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Crl.RC No.286 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 16.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.RC No.286 of 2023

Sivachandran

... Petitioner

Vs.

The State: rep. by
The Inspector of Police,
B-1, North Beach Police Station,
Chennai,
Cr no.285 of 2022

... Respondent

Prayer: Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. to set aside the order dated 08.02.2023 made in Crl.M.P.No.609 of 2023 passed by the learned Principal Special Judge, EC & NDPS Court, Chennai and to allow the above Criminal Revision Petition.

For Petitioner	: Ms.L.Srileka
For Respondent	: Mr.V.Meganathan, Government Advocate (Crl. Side)

ORDER

This petition has been filed to set aside the order dated 08.02.2023 made in Crl.M.P.No.609 of 2023 passed by the learned Principal Special Judge, EC & NDPS Court, Chennai and to allow the



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above Criminal Revision Petition.

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2. The respondent police registered a case in Crime No.285 of 2022 for the offences punishable under Sections 9A, 22(c) and 25(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, NDPS Act) against the petitioner herein, who is A2. The case of the prosecution is that, on 30.07.2022, the petitioner along with another accused, were found in illegal possession of 500 grams of Methamphetamine and the contraband was seized by the respondent police. The petitioner was remanded to judicial custody on 30.07.2022. Since, within the statutory period of 180 days, the respondent Police had not filed a final report, the petitioner had filed a statutory bail application on 27.01.2023 i.e., after completion of 182 days. In the meanwhile, the respondent Police has also filed an application in Crl MP No.520 of 2023 on 24.01.2023 under Section 36A(4) of the NDPS Act, for extension of statutory period of investigation and the same is pending before the trial Court.

3. The learned counsel for the petitioner submitted that, the



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investigating officer has not completed the investigation and failed to file the final report, within the statutory period of 180 days and hence, as per Section 167(2) of Cr.P.C., it is mandated to grant statutory bail to the petitioner. He further submitted that, since the respondent police failed to file the final report, within the statutory period, the petitioner is entitled for statutory bail. However, without considering the legal aspects, the Trial Court has erred in dismissing the bail petition in Crl.M.P.No.609 of 2023, vide order dated 08.02.2023 and hence, the above order has to be set aside while granting the bail to the petitioner.

4. Mr.V.Meganathan, learned Government Advocate (Crl.Side) takes notice for the sole respondent and submitted that the respondent Police filed a petition under Section 36A(4) of the NDPS Act for further extension of statutory period for investigation and the same is pending before the trial Court and hence strongly objected for granting bail to the petitioner.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the sole respondent and



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6.A perusal of the records reveals that the respondent police registered a case in Crime No.285 of 2022 for the offences punishable under Sections 9A, 22(c) and 25(A) of the NDPS Act against the petitioner herein, who is A2. The case of the prosecution is that, on 30.07.2022, the petitioner along with another accused were found in illegal possession of 500 grams of Methamphetamine and the contraband also seized by the respondent police. The petitioner was remanded to judicial custody on 30.07.2022. Admittedly, within the statutory period of 180 days, the respondent Police had not filed a final report, which prompted the petitioner to move the statutory bail application on 27.01.2023 i.e., after completion of 182 days. However, the Trial Court has dismissed the bail petition in Crl.M.P.No.609 of 2023, vide order dated 08.02.2023, which is unsustainable. The statutory bail application has to be disposed of simultaneously along with the extension application. The statutory bail application cannot be dismissed on the ground that extension petition was filed for further extension of statutory period for investigation. The petitioner has



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stated that since the respondent police failed to file the final report, within the statutory period, the petitioner is entitled for statutory bail.

7. 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 Hon'ble 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, if 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.

8. Accordingly, this Criminal Revision Case is allowed by setting



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aside the impugned order passed by the Trial Court in Crl.M.P.No.609 of 2023 in Crime No.285 of 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 Principal Special Judge, EC & NDPS Court, Chennai-104.

(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 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;

(vi) on breach of any of the aforesaid conditions, the learned



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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

Index:Yes/No
Internet:Yes/No
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Issue order copy on 21.02.2023

To

1. The Inspector of Police,
B-1, North Beach Police Station,
Chennai.

2.The Public Prosecutor, High Court, Madras.



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V.SIVAGNANAM, J.

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