



Crl.O.P.No.5142 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 31.03.2023

Pronounced on : 06.04.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.5142 of 2023

Harikrishnan @ Hari,
S/o.Murugan (Late),
No.27/B, Vadivel Mudaliyar Street,
Venkatapuram, Ambattur,
Chennai – 600 053.

... Petitioner/Accused

/versus/

The Inspector of Police,
T-3, Korattur Police Station,
Chennai.
(Crime No.1166 of 2021)

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 439 of Cr.P.C., pleaded to enlarge the petitioner on bail pending trial in C.C.No.122 of 2022 on the file of the Principal Special Judge, NDPS Act, Chennai.

For Petitioner : Mr.T.S.Sasikumar

For Respondent : Mr.S.Udaya Kumar,
Government Advocate (Crl.Side)



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ORDER

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The petitioner, who was arrested for the alleged offences under Section 8(c) r/w 22(c), 29(i) of NDPS., in Crime No.1166 of 2021, on the file of the respondent police, seek bail.

2. This is 5th petition filed by the accused seeking bail. All his earlier four attempts failed and for the 5th time he has taken out a different plea that, he along with 1st accused filed petition for bail under Section 167(2) of Cr.P.C, since investigation did not complete within the statutory period of 180 days and final report presented before the trial Court was defective and not taken on file. Since the bail petition of the 1st accused was reconsidered by the trial Court after the intervention of the High Court and bail granted same order to be extended to him also.

3. According to the learned counsel for the petitioner the 1st accused filed bail petition under Section 167(2) of Cr.P.C on the ground of default on 13.06.2022, it was returned on 14.06.2022 stating that, final report was already filed. Therefore, bail petition under Section 167(2) of Cr.P.C is not maintainable.



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When this matter was taken up before this Hon'ble High Court by the 1st accused in Crl.O.P.No.22914 of 2022, High Court directed the trial Court *vide* order dated 20.12.2022 to consider the issue as to whether the final report filed on 03.06.2022 was free from defect and contain all the documents relied by the prosecution. On perusal of the charge sheet, the trial Court found that the statement of the defacto complainant/Mr.Gopinath was not filed along with the final report filed on 03.06.2022 and it was filed only on 24.06.2022 and thereafter, final report was taken on file by the trial Court on 24.06.2022. The trial Court has held that though the final report with defect filed on 03.06.2022 not returned but undoubtedly, it was a defective charge sheet and the defect was cured only on 24.06.2022 and thereafter, same was taken on file. Hence, the 1st accused is entitle for bail on default. The petitioner herein seeks bail on parity.

4. The Learned counsel appearing for the petitioner herein citing the circumstance under which A1 was granted bail, submitted that, this petitioner along with A1 filed bail petition under Section 167(2) of Cr.P.C in S.R.No.3143 and same was returned by the Registry stating that, final report was filed. However, final report filed defectively and the defect was cured only on



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24.06.2022. Therefore, he is entitled for default bail *par* with A1 though he has not approached the High Court and got a direction as in the case of A1.

5. The Learned Government Advocate for the respondent/State submitted that even assuming that the petitioner sought for default bail on expiry of statutory period of 180 days since it was not numbered and returned, he cannot claim the advantage inured to him under Section 167(2) of Cr.P.C. Since final report taken on file by Special Court on 24.06.2022.

6. The order of the Special Court dated 11.01.2023 granting default bail to A1 produced for consideration and also the bail petition filed by this petitioner under Section 167(2) of Cr.P.C on 13.06.2022 in S.R.No.3147, which was not numbered but returned on the premise that, final report filed. The learned counsel for the petitioner rely upon these documents to draw parity.

7. This petitioner was arrested and remanded to judicial custody on 14.12.2021. His right to seek default bail got accrued on expiry of 180 days since commercial quantity of Narcotic Drug been recovered from his possession. From



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the records we find though final report was filed on 03.06.2022, it was a defective final report. The defect was cured and taken on file only on 24.06.2022. The earlier bail petitions filed by the accused was dismissed on other aspects but this point was raised for the first time by the petitioner.

8. The infallible right seeking bail under Section 167 (2) of Cr.P.C accrued to the petitioner on 13.06.2022 on the expiry of 180 days. In fact, he has filed petition for bail on 13.06.2022 along with A1 and other accused. All those petitions were returned without numbering stating that final report already filed. The record reveals that final report filed was defective and the defect was cured much later and it was taken on file only on 24.06.2022. Since A1 pursued his matter and filed petition before the High Court and his case was considered by the trial Court as per the direction of the High Court and he was granted default bail *vide* order dated 11.01.2023.

9. This Court is of the view that though this petitioner has not approached the High Court along with A1, the principle followed by the trial Court for granting bail to A1 also applies to this accused. Hence, the petitioner is to be



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released on bail under Section 167 (2) of Cr.P.C.

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10. It is not a case where final report filed after expiry of 180 days but the petitioner did not avail his right before filing final report. It is a case that the petitioner exercised his right under Section 167 (2) of Cr.P.C by filing petition for bail but the trial Court has wrongly returned the petition under the impression that final report already filed but the said final report filed on 03.06.2022 was a defective report and it was not taken on file till the defect was cured on 24.06.2022.

11. In view of the above submissions and taking note of the fact that A1 has already been granted bail on condition, this Court is of the view that the petitioner is entitled for bail par with A1. Accordingly, the petitioner is ordered to be released on bail subject to the following conditions;

(a) 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 **Principal Special Judge, NPDS Act, Chennai.**



(b) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) The petitioner is directed to report before the trial Court on all hearing dates without fail;

(d) The petitioner shall not abscond either during trial;

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

(f) on breach of any of the aforesaid conditions, the learned Judicial 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]***;



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(g) if the accused thereafter absconds, a fresh FIR
can be registered under Section 229A IPC.

12. Accordingly, the *Criminal Original Petition is allowed.*

06.04.2023

Index :Yes
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
bsm

To,

1. The Principal Special Judge, NDPS Act, Chennai.
2. The Inspector of Police, T-3, Korattur Police Station, Chennai.
3. The Central Prison, Puzhal-II, Chennai.
4. The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

bsm

Pre-Delivery order made in
CrI.O.P.No.5142 of 2023

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