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Crl.RC No.288 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 20.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.RC No.288 of 2023

Ranjithnag

... Petitioner

Vs.

State: Rep. by the Inspector of Police,
Sriperumbuthur Police Station,
Kancheepuram District,
(Crime No.487/2022)

... Respondent

Prayer: Criminal Revision Petition filed under Section 397 & 401 Cr.P.C. to set aside the order passed in Crl.M.P.No.582/2023 dated 08.02.2023 by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai and enlarge the petitioner on bail by allowing the Criminal Revision Case.

For Petitioner : Mr.T.S.Sasikumar

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.582/2023 dated 08.02.2023 by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai and enlarge the petitioner on bail.

2. The case of the prosecution is that the petitioner was found in possession of 21 kgs of Ganja and hence a case in Crime No.487/2022 was registered against him for the offence punishable under Sections 8(c) r/w 20(b)(ii)(C) of NDPS Act and he was arrested and remanded to judicial custody on 02.08.2022. Further, the contraband was seized and it was produced before the Court in A.No.868/2022 and then it was sent to Lab for chemical analysis.

3. The petitioner filed a petition in Crl.M.P.No.582/2023 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 Trial Court, Vide order dated 08.02.2023. 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 181 days from the date of arrest, seeking Statutory bail. However, without considering the legal aspects, the Trial Court has dismissed the statutory bail petition on 08.02.2023, for the reason that the petition under Section 36A(4) of NDPS Act, filed by the respondent/police seeking extension of time to file final report, is pending for consideration. Therefore, the above impugned order passed by the Trial Court is against the principles of law and the same is liable be set aside.

5. Mr.V.Meganathan, learned Government Advocate (Crl.Side) takes notice for the sole respondent and fairly submitted that the investigating officer has not completed the investigation within the statutory period. He further submitted that the investigating officer filed a petition in Crl.M.P.No.567/2023 on 27.01.2023 before the Trial



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Court to extend time for filing final report and it was allowed on 15.02.2023. He also produced the above said order before this Court.

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.487/2022 against the petitioner for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C) of NDPS Act and the petitioner was arrested and remanded to judicial custody on 02.08.2022. The investigating officer has not filed the 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.567/2023 on 27.01.2023 to extend time for filing final report and it was not decided by the Trial Court, on the date of deciding the statutory bail petition filed by the petitioner on 08.02.2023 and the above petition was allowed only on 15.02.2023, i.e. subsequent to the



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dismissal of statutory bail petition, which is against the principles of law.

8. 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 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.



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9. Accordingly, this Criminal Revision Case is allowed by setting aside the impugned order passed by the Trial Court in Crl.M.P.No.582 of 2023 in Crime No.487/2022, dated 08.02.2023 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 Judicial Magistrate, Sriperumbuthur.*

(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;

(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;



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(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.

20.02.2023

Index:Yes/No
Internet:Yes/No
mst

To

1. The Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai.
2. The Judicial Magistrate, Sriperumbuthur.
3. The Superintendent, Central Prison, Puzhal, Chennai.
- 4.The Public Prosecutor, High Court, Madras.



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V.SIVAGNANAM, J.

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