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Crl.R.C.No.671 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.04.2023

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THE HONOURABLE Mr. JUSTICE V. SIVAGNANAM

Crl.R.C.No.671 of 2023

Mohammed Zoha

... Petitioner

Vs.

The State Represented by
the Inspector of Police,
Pallikaranai Police Station,
Chennai District.
Crime No.872 of 2022
Respondent

...

Criminal Revision filed under Section 397 and 401 of Cr.P.C., to set aside the order passed in Crl.M.P.No.1447 of 2023 on 06.03.2023 passed by the learned Principal Special Court EC & NDPS Act, Chennai.

For Petitioner : Mr.S.Karthikeyan for
Mr.M.Kaveriselvam

For Respondent : Mr.R.Vinoth Raja,
Government Advocate (Crl. Side)

ORDER

This criminal revision has been filed challenging the order passed in Crl.M.P.No.1447 of 2023, dated 06.03.2023 by the learned Principal Special Judge, Principal Special Court under 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.

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2. The learned counsel appearing for the petitioner contended that the respondent police registered a case against the petitioner in Cr.No.872 of 2022 for the offences punishable under sections 8(c), r/w. 22(C) of NDPS Act, 1985. The petitioner was arrested on 29.08.2022 and remanded to judicial custody. After the expiry of statutory period of 180 days, the respondent police, has not filed a final report. Hence, the petitioner filed statutory bail application before the trial court on 02.03.2023. The respondent Police also filed an application under Section 36A(4) of the NDPS Act CrI.M.P.No.1161 of 2023 on 20.02.2023 for extension of statutory period for investigation. The trial court, by passing the impugned order dated 06.03.2023, dismissed the statutory bail petition and allowed the extension application filed by the respondent Police. It is the grievance of the petitioner that the learned Principal Special Judge, while deciding the application for extension of statutory period of investigation on 06.03.2023, the accused was not heard before the Court either physically or virtually. In the absence of the accused, mere allowing the extension petition is a violation of principle laid down by the Hon'ble Supreme Court reported in **2022 SCC Online SC 1290 in Jigar alias Jimmy Pravinchandra Adatiya Vrs.**



State of Gujarat. Therefore, the petitioner is entitled for statutory bail. Thus,

he seeks to set aside the impugned order and grant bail to the petitioner.

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3. The learned Government Advocate (Crl.side) has objected for grant of bail and contended that on the date the accused was represented by the counsel. Therefore the presence of the accused either physically or virtually is not warranted. Therefore there is no illegality in the order dated 06.03.2023. Hence, the petitioner is not entitled for statutory bail and the learned Government Advocate (Crl. Side) 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, it is seen that the respondent police registered a case against the petitioner in Cr.No.872 of 2022 for the offence punishable under sections 8(c), r/w. 22(C) of NDPS Act, 1985 for illegal possession of LSD stamps intoxicated drug, pursuant to which, the respondent police arrested the petitioner and remanded him to judicial custody on 29.08.2022. Since the respondent police has not filed final report within 180 days as mandated under section 167(2) of Cr.P.C., the petitioner has filed an application in



Crl.M.P.No.1447 of 2023 on 02.03.2023. The prosecution has filed an application in Crl.M.P.No.1161 of 2023 seeking time for completing investigation under section 36(A)(4) of NDPS Act on 20.02.2023 before completion of 180 days. On hearing both the applications, the learned Principal Judge on 06.03.2023, allowed the application filed for extension of statutory period for investigation and dismissed the bail application filed by the accused.

6. No doubt while allowing the application filed seeking for extension time for investigation in Cr.M.P.No.1161 of 2023 on 06.03.2023, the accused was not produced either physically or virtually before the Court. It was not disputed that the accused was represented by the counsel. The Supreme Court after considering 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** finally concluded that the failure to procure the presence of the accused either physically or virtually before the Court and the failure to inform him about the application filed by the prosecution for extension of time for investigation, is a mere procedural irregularity and the same is a violation of the principal laid down by the Hon'ble Supreme Court in **2022 SCC Online SC 1290** in **Jigar alias Jimmy Pravinchandra Adatiya Vrs. State of Gujarat**. For



the sake of better understanding the relevant paragraphs are extracted hereunder:

