



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.03.2023

CORAM

THE HONOURABLE Mr. JUSTICE V. SIVAGNANAM

Crl.R.C.No.299 of 2023

Manikandan

... Petitioner

Vs.

The State of Tamil Nadu,
Rep by the Inspector of Police,
N-1, Royapuram Police Station,
Chennai

... Respondent

Criminal Revision filed under Section 397 r/w 401 of Cr.P.C., to set aside the order passed in Crl.M.P.No.3335 of 2022, dated 10.08.2022 on the file of the Principal Special Court for NDPS Act Cases at Chennai and enlarge the petitioner on mandatory bail under Section 167(2) Cr.P.C in Crime No.37 of 2022, pending on the file of the respondent police.

For Petitioner : Mr.M.S.Ramesh

For Respondent : Mr.R.Vinothraja, GA, (crl.side)

ORDER

This criminal revision has been filed challenging the order passed in Crl.M.P.No.3335 of 2022, dated 10.08.2022 by the learned Principal Special Judge for NDPS Act, Chennai, in and by which, the learned



Principal Special Judge has dismissed the bail application filed by the petitioners under section 167(2) Cr.P.C r/w 36(A) of NDPS Act.

2.The Learned Counsel for the petitioner contended that the petitioner is the 3rd accused and the respondent police registered the case against this petitioner along with other persons in Crime No.37 of 2022 for offences under Sections 8 (c) r/w 20(b)(ii)(c) and 29(1) of NDPS Act and he was arrested and remanded to judicial custody from 14.01.2022. The allegation is that the contraband of 160 kgs of Ganja has been seized from the accused. As mandated under Section 167(2) of Cr.P.C, the limitation period for filing final report is within 180 days, so far, no final report has been filed before the statutory period. Hence, the petitioner is entitled for statutory bail. Therefore, the petitioner filed an application before the trial Court in Crl.M.P.No.3335 of 2022, which was dismissed on the ground that the respondent police filed an application on 08.07.2022 i.e.,176th day, before completion of 180 days, under Section 36A(4) of NDPS Act, for extension of time for filing final report. The extension petition was permitted by this Court on the same day. Therefore, the trial Court ordered extension of time only on 11.08.2022. Therefore, the observation made by



the Court in the dismissal order is unsustainable. Hence, this petition has been filed seeking to set aside the impugned order passed by the trial Court and to enlarge the petitioner on bail under Section 167 (2) of Cr.P.C.

3.The Learned Government Advocate (Crl.Side) for the respondent submitted that the petitioner was arrested by the respondent police in Crime No.37 of 2022 for offences under Sections 8 (c) r/w 20(b)(ii)(c) and 29(1) of NDPS Act. Further, he submitted that within the statutory period of 180 days, the respondent police has not filed the final report, but he filed an application under Section 36A(4) of NDPS Act, on 08.07.2022 before the completion of 180 days. Though the trial Court in the impugned order mentioned that the extension of time was ordered on the same day itself, but the order was passed only on 11.08.2022.

4.Heard the Learned Counsel for the petitioner and the Learned Government Advocate (Crl.Side) for the respondent. Perused the records.

5.On perusal of records, the fact reveals that the petitioner is the 3rd accused in Crime No.37 of 2022. The respondent police registered a case



against the petitioner for the offences under Sections 8(c) r/w 20(b)(ii)(c) and 29(1) of the NDPS Act and seized the contraband of 160 kgs ganja, from the accused persons on 14.01.2022 and thereafter, they arrested and remanded the accused to judicial custody on 14.01.2022. Further, on perusal of the records, it is noticed that the statutory bail application was dismissed on 10.08.2022 in Crl.M.P.No.3335 of 2022. The extension of time application in Crl.M.P.No.3306 of 2022 was granted on 11.08.2022, i.e, on the next day of dismissal of statutory bail application. This Court, vide order dated 06.03.2023, called for an explanation from the learned Special Judge, Principal Special Court under EC & NDPS Act, Chennai, since in the impugned order, it is recorded that the extension of time application was granted on the same day itself, i.e. 10.08.2022. In this regard, the learned Judge has submitted his remarks, vide proceedings dated 20.03.2023 in Dis.No.1877/2023, wherein, it has been stated as follows:-

“Though two Crl.M.P.No.3335/2022 u/s.167 Cr.P.C. and Crl.M.P.No.3306/2022 u/s.36(A) NDPS Act were taken into consideration on the very same day and had instructed my steno to allow 36(A) NDPS Act petition and dismiss 167(2) Cr.P.C. simultaneous manner. Without



WEB COPY



knowing the significant, my steno had typed the 167 Cr.P.C as not maintainable on 10.08.2022 and on 11.08.2022, the 36(A) NDPS Act petition in Crl.M.P.No.3306/2022 was allowed. So as on date on 10.08.2022, there is no such order in 36(A) petition. Hence, order as such passed in 167 Cr.P.C on 10.08.2022 without pronouncing order in 36A petition as not maintainable is a pure error done by this court. I have not done wantonly. I tender my apology. Due to pressure of work, this mistake had occurred.”

6.From the above remarks, it is clear that though the learned Principal Special Judge, Special Court under EC and NDPS Act, Chennai has stated that on the same day, i.e, 10.08.2022, he disposed both applications, i.e. Crl.M.P.No.3335 of 2022 and Crl.M.P.No.3306 of 2022, but the records would not support the averments stated in the impugned order. It is also admitted that extension of time application was allowed on 11.08.2022.

7.In view of Section 167(2) of Cr.P.C., final report has to be filed within 180 days. Since the respondent police has not filed the final report within 180 days, the petitioner filed an application under Section 167(2) of Cr.P.C, r/w 36(A) of NDPS Act, in Crl.M.P.No.3335 of 2022 for statutory



bail and the same was dismissed as not maintainable by the trial Court on 10.08.2022 by giving a reason that the respondent police filed a petition in Crl.M.P.No.3306 of 2022 under Section 36A(4) of NDPS Act seeking further extension of time for completion of investigation is ordered. Therefore, the observation made by the trial Court in Crl.M.P.No.3335 of 2022 is incorrect and the petitioner is entitled for statutory bail.

8.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 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 for statutory bail, 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 final report 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 application on the ground of receiving petition for extension of time and kept the same pending without passing any order on



that application 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.

9. Accordingly, the Criminal Revision Case is allowed 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 Principal Special Court under EC & NDPS Act, 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
- (iii) The petitioner shall appear before the trial Court as and when required.

27.03.2023

srn

Index: Yes/No

Internet: Yes/No



To

WEB COPY

- 1.The Principal Special Judge for NDPS Act, Chennai
- 2.The Inspector of Police,
N-1, Royapuram Police Station,
Chennai
- 3.The Public Prosecutor, High Court, Madras.
4. The Superintendent, Central Prison,
Puzhal, Chennai.



WEB COPY

Crl.R.C.No.299 of 2



V. SIVAGNANAM, J.

srn

Crl.R.C.No.299 of 2023

27.03.2023