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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.06.2023

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THE HONOURABLE Mr. JUSTICE V. SIVAGNANAM

Crl.R.C.No.1141 of 2023

Subramani

... Petitioner

Vs.

The State of Tamil Nadu,
Rep by the Inspector of Police,
N-1, Royapuram Police Station,
Chennai

... Respondent

Criminal Revision filed under Section 397 r/w 401 of Cr.P.C., to set aside the order passed in Crl.M.P.No.3312 of 2022, dated 27.07.2022 on the file of the Principal Special Court for NDPS Act Cases at Chennai and enlarge the petitioner on mandatory bail under Section 167(2) Cr.P.C in Crime No.37 of 2022, pending on the file of the respondent police.

For Petitioner : Mr.D. Manoj Kumar

For Respondent : Mr.R.Vinothraja, GA, (crl.side)

ORDER

This criminal revision has been filed challenging the order passed in Crl.M.P.No.3312 of 2022, dated 27.07.2022 by the learned Principal Special Judge for NDPS Act, Chennai, in and by which, the learned



Principal Special Judge has dismissed the bail application filed by the petitioners under section 167(2) Cr.P.C r/w 36(A) of NDPS Act.

2.The Learned Counsel for the petitioner contended that the petitioner is the 4th accused and the respondent police registered the case against this petitioner along with other persons in Crime No.37 of 2022 for offences under Sections 8 (c) r/w 20(b)(ii)(c) and 29(1) of NDPS Act and he was arrested and remanded to judicial custody from 14.01.2022. The allegation is that from the accused persons, the respondent police has seized 160 kgs of Ganja. As mandated under Section 167(2) of Cr.P.C, the limitation period for filing final report is within 180 days, so far, no final report has been filed before the statutory period. Hence, the petitioner is entitled for statutory bail. Therefore, the petitioner filed an application before the trial Court in Crl.M.P.No.3312 of 2022, which was dismissed on the ground that the respondent police filed an application on 08.07.2022 i.e.,176th day, before completion of 180 days, under Section 36A(4) of NDPS Act, for extension of time for filing final report and the extension petition was permitted by this Court on the same day.



However, the trial Court passed an order in petition seeking extension of time only on 11.08.2022. Therefore, the observation made by the Court in the dismissal order is unsustainable. Hence, this petition has been filed seeking to set aside the impugned order passed by the trial Court and to enlarge the petitioner on bail under Section 167 (2) of Cr.P.C.

3.The Learned Government Advocate (Crl.Side) for the respondent submitted that the petitioner was arrested by the respondent police in Crime No.37 of 2022 for offences under Sections 8 (c) r/w 20(b)(ii)(c) and 29(1) of NDPS Act. Further, he submitted that within the statutory period of 180 days, the respondent police has not filed the final report, but he filed an application in Crl.M.P.No.3306 of 2022 seeking extension of statutory period of investigation for a period of 60 more days under Section 36A(4) of NDPS Act, on 08.07.2022 before the completion of 180 days. Though the trial Court in the impugned order mentioned that the extension of time was ordered on the same day itself, but Crl.M.P.No.3306 of 2022 was ordered only on 11.08.2022.



4. Heard the Learned Counsel for the petitioner and the Learned Government Advocate (Crl.Side) for the respondent. Perused the records.

5. On perusal of records, the fact reveals that the petitioner is the 4th accused in Crime No.37 of 2022. The respondent police registered a case against the petitioner along with other accused for the offences under Sections 8(c) r/w 20(b)(ii)(c) and 29(1) of the NDPS Act and seized the contraband of 160 kgs ganja, from the accused persons on 14.01.2022 and thereafter, they were arrested and remanded the accused to judicial custody on 14.01.2022. Further, on perusal of the records, it is noticed that the statutory bail application was dismissed on 27.07.2022 in Crl.M.P.No.3312 of 2022. The extension of time application in Crl.M.P.No.3306 of 2022 was granted on 11.08.2022, i.e, after the dismissal of statutory bail application.

6. Perusal of records would reveal that though the learned Principal Special Judge, Special Court under EC and NDPS Act, Chennai has stated that on the same day, i.e, on 08.07.2022, Crl.M.P.No.3306 of



2022 seeking extension of statutory period was permitted, he disposed the said application only on 11.08.2022 and learned Govt. Advocate (crl.side) also admitted that extension of time application was allowed on 11.08.2022.

7.In view of Section 167(2) of Cr.P.C., final report has to be filed within 180 days. Since the respondent police has not filed the final report within 180 days, the petitioner filed an application under Section 167(2) of Cr.P.C, r/w 36(A) of NDPS Act, in Crl.M.P.No.3312 of 2022 for statutory bail and the same was dismissed as not maintainable by the trial Court on 27.07.2022 by giving a reason that the respondent police filed a petition in Crl.M.P.No.3306 of 2022 under Section 36A(4) of NDPS Act seeking further extension of time for completion of investigation is ordered. Therefore, the observation made by the trial Court in Crl.M.P.No.3312 of 2022 is incorrect and the petitioner is entitled for statutory bail.



8. 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, reported in 1995 SCC Crl.830*, if an accused filed an application for statutory bail, 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 final report 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.



9. Accordingly, the impugned order dated 27.07.2022 passed in Crl.M.P.No.3312 of 2022 by the Principal Special Judge, Principal Special Court under EC and 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) along with two sureties, each for a likesum to the satisfaction of Principal Special Judge, Principal Special Court under EC and 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 above said court on the first working day of every month at 10.30 am., until further orders;

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



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(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.

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

28.06.2023

msr

Index:Yes/No

Internet:Yes/No

To

1.The Principal Special Judge for NDPS Act, Chennai

2.The Inspector of Police,
N-1, Royapuram Police Station,
Chennai



3. The Public Prosecutor, High Court, Madras.

4. The Superintendent, Central Prison,
Puzhal, Chennai.

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V. SIVAGNANAM, J.

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