has been filed.



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2.The fact of the case is that the petitioner is the 6th accused in crime No.1166 of 2021 in C.C.No.122 of 2022 on the file of the Principal Special Court under EC & NDPS Act, Chennai. The accused persons including the petitioner viz., A1 to A7 were arrested for having illegal possession of 390 Nos of LSD Stamps, 5 grams of MDMA Powder, 0.525 grams of Resin and 0.298 grams of OG ganja. From the petitioner (A6), the respondent police seized 5 grams of MDMA powder weighing at 4.988 grams, 10 numbers of LSD stamp weighing at 0.193 grams and 0.525 grams of resin. Therefore, he was arrested and remanded to judicial custody on 14.12.2021. This petitioner filed a petition under Section 167(2) Cr.P.C for statutory bail in Crl.M.P.SR.No.3147 of 2022 that was returned on 13.06.2022 on the ground that the charge sheet has already been filed on 03.06.2022. Again, this petitioner filed another petition for statutory bail in Crl.M.P.No.344 of 2022 and the same was dismissed on 02.02.2023 by the learned Principal Special Judge for EC & NDPS Act, Chennai on the ground that in this case, the seized contraband is of commercial quantity. Charge sheet has also been filed, which was taken on file in C.C.No.122 of 2022 and the charges also framed against the accused on 19.01.2023 and the case is posted for trial



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and the same is under challenge.

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3.The learned counsel for the petitioner submitted that the petitioner was arrested and remanded to judicial custody by the respondent police on 14.12.2021 for having an illegal possession of 10 LSD stamps, 5 grams of MDMA and 0.525 grams of Ganja resin and registered a case in crime No.1166 of 2021 for the offences punishable under Sections 8(c) r/w 22 (c) and 29(c) of the NDPS Act and the contraband were seized.

4.The learned counsel for the petitioner further submitted that the first accused filed a statutory bail petition under Section 167(2) Cr.P.C. and bail was granted on 11.01.2023 and under the same ground, this petitioner is also filed a statutory bail under Section 167(2) Cr.P.C. but the trial Court without assigning any reasons dismissed the bail petition filed by this petitioner on 02.02.2023. Therefore, the impugned order is unsustainable, thus, he pleaded to grant statutory bail.

5.The learned Government Advocate (Crl.side) for the respondent



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submitted that at the time of filing the statutory bail petition by A1, charge sheet was not filed, which was not taken on file by the trial Court. Hence, his statutory bail petition was allowed but while this petitioner (A6) filed the statutory bail petition under Section 167(2) Cr.P.C, charge sheet has been filed, which was taken on file in C.C.No.122 of 2022 and charges also framed against the petitioner and the case is posted for trial. Therefore, the trial Court rightly dismissed the statutory bail petition on 02.02.2023 and there is no ground to interfere with the impugned order and no merit in the criminal revision case, thus pleaded to dismiss the criminal revision.

6.I have considered the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate (Crl.side) for the respondent.

7.On perusal of the records, it is seen that the respondent police registered a case in Crime No.1166 of 2021 against this petitioner (A6) and 6 others for the offence under Section 8(c) r/w.22(c), 29(1) of NDPS Act. Further, from this petitioner, 5 grams of MDMA powder weighing at 4.988 grams, 10 numbers of LSD stamp weighing at 0.193 grams and 0.525



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grams of resin were seized by the respondent police. It is admittedly a commercial quantity. Further, the petitioner filed a statutory bail petition on 13.06.2022 but it was returned by the trial Court in Crl.M.P.Sr.No.3147 of 2022. Subsequently, the petitioner filed another bail petition under Section 167(2) Cr.P.C., which was taken on file in Crl.M.P.No.344 of 2023 on 24.01.2023 and the same was dismissed on 02.02.2023 on the ground that on the date of consideration of the bail petition, the charge sheet has been filed, which was taken on file in C.C.No.122 of 2022 and charges also framed against the accused persons and the case is posted for trial. This factual aspect is not in dispute.

8.In view of the settled principle expressed by the Hon'ble Supreme Court in *Sanjay Dutt Vs. State through C.B.I. Bombay (II)* reported in *(1994) 5 Supreme Court Cases 410* that the right of the accused for bail under Section 167(2) Cr.P.C. does not survive or remain enforceable on the challan being filed. Further, it is cleared by the Hon'ble Supreme Court in *Hitendra Vishnu Thakur case 1994 SCC (4) 602* that the right is enforceable by the accused only from the time of depart till the filing of the



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challen and does not survive or remain enforceable on the challan being filed. Further, the Hon'ble Supreme Court in ***State of M.P. Vs. Rustam and others*** reported in ***1995 Supp (3) Supreme Court Cases 221*** held that the right to compulsive bail does not survive after filing of the challan and the Court must examine the availability of the right of compulsive bail on the date it is considering the question of bail and not barely on the date of presentation of the petition for bail. Therefore, in view of the above legal position, the trial Court considered the statutory bail petition and dismissed the same on 02.02.2023. As on the date of consideration of bail, in this case, a final report has been filed, which was taken on file in C.C.No.122 of 2022 and charges have been framed against the accused persons and it is posted for trial. Therefore, I find no merit in the contention of the learned counsel for the petitioner.

Accordingly, the criminal revision case is dismissed.



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Index : Yes/No

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To

1.The learned Principal Special Judge
for EC & NDPS Act, Chennai,

2.Inspector of Police
T-3 Korattur Police Station,
Chennai.(Cr.No.1166 of 2021)

3.The Public Prosecutor,
High Court, Madras.

V.SIVAGNANAM ,J.

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Pre-delivery order made in
Crl.R.C.No.241 of 2023

02.03.2023