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Crl.R.C.No.433 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2023

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THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.RC.NO.433 OF 2023

Siddharth

... Petitioner

Vs.

The Inspector of Police
T14, Pallikaranai Police Station
Chennai.
Crime No.779/2022

... Respondent

PRAYER: Criminal Revision filed under Section 397 read with 401 of Cr.P.C., to set aside the order dated 03.02.2023 in Crl.M.P.No.608/2023 passed by the Principal Special Court for NDPS Act Cases at Chennai and seeking to enlarge the petitioner on mandatory bail under Section 167(2) Cr.P.C. in Crime No.779/2022 pending on the file of respondent police.

For Petitioner	:	Ms.L.Srileka
For Respondent	:	Mr.R.Vinothraja Government Advocate (Crl. Side)



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Crl.R.C.No.433 of 2023

ORDER

This Criminal Revision has been filed challenging the order passed in Crl.M.P.No.608 of 2023, dated 03.02.2023, by the learned Principal Special Judge for EC & NDPS Act, Chennai, in and by which, the learned Principal Special Judge has dismissed the bail application filed by the petitioner under section 167(2) Cr.P.C.

2.The learned counsel for the petitioner submitted that the petitioner is the first accused. The respondent police had registered a case in Crime No.779/2022 on 01.08.2022 for the offences punishable under Section 8(c) read with 22(C), 22(b) and 29(1) of the Narcotic Drug and Psychotropic Substances Act, 1985 (NDPS) and the petitioner is in judicial custody from 02.08.2022. The limitation period for filing final report or charge sheet is 180 days, but the respondent police did not file any final report within 180 days. Therefore, as per section 167(2) Cr.P.C., which confers right on the accused persons to be released on bail on the expiry of the period contemplated under such section, the petitioner has filed his bail petition before the trial court on 31.01.2023, but the trial



Crl.R.C.No.433 of 2023

court has dismissed the said bail petition on the ground hat the respondent police had filed a petition seeking extension of time for filing final report in Crl.M.P.No.529 of 2023, but in the said petition, no order was passed by the trial court granting extension of time for filing final report. In the circumstances, dismissing the statutory bail application on the ground that merely the respondent police have filed a petition seeking extension of time for filing final report, will take away the right of the petitioner/accused. Therefore, the impugned order is unsustainable and the same is liable to be set aside. Thus, he seeks to set aside the impugned order and grant bail to the petitioner.

3.The learned Govt. Advocate (Criminal Side) submitted that the respondent police filed a petition in Crl.M.P.No.529 of 2023 under Section 36A(4) of NDPS Act for extension of time for filing final report. He fairly conceded that no order was passed on that petition while passing the impugned order on 03.02.2023 and the same was allowed only on 16.03.2023. He would further submit that since the application for extension of time is filed within 180 days, the impugned order is



sustainable and hence, there is no reason to interfere with the order passed by the trial court and pleaded to dismiss the criminal revision petition.

4.I have considered the submissions made on either side and perused the entire materials available on record.

5.On a perusal of records, the fact reveals that on 01.08.2022 at about 10.20 hours, when Tr.P.Thirunavukarasu, Sub-Inspector of Police was in station duty, at that time received a secret information about illegal sale of Narcotic Substances at Kovilambakkam Viduthalai Nagar Play Ground nearby bus stand, after receiving the secret information, he along with his Police Team went to the scene of occurrence. AT that time, the accused persons namely Siddharth / A1, Jagadeeswarn/A2, Ragul/A3, Udhyan/A4, Adhithya/A5, Barves Ushan/A6 and Ragulkrishna/A7 are sitting on that place, immediately the police parties caught and hold of the accused persons and enquired them. On searching the said accused persons (A1 to A7) and found in possession of LSD Stamp – 45 Nos, Methamphetamine – 4 tablets, weighing 4 grams, Eastacy pill tablet-1, Nitroxit tablet-1, used tab strip-21 nos. and injection needles – 10 nos.



