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Crl.R.C.No.341 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.R.C.No.341 of 2023

Elumalai

...

Petitioner

/vs/

The State

Rep.by Inspector of Police,
V-4, Rajamangalam Police Station,
Chennai.

Crime No.602/2022

...

Respondent

PRAYER : Criminal Revision Case has been filed under Section 397 & 401 Cr.P.C. to set aside the order of the learned Principal Special Judge under EC & NDPS Act, Chennai-600 104 in Crl.M.P.No.341 of 2023, allowing this revision petitioner, granting bail to the revision petitioner enlarging the revision petitioner on bail.

For Petitioner

...

Mr.J.Sudhakaran

For Respondent

...

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

ORDER

The Criminal Revision Case has been filed challenging the impugned order dated 08.02.2023 passed in Crl.M.P.No.341 of 2023 by the Principal



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Special Court under EC & NDPS Act, Chennai.

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2.The learned counsel for the petitioner contended that the respondent police has registered a case in Crime No.602/2022 against this petitioner for the offence punishable under Section 22(c) of the Narcotic Drugs & Psychotropic Substances Act, 1985. In this regard, the respondent police arrested the petitioner and remanded him to Judicial custody on 16.07.2022. In respect of the same, the respondent police have to file a final report within 180 days, but they failed to file a final report. Therefore, the petitioner filed a statutory bail petition in Crl.M.P.No.341 of 2023 under Section 167 (2) Cr.P.C. before the Principal Special Court under EC & NDPS Act. That petition was dismissed by the Trial Court on 08.02.2023 on the ground that the petition in Crl.M.P.No.244 of 2023 filed under Section 36A(4) of the NDPS Act for extension of time for investigation and for filing a final report on 179th day i.e. 10.01.2023 is pending. Under these circumstances, the petitioner is entitled for statutory bail. Hence, the present Criminal Revision Case.



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3.The learned Government Advocate (Crl.side) filed counter and objected to grant bail. He further contended that the petition for extension of time for filing the final report filed by the respondent police in Crl.M.P.No.244 of 2023 is pending before the Trial Court for filing of counter.

4.I have considered the submissions of the parties and perused the materials available on record.

5.On a perusal of the records, the fact reveals that on 16.07.2022 at about 05.15 hrs, the respondent police received a secret information about illegal sale of Narcotic Substance i.e., Alprazolam at Fish Market nearby Retteri Junction. Immediately, the respondent police rushed to the scene of occurrence along with the police team. At that time, the accused/Elumalai with plastic bag tried to escape from that place. Immediately, the police team caught hold of the accused who tried to flee away from the place. After adopting a proceeding, they searched the said plastic bag and found Alprazolam weighing 250 grams, which comes under commercial quantity.



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Subsequently, the respondent police have taken 2 sample packets containing 10 grams each. Then remaining Alprozolam were seized under cover of seizure mahazar in the presence of police witnesses. A case has been registered in Crime No.602 of 2022 by the respondent police, V-4, Rajamangalam Police Station under Section 22(c) of NDPS Act, 1985 against the accused on 16.07.2022 and took up the case for investigation. The respondent police arrested the accused and produced before the XIII Metropolitan Magistrate, Egmore, Chennai and remanded him to judicial custody. Admittedly, the petitioner was arrested and remanded to judicial custody on 16.07.2022. Within a period of 180 days i.e., 11.01.2023, the respondent police ought to have filed the final report, but they have failed to file same. Therefore, the petitioner filed a statutory bail petition in Crl.M.P.No.341 of 2023 on 20.01.2023 and the same was dismissed by the Trial Court on 08.02.2023 on the ground that the respondent police filed a petition in Crl.M.P.No.244 of 2023 on 10.01.2023 for seeking extension of time for investigation and for filing a final report, which is still pending before the Trial Court. The details of the events are listed as below:-



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S.No.	Events	Dates
1	Date of arrest	16.07.2022
2.	Completion of 180 th day	11.01.2023
3.	36(A)(iv) petitioner filed for 180 days	10.01.2023 on 179 th day
4.	Bail 167 Cr.P.C in Crl.M.P.No.341/2023	Filed on 20.01.2023 Dismissed 08.02.2023

As on date no order has been passed by the Trial Court. So without taking any decision upon the extension of time for investigation, dismissing the statutory bail petition is unsustainable and contrary to the principle laid down 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*** and ***State of M.P. Vs. Rustam and others*** reported in ***1995 Supp (3) Supreme Court Cases 221***. Under these circumstances, the petitioner is entitled to statutory bail.

6. Accordingly, the impugned order dated 08.02.2023 passed in Crl.M.P.No.341 of 2023 by the learned Principal Special Judge under EC & NDPS Act, Chennai, is set aside and Statutory Bail is granted to the petitioner and the petitioner is ordered to be released on bail on executing a



bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) with two sureties for a sum of Rs.1,00,000/- (Rupees One Lakh only) each, before the Principal Special Judge under EC & NDPS Act, Chennai on the following conditions;

(a) 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;

(b) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(c) the petitioner shall appear before the respondent police daily at 10.30 a.m., until further orders;

(d) the petitioner shall not abscond either during investigation or trial;

(e) 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 have 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;

(f) if the accused thereafter absconds, a fresh FIR can



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be registered under Section 229-A IPC.

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7. With the above directions, this Criminal Revision Case is allowed.

Index : Yes/No

28.02.2023

Internet : Yes/No

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To

- 1.The Principal Special Judge
NDPS Cases, Chennai.
- 2.The Superintendent, Central Prison, Puzhal, Chennai.
- 3.The Inspector of Police,
V-4, Rajamangalam Police Station,
Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

V.SIVAGNANAM ,J.



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