



Crl.R.C.No.1092 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2023

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THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.1092 of 2023
and Crl.MP.No.9113 of 2023

T.Dubash Shankar @ Shankar

... Petitioner

Vs.

Union of India,
Narcotic Control Bureau through Intelligence Officer,
Narcotic Control Bureau,
Chennai Zonal Unit, Chennai.

... Respondent

Prayer : Criminal Revision filed under Section 397 & 401 of Criminal Procedure Code to enlarge the petitioner on bail concerned in RR.No.17 of 2021 and NCB file No.48/1/07/21, on the file of the Narcotic Control Bureau, Chennai Zonal Unit, Chennai.

For Petitioner : Mr.N.Nishar Ahamed.

For Respondent : Mr.S.Rajendra Kumar, Spl.PP for NCB

ORDER

The present criminal revision petition is directed against the order dated 09.05.2023 passed by the Special Judge, I Additional Special Court for Exclusive trial of Cases under NDPS Act, Chennai in

Page 1 of 7



CrI.R.C.No.1092 of 2023

WEB COPY

CrI.MP.No.2696 of 2023 which was filed seeking default bail under Section 167(2) Cr.PC in CC.No.82 of 2022.

2. The learned Special Judge, dismissed the said application on the ground that since the charge sheet was filed on 178th day itself within the statutory period the present accused is not entitled to get default bail under Section 167(2) Cr.PC.

3. The contention of the learned counsel for the present revision petitioner is that the charge sheet which was filed on 178th day is incomplete, since, the police custody orders in page Nos.145 to 152, memo with annexures in page Nos.195 to 208 did not contain the Court seal and the said documents were filed only after 12.01.2022. He also relied upon the decision of this Court reported in **[2003] 0 Supreme (Mad) 2065** in the case of **Nagarajan and others v. State of Tamil Nadu rep by the Inspector of Police** and contended that failure to file the charge sheet or final report before the period prescribed under section



Crl.R.C.No.1092 of 2023

WEB COPY

167(2) Cr.PC will automatically result in releasing the accused on bail, subject to two conditions that there is an application for bail for the person in custody and that he must be in a position to offer an adequate sureties. He would further contend that the police report under Section 173(2) Cr.PC is not complete, unless it is accompanied by the material papers (statements etc) as contemplated under Section 173(5) Cr.PC.

4. The learned Special Court judge in the order dated 09.05.2023 has observed thus :-

“On perusal of records, the petitioner/A1 was arrested and remanded to judicial custody on 19.07.2021 and the respondent police have filed the Charge Sheet on 12.01.2022 ie 178th day within the statutory period. The said charge sheet was not returned to the respondent police by the court for any default. On careful perusal, the respondent police had filed a petition u/s.164 of Cr.P.C along with affidavit for taking this petitioner and A2 for police custody for the period of one day on 28.07.2021 and the same petition had been assigned as Crl.M.P.No.1951/2021 on the file of the Hon'ble Principal Special Court under EC & NDPS Act on the



Crl.R.C.No.1092 of 2023

WEB COPY

day itself. The said petition had contained the court's seal. On the very next day ie. 29.07.2021, the Presiding officer had passed order in Crl.M.P.No.1951/2021 on 29.07.2021, which is available in Page No. 145 to 152. Though the custody order in Crl.M.P.No.1951/2021, dt.29.07.2021 had not contained the court's seal, the signature of Presiding Officer is very much available with date. The said order had also been uploaded in E-court on the day itself and the order is very much available in Crl.M.P.No.1951/2021 in E-court on the file of Principal Special Judge under EC & NDPS Act, Chennai. Next going to memo along with medical report for this petitioner/A1 and A2, which is available in Page No. 195 to 208 had been filed by the Intelligence Officer before the court at the time of producing the petitioner/A1 along with A2 after completion of police custody on 30.07.2021. Though the memo had not contained the court's seal. the signature of Presiding Officer is very much available with date ie. 30.07.2021. Both the documents are court's documents. At the time of filing charge sheet, these documents are very much available in the court. Hence the charge sheet is not a default charge sheet. Admittedly, the charge sheet was numbered as C.C.No.82/2022 on 16.03.2022 by the Hon'ble Principal Special Court under EC & NDPS Act. At that time, this petitioner A1 has not filed any petition



Crl.R.C.No.1092 of 2023

WEB COPY

u/s.167(2) of Cr.P.C. before the Hon'ble Principal Special Court under EC & NDPS Act and then the case has been transferred to this court only on 16.03.2022. After a lapse of 12 months, the present petition has filed by the petitioner/Al for default bail before this court. At the time of filing the present petition, the case is pending for framing of charges against the accused persons. Under such circumstances, this court can not entertain the bail petition u/s.167(2) of Cr.P.C, and the same is liable to be dismissed.”

5. Thus the learned Special Judge had considered all the contentions of the revision petitioner and had come to a definite conclusion that the charge sheet was not a defective charge sheet and all the documents were filed along with the charge sheet on 12.01.2022 itself. Merely because, the charge sheet was taken up on file on 06.03.2022, the same would not be a ground for the accused to get default bail under Section 167(2) Cr.PC.



WEB COPY



Crl.R.C.No.1092 of 2023

6. Accordingly, the criminal revision petition is dismissed. No costs.

11.07.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

- 1.The Special Public Prosecutor, (NCB Cases) High Court, Madras.
- 2.The Special Judge, I Additional Special Court for Exclusive trial of Cases under NDPS Act, Chennai
3. The Union of India,
Narcotic Control Bureau,
Chennai Zonal Unit, Chennai.



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Crl.R.C.No.1092 of 2023

R. HEMALATHA, J.
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Crl.R.C.No.1092 of 2023

11.07.2023