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Crl.R.C.No.905 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Crl.R.C.No.905 of 2023

S.Sathish

.. Petitioner

Vs

State Rep. by
The Inspector of Police,
D-1, Thiruthani Police Station,
Thiruthani – 631 209.
Crime No.136/2022.

... Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w.401 Cr.P.C. to call for the the records and papers relating to Crl.M.P.No.912 of 2023 on the file of the Principal Special Court under EC & NDPS Act, Chennai and set aside the order dated 24.02.2023.

For Petitioner : Mr.M.G.Martin manivannan

For Respondent : Mr.R.Vinothraja,
Government Advocate (Crl. side)

ORDER

This Criminal Revision case has been filed challenging the order of dismissal of statutory bail petition, dated 24.02.2023 passed by the Principal Special Court under EC & NDPS Act, Chennai.



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2. The learned counsel for the petitioner submitted that the respondent police has registered a case against the petitioner along with other accused persons in Crime No.136 of 2022 for the offence under Sections 8 [c] read with 20 [b] [ii] [C], 25 and 29[1] of the Narcotic Drugs and Psychotropic Substances Act, 1985 for illegal possession of 80 kgs of Ganja. The petitioner was arrested and remanded to judicial custody on 04.04.2022. The learned counsel further submitted that since the respondent Police has not filed final report within the statutory period of 180 days, the petitioner/accused filed a petition in Crl.M.P.No.5162 of 2022, 24.02.2023 for statutory bail. The prosecution has also filed a petition in Crl.M.P.No.4725 of 2022 under Section 36 [A] [4] of NDPS Act before 180 days for extension of statutory period to complete the investigation. The same was taken on file on 04.07.2022. The learned counsel further submitted that the learned Judge dismissed the statutory bail petition in Crl.M.P.No.5162 of 2022 on 02.11.2022 on the ground that the extension of statutory period has been filed by the prosecution. However, the learned judge has not passed any order in Crl.M.P.No.4725 of 2022.



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3. Thereafter once again the petitioner has filed another statutory bail under Section 167 (2) Cr.P.C., in Cr.M.P.No.912 of 2023. Similarly, the prosecution has also filed another petition for extension of time for further investigation under section 36[A] of NDPS Act in Crl.M.P.No.6581 of 2023. Though the petitioner filed the statutory bail application on 13.02.2023 which has been posted for hearing on the next day i.e., 14.02.2023 and on subsequent date i.e., on 15.02.2023, the learned Judge allowed the extension applications filed by the prosecution in Crl.M.P.Nos.4725 and 6581 of 2022 and dismissed the statutory bail petition filed by the petitioner in Crl.M.P.No.912 of 2023 on 24.02.2023. Hence, the said decision of the Judge is contrary of the principles laid down by the Honourable Supreme Court in ***Judgebir Singh @ Jasbir Singh Samra @ Jasbir & Ors. Vrs. National Investigation Agency in Criminal Appeal No. 1012 of 2023*** wherein the Hon'ble Supreme Court granted statutory bail in favour of the petitioner by setting aside the impugned order. The relevant paragraph is extracted hereunder for better appreciation:

76. As is evident from the chronology of dates and events referred to in the earlier part of our judgment, the



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final report under Section 173(2) of the CrPC was filed in the Court of SDJM, Ajnala on 15.11.2019. 15.11.2019 was the 161st day from the date of arrest of two of the appellants before us, namely, Jasbir Singh and Varinder Singh. They were the first to be arrested on 08.06.2019. The Punjab Police applied to the Court of the Additional Sessions Judge, Amritsar, for extension of time to complete the investigation invoking the proviso to Section 43D(2)(b) of the UAPA on 04.09.2019. When this application for extension of time was filed only two days were left for 90 days to expire. This is suggestive of the fact that the 91st day would have fallen on 07.09.2019. What is important to highlight is that the Additional Sessions Judge, Amritsar, looked into the extension application dated 04.09.2019 filed by the Punjab Police and ultimately, extended the time limit vide its order dated 17.09.2019 i.e., on the 101st day. By the time, the Additional Sessions Judge, Amritsar, passed an order extending the time, the period of 90 days had already expired. Indisputably, there was no chargesheet before the Court on the 91st day i.e., on 07.09.2019. The reason why we say that this is a grey area is because what would have happened if the appellants Jasbir Singh and Varinder Singh had preferred an application seeking



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statutory/default bail under Section 167(2) of the CrPC on the 91st day i.e., on 07.09.2019. The application seeking extension of time was very much pending. The Additional Sessions Judge could not have even allowed such application promptly i.e., on or before the 90th day without giving notice to the accused persons. The law is now well settled in view of the decision of this Court in the case of Jigar alias Jimmy Pravinchandra Aditya v. State of Gujarat reported in 2022 SCC OnLine SC 1290 that an opportunity of hearing has to be given to the accused persons before the time is extended up to 180 days to complete the investigation. The only error or lapse on the part of the appellants Jasbir and Varinder Singh was that they failed to prefer an appropriate application seeking statutory/default bail on the 91st day. If such application would have been filed, the court would have had no option but to release them on statutory/default bail. The Court could not have said that since the extension application was pending, it shall pass an appropriate order only after the extension application was decided. That again would have been something contrary to the well settled position of law. This litigation is an eye opener for the NIA as well as the State investigating agency that if they want to seek extension,



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they must be careful that such extension is not prayed for at the last moment.

77. The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the court. However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, or a report seeking extension of time is preferred before the Magistrate or any other competent court, the right to default bail would be extinguished. The court would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC.

