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Crl.R.C.Nos.1005 & 1081 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated **30.06.2023**

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.R.C.Nos.1005 & 1081 of 2023

Harsh Goel

... Petitioner in both Crl.R.Cs.

Vs.

State Rep. by The Inspector of Police,
T-14 Mangadu Police Station, Chennai
[Crime No.786 of 2022]

...Respondent in both Crl.RCs.

Prayer in Crl.R.C.No.1005 of 2023 : Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. to call for the records and set aside the Order passed in Crl.M.P.No.3128 of 2023 dated 12.05.2023 by the learned Principal Special Judge for NDPS Act Cases, Chennai in Crime No.786 of 2022 on the file of the respondent and grant bail to the petitioner.

Prayer in Crl.R.C.No.1081 of 2023 : Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. to call for the records and set aside the Order passed in Crl.M.P.No.1985 of 2023 dated 12.04.2023 by the



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learned Principal Special Judge for NDPS Act Cases, Chennai in Crime No.786 of 2022 on the file of the respondent and grant bail to the petitioner.

For Petitioner : Mr.M.S.Charles in both Crl.R.Cs.

For Respondent : Mr.r.Vinothraja,
Govt. Advocate [Criminal Side]

COMMON ORDER

These criminal revisions have been filed challenging the order passed in Crl.M.P.Nos.3128 of 2023, dated 12.05.2023 and 1985 of 2023, dated 12.04.2023 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.

2. The learned counsel appearing for the petitioner contended that the respondent police registered a case against the petitioner and two other accused persons in Cr.No.786 of 2022 for the offence punishable under section 8(c), r/w. 20(b)(ii)(C), 25 and 29(1) of the NDPS Act, 1985. The



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petitioner was arrested on 27.09.2022 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 and the trial court, by passing the impugned order dated 12.04.2023 and 12.05.2023 dismissed the statutory bail petitions.

The learned counsel for the petitioner further submitted that the respondent police has also filed a petition for extension of period of investigation in Crl.M.P.No.1985 of 2023 and the same was allowed by the learned Judge on 12.04.2023. 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 12.04.2023, neither the accused was heard before the Court either physically or virtually nor he was represented by the his counsel. In the absence of the accused, mere allowing the extension petition is a violation of principal 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. The learned counsel for the petitioner further submitted that thereafter, the petitioner again filed a petition for statutory bail in Crl.M.P.No.3128 and the same was also



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dismissed by the trial Court on 12.05.2023. Hence, submitted that the impugned Orders are unsustainable and seeks statutory bail to the petitioner.

3. The learned Government Advocate (Criminal side) conceded that remand extension was granted to the petitioner on 11.04.2023 till 24.04.2023 and there is no record to show that the petitioner was produced on 12.04.2023 on the date of granting extension of time for investigation in Crl.M.P.No.1985 of 2023, dated 12.04.2023.

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.786 of 2022 for the offence punishable under sections 8(c), r/w. 20(b)(ii)(C), 25 and 29(1) of the NDPS Act, 1985 for illegal possession of 1.300 kgs of Ganja, pursuant to which, the respondent police arrested the petitioner and remanded him to judicial custody on 27.09.2022. Since the respondent police has not filed



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final report within 180 days as mandated under section 167(2) of Cr.P.C., the petitioner has filed a petition in Crl.M.P.No.1985 of 2023 on 12.04.2023. The prosecution has filed a petition in Crl.M.P.No.1985 of 2023 seeking time for completing investigation under section 36(A)(4) of NDPS Act before completion of 180 days. On hearing both the applications, the learned Principal Judge on 12.04.2023, allowed the application filed for extension of statutory period for investigation and dismissed the bail application filed by the accused.

6. It is noticed that while allowing the application filed seeking for extension time for investigation in Cr.M.P.No.1985 of 2023 on 12.04.2023, the accused was not produced either physically or virtually before the Court. It was not disputed that the accused was not represented by his 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 them



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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 JimmyPravinchandra Adatiya Vrs. State of Gujarat*** and 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



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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



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away the infeasible 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.

38. The learned Additional Solicitor General relied upon the decision of this Court in the case of Narender G. Goel⁹. 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 Gadling¹⁰ will



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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,



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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



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the respondents.”

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7. In view of the above principles laid down by the Hon'ble Supreme Court, mere allowing of the extension petition filed by the prosecution in the absence of the accused, is not in accordance with law and same is unsustainable and it is liable to be set aside. Though the petitioner has not challenged the dismissal of the statutory bail Order in Crl.M.P.No.2251 of 2023, dated 12.04.2023, since petition filed for extension of time for investigation is set aside. Considering the fact that on the date of passing of the Order in Crl.M.P.No.1985 of 2023 dated 12.04.2023, the final report has not been filed before the trial Court, the petitioner is entitled for statutory bail. Therefore, the impugned Order in Crl.M.P.No.3128 of 2023 is also set aside.

8. Accordingly, these Criminal Revision Cases are allowed and the impugned orders passed in Crl.M.P.No.1985 of 2023 dated 12.04.2023 and Crl.M.P.No.3128 of 2028 dated 12.05.2023 by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai, are set aside and Statutory Bail is granted to the petitioner and the



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petitioner is ordered to be released on bail his on executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each, with two sureties for a like sum to 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;

(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



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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 abscond, a fresh FIR can be registered under Section 229-A IPC.

30.06.2023

Index:Yes/No

vrc

To

1. The Sessions Judge, Special Court under EC & NDPS Act, Chennai.
2. The Public Prosecutor, High Court, Chennai.



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V.SIVAGNANAM, J.

VTC

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