



Crl.R.C.No.300 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.02.2023

PRONOUNCED ON: 02.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.300 of 2023

R.Rakesh

...

Petitioner

/vs/

State represented by

The 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 r/w 401 Code of Criminal Procedure to set aside the order passed in Crl.M.P.No.279 of 2023 dated 02.02.2023 in C.C.No.122 of 2022 pending on the file of the Principal Special Court for EC & NDPS Act at Chennai.

For Petitioner

...

Mr.K.Anandha Raja

For Respondent

...

Mr.V.Meganathan
Govt.Advocate (Crl.side)



Crl.R.C.No.300 of 2023

ORDER

Challenging the impugned order dated 02.02.2023 passed in Crl.M.P.No.279 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.

2.The fact of case is that the petitioner is the 5th 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. From the petitioner (A5) along with A4, the respondent police seized 10 numbers of LSD Stamps and they were arrested and remanded to judicial custody on 12.12.2021. This petitioner filed a petition under Section 167(2) Cr.P.C for statutory bail in Crl.M.P.SR.No.3135 of 2022 that was returned on 10.06.2022 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.279 of 2023, which 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



CrI.R.C.No.300 of 2023

framed against the accused on 19.01.2023 and the case is posted for trial and the same is under challenge.

3.The learned counsel for the petitioner submitted that the petitioner is the 5th accused in the case registered by the respondent police in Crime No.1166 of 2021 for the offences under Section 8(c), 22(c) and 29(1) of Narcotic Drugs & Psychotropic substances Act, 1985. The petitioner/accused was arrested and remanded to judicial custody on 12.12.2021. The respondent police had not filed a final report within the statutory period as contemplated under Section 167(2) Cr.P.C. Hence, the petitioner filed statutory bail petition before the trial Court and the trial Court dismissed the bail petition and passed the impugned order on the ground that the final report report has been filed and the case has been taken on file in C.C.No.122 of 2022 and charges have also been framed against the petitioner on 19.01.2023 but the final report was not filed before filing of the bail petition. The co-accused was released on statutory bail. Hence, the impugned order may be set aside and granted statutory bail to the petitioner also.



Crl.R.C.No.300 of 2023

4.The learned Government Advocate (crl.side) for the respondent submitted that the seized contraband is of commercial quantity and Section 37 attracts and the investigation has been completed and the charge sheet has also been filed before the trial Court, which was taken on file in C.C.No.122 of 2022 and the case is posted for trial. Therefore, the petitioner is not entitled to grant statutory bail and thus, pleaded to dismiss the revision case.

5.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.

6.On perusal of the records, it is seen that the respondent police registered a case in Crime No.1166 of 2021 against this petitioner (A5) and 6 others for the offence under Section 8(c) r/w.22(c), 29(1) of NDPS Act. Further, from this petitioner, 10 numbers of LSD Stamps were seized by the respondent police. It is admittedly a commercial quantity. Further, the petitioner filed a statutory bail petition in Crl.M.P.Sr.No.3135 of 2022 but it was returned by the trial Court on 10.06.2022 stating that charge sheet



CrI.R.C.No.300 of 2023

has been filed on 03.06.2022. Subsequently, the petitioner filed another bail petition under Section 167(2) Cr.P.C., which was taken on file in CrI.M.P.No.279 of 2023 on 25.01.2023 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.

7.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 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



CrI.R.C.No.300 of 2023

right to compulsive bail does not survive after filing of the challen 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 positions, 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.

Index : Yes/No
Internet : Yes/No
sms

02.03.2023

To

Page 6 of 8



CrI.R.C.No.300 of 2023

1.The Principal Special Court for EC & NDPS Act
at 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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Crl.R.C.No.300 of 2023

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Pre-delivery order made in
Crl.R.C.No.300 of 2023

02.03.2023