“36. The logical and legal consequence of the grant of extension of time is the deprivation of the indefeasible right available to the accused to claim a default bail. If we accept the argument that the failure of the prosecution to produce the accused before the Court and to inform him that the application of extension is being considered by the Court is a mere procedural irregularity, it will negate the proviso added by sub-section (2) of [Section 20](#) of the 2015 Act and that may amount to violation of rights conferred by [Article 21](#) of the Constitution. The reason is the grant of the extension of time takes away the right of the accused to get default bail which is intrinsically connected with the fundamental rights guaranteed under [Article 21](#) of the Constitution. The procedure contemplated by [Article 21](#) of the Constitution which is required to be followed before the liberty of a person is taken away has to be a fair and reasonable procedure. In fact, procedural safeguards play an important role in protecting the liberty guaranteed by [Article 21](#). The failure to procure the presence of the accused either physically or virtually before the Court and the failure to inform him that the application made by the Public Prosecutor for the extension of time is being considered, is not a mere procedural irregularity. It is gross illegality that violates the rights of the accused under [Article 21](#).

37. An attempt was made to argue that the failure to produce the accused will not cause any prejudice to him. As noted earlier, the grant of extension of time to complete the investigation takes away the indefeasible right of the accused to apply for default bail. It takes away the right of the accused to raise a limited objection to the prayer for the extension. The failure to produce the accused before the Court at the time of consideration of the application for extension of time will amount to a violation of the right



guaranteed under [Article 21](#) of the Constitution. Thus, prejudice is inherent and need not be established by the accused.

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38. The learned Additional Solicitor General relied upon the decision of this Court in the case of *Narender G. Goel*⁹. The issue involved in that case was not of extension of time for completion of the investigation. The issue generally discussed therein is about the right of hearing of the accused at the stage of the investigation. His reliance on the decision of this Court in the case of *Surendra Pundlik Gadling*¹⁰ will not help him at all. This was a case where the accused was not only produced before the Court but he was provided a copy of the application for extension of time. The grievance of the accused was that time of only one day was granted to contest the application. This contention was rejected.

39. In the facts of the cases in hand, when the Special Court considered the reports submitted by the Public Prosecutor for grant of extension of time, the presence of the appellants was admittedly not procured before the Special Court either personally or through video conference. It is also an admitted position that information about the filing of such reports by the Public Prosecutor was not provided to the accused. It is mentioned in the impugned judgment that due to COVID – 19, it was not permissible to physically produce the accused before the Special Court. Moreover, the accused were in different prisons and, therefore, the production through video conference would have been very slow. Assuming that the process of production would have been slow, that is no excuse for not procuring the presence of the accused through video conference. Nothing is placed on record either before this Court or High Court to show that as per the Standard Operating Procedure applicable to the concerned Court in January 2021 when the impugned orders were passed granting the extension, it was not permissible to physically produce the accused before the Special Court. There is no material placed on record to show that technical reasons/difficulties prevented the prosecution from producing the accused before the Special Court through video conference. It is



not possible to accept that in January 2021 in the Court at Rajkot in the State of Gujarat, there was any connectivity issue. In fact, admittedly, no such case was pleaded before the High Court in the pleadings of the respondents.”

7. In view of the above principles laid down by the Hon'ble Supreme Court, the mere allowing of the extension application on 06.03.2023 without the presence of the accused either physically or virtually, is not in accordance with law. Therefore, the impugned order passed by the trial judge is unsustainable and the same is liable to be set aside. In view of the foregoing discussions, the impugned order is set aside and statutory bail is granted to the petitioner.

8. Accordingly, the impugned order dated 06.03.2023 passed in Crl.M.P.No.1447 of 2023 by the learned Principal Special Judge, Principal Special Court 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.25,000/- (Rupees Twenty Five Thousand only) with two sureties for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each, before the Principal Special Court 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;



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

(c) the petitioner to appear before the respondent police on the first working day of every month 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 be registered under Section 229-A IPC.

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

24.04.2023

vum

Index:Yes/No

Speaking order / Non speaking order

Note: Issue copy on 25.04.2023



To

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



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V. SIVAGNANAM, J.

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