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from them. The above contrabands and properties were seized from the accused persons (A1 to A7) under the cover of seizure mahazar in the presence of witnesses. Thereafter, the Sub-Inspector of Police arrested the accused persons and recorded confession statements. After that they arrested the accused persons along with the seized contrabands taken to the respondent police. Based on the above, a case was registered in T14, Pallikaranai Police Station, in Crime No.779/2022, under Sections 8(c), 22(c), 22(b), 29(1) of NDPS Act, 1985 against the accused on 01.08.2022. and the petitioner was remanded to judicial custody on 02.08.2022. Admittedly, the petitioner is in judicial custody since 02.08.2022.

6.As mandated under Section 167(2) of Cr.P.C., the final report should be filed by the respondent police within a period of 180 days from the date of arrest. Since the police failed to file final report within 180 days , the petitioner filed a petition on 31.01.2023 seeking statutory bail after completion of 180 days. The respondent police had also filed an application under section 36 A(4) of NDPS Act in Crl.M.P.No.529 of 2023 before the trial court seeking extension of time for filing final report. Admittedly, the said petition was filed before



Crl.R.C.No.433 of 2023

completion of 180 days. Unfortunately, the trial court has not passed any order upon such extension petition filed by the respondent police. On verification of facts, it is further revealed that the trial court passed its order on the application for extension of time only on 16.03.2023. Therefore, it is clear that on the date of completion of statutory period, time for filing final report was not extended by the trial court .

7.The legislative mandate confers right on the accused to be released on bail on the expiry of the period contemplated under the proviso to subsection (2) of Section 167 Cr.P.C., if the accused offering himself to be released on bail. In this case, the accused were remanded to judicial custody on 02.08.2022. Till the completion of 180 days, the respondent police did not file final report. It is seen that the respondent police filed a petition for extension of time for filing final report which was received by the trial court in Crl.M.P.No.529 of 2023, but in that petition, no order was passed as to whether the time for filing final report is extended or rejected. In these circumstances, the trial court without passing any order on time extension petition, rejected the bail petition filed by the petitioner/accused. Further, on perusal of records, it reveals



that the trial court allowed the petition in Crl.M.P.529 of 2023 seeking extension of time only on 16.03.2023. Therefore, on the date of deciding bail application filed by the petitioners, the time for filing final report was not extended. Therefore, in view of 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 Supreme Court in ***STATE OF MADHYA PRADESH VS. RUSTAM, [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, 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. Merely dismissing such application on the ground of receiving petition for extension of time and kept the same pending without passing any order on that application, would frustrate the right of the accused. Therefore, in view of the above discussions, the order of the trial court is unsustainable and the same is liable to be set aside.



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Crl.R.C.No.433 of 2023

8. Accordingly, the Criminal Revision Case is allowed and the impugned order passed by the Principal Special Judge under EC and NDPS Act, Chennai is set aside and the petitioner / accused is enlarged on statutory bail on the following conditions;

(i) 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 for Special Court under EC and NDPS Act, Chennai.

(ii) The petitioner and sureties shall affix their photographs and Left Thumb Impression in the surety bond and the said Court may obtain a copy of their Aadhaar card or Bank pass Book to ensure their identity; and

(iii) The petitioner shall appear before the respondent police on the first day of every English calendar month at 10.30 a.m. until further orders.

21.03.2023

Index :Yes/No
Internet :Yes/No
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CrI.R.C.No.433 of 2023

To
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- 1.The Principal Special Judge
Principal Special Court under EC & NDPS Act
Chennai – 104.
- 2.The Inspector of Police
T14, Pallikaranai Police Station
Chennai.
- 3.The Public Prosecutor
High Court of Madras.
- 4.The Superintendent
Central Prison
Puzhal, Chennai.



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Crl.R.C.No.433 of 2023

V. SIVAGNANAM, J.

TK

CRL.RC.NO.433 OF 2023

21.03.2023