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Crl.R.C.No.1072 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.06.2023

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THE HONOURABLE Mr. JUSTICE V. SIVAGNANAM

Crl.R.C.No.1072 of 2023

Thanappan

... Petitioner

Vs.

Inspector of Police,
D-1, Thiruttani Police Station,
Thiruvallur
(Cr.No.136/2022)
Respondent

...

Criminal Revision filed under Section 397 and 401 of Cr.P.C., to set aside the order passed in Crl.M.P.No.5292 of 2022, dated 01.11.2022 by the Principal Special Judge for NDPS Act, Chennai by allowing this Revision Petition.

For Petitioner : Mr.T.S. Sasi Kumar

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

ORDER

This Criminal Revision case has been filed challenging the order of dismissal of statutory bail petition, dated 01.11.2022 passed by the Principal Special Court under EC & NDPS Act, Chennai.



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.5292 of 2022 on 20.10.2022 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 on 27.09.2022 before 180 days, i.e., on 177th day, for extension of statutory period to complete the investigation. In the above extension petition, the court below ordered to issue notice to respondent/accused and as he had not received notice issued by the court and hence the court intimated the petitioner accused directly, while he was produced before the court for remand extension. Thereafter, for filing counter, Crl.M.P.No.5292 of 2022 was posted for counter and since no counter was filed, the petition was posted for orders.

3. He further submitted that by the time, in Crl.M.P.No.4275 of 2022, since the prayer seeking extension of statutory period of 90 days became



expired, the prosecution filed another petition under section 36A(4) of NDPS Act on 23.12.2022 in CrI.M.P.No.6581 of 2022, wherein, after issuing notice and filing counter, the court below allowed both the petitions on 15.02.2023 by extending 90 more days for completing investigation in CrI.M.P.No.4725 of 2022 and further 90 more days is extended to complete investigation in CrI.M.P.No.6581 of 2022.

4. It is his further submission that learned Judge dismissed the statutory bail petition in CrI.M.P.No.5292 of 2022 on 01.11.2022 on the ground that petitioner for extension of statutory period has been filed by the prosecution in CrI.M.P.No.4725 of 2022 and the same is posted for further proceedings. However, the learned judge has not passed any order in CrI.M.P.No.4725 of 2022 and only on 15.02.2023, he decided the abovesaid extension application filed by the prosecution. Though the petitioner filed the statutory bail application on 20.10.2022 i.e., on 200th day, and the same was posted for filing counter, without obtaining necessary order from the earlier petition, the prosecution has filed another petition in CrI.M.P.No.6581 of 2022 under the same provision. The court below dismissed the statutory bail petition filed by the petitioner in CrI.M.P.No.5292 of 2022 on 01.11.2022 and on 15.02.2023, the court below allowed the extension applications filed by the prosecution in CrI.M.P.Nos.4725



and 6581 of 2022. Hence, the said decision of the Judge is contrary to 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 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



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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 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



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well as the State investigating agency that if they want to seek extension, 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:

“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



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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 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



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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 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.”

Thus he pleaded for granting statutory bail to the petitioner.



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

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

7. On a perusal of records it shows that the respondent police has registered a case against the petitioner/A2 along with A1 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.5292 of 2022 on 20.10.2022 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.5292 of 2022 on 01.11.2022 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 CrI.M.P.No.4725 of 2022. Subsequently, the prayer sought for in CrI.M.P.No.4725 of 2022 got expired, the prosecution once again filed another petition for extension of time for further investigation under section 36[A] of NDPS Act in CrI.M.P.No.6581 of 2023. Though the petitioner filed the statutory bail application on 20.10.2022, the learned Judge decided the extension application filed by the prosecution in CrI.M.P.Nos.4725 and 6581 of 2022 on 15.02.2023 and only after dismissing the statutory bail petition filed by the petitioner in CrI.M.P.No.5292 of 2022 on 01.11.2022. Aggrieved against the said order of dismissal, the petitioner is before this Court.

8. Considering the fact that the statutory bail application was filed on 20.10.2022, i.e., 200th day, but undeciding the application for extension of time for investigation filed by the respondent police, the trial judge has dismissed the statutory bail application alone on 01.11.2022 and adjourned the application for extension of time for investigation 'for further proceedings' and finally on 15.02.2023 allowed both the applications for extension of time for completing investigation. Thus it is clear that in the instant case, the learned trial Judge has not considered both the applications on the same day and without deciding CrI.M.P.No.4725 of 2022 seeking time extension application filed by the prosecution, he dismissed the statutory bail application filed by the



petitioner which is violation of the principle laid down by the Hon'ble Supreme

Court in *Judgebir Singh @ Jasbir singh Samra @ Jasbir & Ors. Vrs.*

National Investigation Agency in *Criminal Appeal No. 1012 of 2023* as

mentioned supra. In view of the above, this court is of the view, 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.

9. Accordingly, the impugned order dated 01.11.2022 passed in Crl.M.P.No.5292 of 2022 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 his executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) along with two sureties each for a likesumsum before the I Addl. Special Judge, NDPS Act, Chennai on the following conditions;

(a) the petitioner and 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 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.

23.06.2023

msr

Index: yes/no

Internet:yes/no

To



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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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