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CrI.R.C.No.447 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.NO.447 OF 2023

T.Dubash Shankar @ Shankar

.. Petitioner

Vs

Union of India,
Narcotic Control Bureau through
Intelligence Officer,
Narcotic Control Bureau,
Chennai Zonal Unit,
Chennai.

... Respondent

Prayer: Criminal Revision Petition filed under section 397 r/w.401 Cr.P.C. to set aside the order passed in CrI.M.P.no.620 of 2023 on 17.02.2023 by the learned I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and enlarge the petitioner on statutory bail in R.R.No.17 of 2021 on the file of the respondent police.

For Petitioner : Mr. N. Nishar Ahamed

For Respondent : Mr. N.P.Kumar,
Spl. Public Prosecutor, NCB Cases



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ORDER

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Challenging the order passed by the I Additional Special Court for Exclusive trial of Cases under NDPS Act, Chennai on 17.02.2023 in Crl.M.P.No.620 of 2023 dismissing the statutory bail application of the petitioner, the present Criminal Revision is filed.

2. The learned counsel for the petitioner submitted that the petitioner/A1 is charged for the alleged offence under section 8(c), r/w.20(B)(ii)(C), 27A, 28 and 29 of NDPS Act in R.R.No.17 of 2021 and he was remanded to judicial custody on 19.07.2021. The respondent police has not filed final report within the statutory period of 180 days as required under section 167(2) of Cr.P.C. They filed defective charge sheet on 12.1.2022 before the I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and the same has been returned by the court below and on that day SR.No.164/2022 was assigned. Subsequently, it was numbered and taken on file as C.C.No.82 of 2022 on 16.03.2022 after a long period. Since the petitioner had filed statutory application before filing final report, he is entitled for statutory bail, but the court below without considering the above aspect dismissed the petitioner's application seeking



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statutory bail. Hence, the impugned order is unsustainable and the same is liable to be set aside. Thus he prayed for enlarging the petitioner on statutory bail.

3. The learned Govt. Advocate (Crl.side) submitted that on the date of passing impugned order, the case has been taken on file in C.C.No.82 of 2022. This fact itself is recorded in the impugned order. Therefore, the petitioner is not entitled for statutory bail. Thus,he pleaded to dismiss the criminal revision.

4. Heard the arguments advanced on both sides and perused the impugned order and other material evidence available on record..

5. On perusal of records, the fact reveals that the petitioner is an accused /A1 in C.C.No.82 of 2022 on the file of Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai. The respondent police has registered a case against this petitioner along with another person for having illegal possession of 327.870 kgs. of Ganja. The petitioner/accused was arrested and remanded to judicial custody on 19.07.2021 and the respondent police filed a final report before that court



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on 12.1.2022. Since it was defective charge sheet, only SR.No.164 of 2022 was assigned on that date. But any how, further records reveal that on 16.03.2022, final report has been filed and it was taken on file by the Court below in C.C.No.82 of 2022. The statutory bail application filed by the petitioner has been considered by the learned trial Judge on 17.2.2023 ,i.e., subsequent to taking cognizance of the case.

6. The crucial date for consideration for deciding whether the petitioner is entitled for statutory bail is the date of consideration of the bail application and not filing of final report by the respondent police. As per the principle 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**, it is settled law that the date of consideration of bail application is a crucial date to decide whether the person is entitled for statutory bail or not. In this case, after taking cognizance of the case, the statutory bail application has been considered and decided on 17.02.2023. Applying the principle laid down by the



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Hon'ble Supreme Court in the cases cited supra, the impugned order passed by the court below is just and fair, and therefore, this court is of the view that the impugned order passed by the court below does not warrant interference. Therefore, this Criminal Revision is liable to be dismissed as devoid of merits and the same is hereby dismissed.

14.03.2023

msr

Index: yes/no

Internet:yes/no

To

1. The I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.
2. The Public Prosecutor, High Court, Chennai.
3. The Intelligence Officer,
NCB, Chennai.

V. SIVAGNANAM, J.

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