78. Our observations in paras 76 and 77 respectively as above are keeping in mind the decision of this Court rendered by a three-Judge Bench in the case of Sayed Mohd. Ahmad Kazmi v. State (Government of NCT of Delhi) and Others reported in (2012) 12 SCC 1, wherein in paras 25, 26 and 27 respectively, this Court observed as under:



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“25. Having carefully considered the submissions made on behalf of the respective parties, the relevant provisions of law and the decision cited, we are unable to accept the submissions advanced on behalf of the State by the learned Additional Solicitor General Mr Raval. There is no denying the fact that on 17-7-2012, when CR No. 86 of 2012 was allowed by the Additional Sessions Judge and the custody of the appellant was held to be illegal and an application under Section 167(2) CrPC was made on behalf of the appellant for grant of statutory bail which was listed for hearing. Instead of hearing the application, the Chief Metropolitan Magistrate adjourned the same till the next day when the Public Prosecutor filed an application for extension of the period of custody and investigation and on 20-7-2012 extended the time of investigation and the custody of the appellant for a further period of 90 days with retrospective effect from 2-6-2012. Not only is the retrospectivity of the order of the Chief Metropolitan Magistrate untenable, it could not also defeat the statutory right which had accrued to the appellant on the expiry of 90 days from the date when the appellant was taken into custody. Such



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right, as has been commented upon by this Court in Sanjay Dutt [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] and the other cases cited by the learned Additional Solicitor General, could only be distinguished (sic extinguished) once the charge-sheet had been filed in the case and no application has been made prior thereto for grant of statutory bail. It is well-established that if an accused does not exercise his right to grant of statutory bail before the charge-sheet is filed, he loses his right to such benefit once such charge-sheet is filed and can, thereafter, only apply for regular bail. 26. The circumstances in this case, however, are different in that the appellant had exercised his right to statutory bail on the very same day on which his custody was held to be illegal and such an application was left undecided by the Chief Metropolitan Magistrate till after the application filed by the prosecution for extension of time to complete investigation was taken up and orders were passed thereupon. 27. We are unable to appreciate the procedure adopted by the Chief Metropolitan Magistrate, which has been endorsed by the High Court and we are of the view that the appellant acquired the right for grant of



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statutory bail on 17-7-2012, when his custody was held to be illegal by the Additional Sessions Judge since his application for statutory bail was pending at the time when the application for extension of time for continuing the investigation was filed by the prosecution. In our view, the right of the appellant to grant of statutory bail remained unaffected by the subsequent application and both the Chief Metropolitan Magistrate and the High Court erred in holding otherwise.”

4. The learned Government Advocate (Crl. Side) has not disputed the date and events of the dismissal of the statutory bail application and allowing of extension applications filed by the prosecution.

5. In this regard, this Court has called for the remarks from the learned Judge for not following the principles laid down by the Hon'ble Supreme Court. The learned Judge submitted his report report.

6. I have considered the submissions and perused the materials available on record.



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7. On a perusal of records it shows that the respondent police has registered a case against the petitioner along with other accused persons in Crime No.136 of 2022 for the offences under sections 8 [c] read with 20 [b] [ii] [C], 25, 29[1] of Narcotic Drugs and Psychotropic Substances Act 1985 for illegal possession of 80 kgs of Ganja. The petitioner was arrested and remanded to judicial custody on 04.04.2022. After a period, the petitioner/accused filed a petition in Crl.M.P.No.5162 of 2022 24.02.2023 for statutory bail. The prosecution has also filed a petition in Crl.M.P.No.4725 of 2022 under section 36 [A] [4] of NDPS Act for extension of statutory period to complete the investigation. The same was taken on file on 04.07.2022. However, the learned Judge dismissed the statutory bail petition in Crl.M.P.No.5162 of 2022 on 02.11.2022 on the ground that the extension of statutory bail application has been filed by the prosecution. However, at that time, the learned judge has not passed any order in Crl.M.P.No.4725 of 2022. Thereafter once again the petitioner has filed another statutory bail under Section 167 (2) Cr.P.C., in Cr.M.P.No.912 of 2023. Similarly, the prosecution has also filed another petition for extension of time for further investigation under



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section 36[A] of NDPS Act in Crl.M.P.No.6581 of 2023. Though the petitioner filed the statutory bail application on 13.02.2023 and posted for hearing on the next day i.e., 14.02.2023 and on subsequent dates, the learned Judge decided the extension application filed by the prosecution in Crl.M.P.Nos.4725 and 6581 of 2022 on 15.02.2023 without production of the accused before Court on that date and dismissed the statutory bail petition filed by the petitioner in Crl.M.P.No.912 of 2023 on 24.02.2023. Aggrieved against the said order of dismissal, the petitioner is before this Court.

8. Admittedly, there is no dispute about the above facts. However, Insofar as the the second statutory bail application filed by the petitioner in Crl.M.P.No.912 of 2023 is concerned, it has been taken on file on 13.02.2023 and the same was posted for enquiry on subsequent dates viz., 14.02.2023, 15.02.2023, 16.02.2023, 17.02.2023, 20.02.2023, 21.02.2023 and finally on 24.02.2023. However, on 24.02.2023, the learned Judge dismissed the statutory bail application and allowed the extension applications filed by the prosecution without producing the



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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 like sum, before the I Additional Special Judge, 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 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 petitioners 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



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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.

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

22.06.2023

vum

Index: yes/no

Internet:yes/no

To

1. The Principal Special Court under EC & NDPS Act, Chennai.
2. The I Additional Special Court, NDPS Act, Chennai.
3. The Inspector of Police,
D-1, Thiruthani Police Station,
Thiruthani – 631 209.
4. The Public Prosecutor,
Madras High Court.

V. SIVAGNANAM, J.



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