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Crl.R.C.No.1075 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Crl.R.C.No.1075 of 2023

Sivasankaran @ Pittu

.. Petitioner

Vs

The State of Tamil Nadu,
Rep by the Inspector of Police,
H-3, Tondiarpet Police Station,
Chenbnai

... Respondent

Prayer: Criminal Revision Case filed under Section 397 r/w.401 Cr.P.C. to set aside the default bail application dismissed order dated 23.05.2023 in Crl.M.P.No.3215 of 2023 passed by the learned Principal Special Judge, Special Court under EC and NDPS Act act Chennai connected with Cr.No.328 of 2022 (on the file of respondent police)

For Petitioner : Mr.J.Jayan
for Mr.A.Venkateswara Babu

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



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ORDER

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This Criminal Revision case has been filed challenging the order of dismissal of statutory bail petition, dated 23.05.2023 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.328 of 2022 for the offence under Sections 8 [c], 22 [c] and 29 [1] of the Narcotic Drugs and Psychotropic Substances Act, 1985 for illegal possession of 0.1 gram of Lysergide (LSD) and 8 Nos. of LSD Stamps (weighing 130 mg). The petitioner was arrested and remanded to judicial custody on 11.11.2022. The learned counsel further submitted that since the respondent Police has not filed final report within statutory period of 180 days, the petitioner/accused filed a petition in Crl.M.P.No.3215 of 2023 on 12.05.2023 for statutory bail. The prosecution has filed a petition in Crl.M.P.No.2964 of 2023 under Section 36 [A] [4] of NDPS Act on 04.05.2023 which is before 180 days for extension of statutory period to complete the investigation.



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The learned Principal Special Judge passed a common order, allowing the extension application and dismissed the statutory bail application on 23.05.2023. 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 23.05.2023, 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. Thus, he seeks to set aside the impugned order and grant bail to the petitioner.

3.The learned Government Advocate (Crl.side) has objected for grant of bail. He further submitted that the accused was remanded on 11.11.2022. According to him, there is no illegality in the order dated 23.05.2023 and hence, the petitioner is not entitled for statutory bail and the learned Government Advocate (Crl. Side) pleaded to dismiss the



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criminal revision petition.

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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 has registered a case against the petitioner along with other accused persons in Crime No.328 of 2022 for the offence under Sections 8 [c], 22 [c] and 29 [1] of the Narcotic Drugs and Psychotropic Substances Act, 1985 for illegal possession of 0.1 gram of Lysergide (LSD) and 8 Nos. of LSD Stamps (weighing 130 mg). The petitioner was arrested and remanded to judicial custody on 11.11.2022. Since the respondent Police has not filed final report within statutory period of 180 days, the petitioner/accused filed a petition in Crl.M.P.No.3215 of 2023 on 12.05.2023 for statutory bail. The prosecution has filed a petition in Crl.M.P.No.2964 of 2023 under Section 36 [A] [4] of NDPS Act on 04.05.2023 which is before 180 days for extension of statutory period to complete the investigation. On hearing both the applications, the learned Principal Judge on



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23.05.2023, 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 Crl.M.P.No.2964 of 2023 on 23.05.2023, the accused was not produced either physically or virtually before the Court. Further the remand particulars shows, that the accused was remanded on 11.11.2022 and on the date of passing the impugned order on 23.05.2023, the accused was not produced before the Court.

7. At this juncture, it is relevant to note that the Hon'ble 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 about the



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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



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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.

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



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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 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



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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.”

8. In view of the above principles laid down by the Hon'ble Supreme Court, the mere allowing of the extension application filed by the prosecution in the absence of the accused, 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.

9. In view of the foregoing discussions, the impugned order dated



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23.05.2023 passed in Crl.M.P.No.3215 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) along with two sureties each for a like sum, before the Principal Special Judge, 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



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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 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.

26.06.2023

srn

Index: yes/no

Internet:yes/no

To

1. The Principal Special Court under EC & NDPS Act, Chennai.
2. The Inspector of Police,
H-3, Tondiarpet Police Station, Chennai.
3. The Public Prosecutor, Madras High Court.

V. SIVAGNANAM, J.



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