



Crl.R.C.Nos.1322 & 887 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM

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

Crl.R.C.Nos.1322 & 887 of 2023

Mustafa

... Petitioner in both petitions

Vs.

The Inspector of Police,
B1, North Beach Police Station,
Chennai - 600 001.

... Respondent in both petitions

Prayer in Crl.R.C.No.1322 of 2023: Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the order passed in Crl.M.P.No.1863/2023 dated 13.04.2023 on the file of the Principal Special Court Judge under EC & NDPS Act Cases, Chennai.

Prayer in Crl.R.C.No.887 of 2023: Criminal Revision filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the order passed in Crl.M.P.No.1877/2023 dated 13.04.2023 and enlarge the petitioner on bail.



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In both Criminal Revisions :

For Petitioner : Mr.R.Sankarasubbu
for Mr.Ilayaraja Kandasamy
For Respondent : Mr.R.Vinothraja, GA (Crl. Side)

COMMON ORDER

Challenging the orders dated 13.04.2023 passed by the learned Principal Special Judge under EC & NDPS Act, Chennai in Crl.M.P.Nos.1863 & 1877/2023, the present revisions are filed.

2.The petitioner is the accused in Crime No.336/2022 of B1, North Beach Police Station, Chennai registered for the alleged offences punishable under Sections 9A, 22(c), 8(c) and 20(b)(ii)(A) of NDPS Act. The Investigating Officer did not file the final report within a period of 180 days. However, on 179th day, the Investigating Officer filed a petition under Section 36A(4) of NDPS Act in Crl.M.P.No.1863/2023. He sought extension of time for completing investigation. Notice was issued in the said petition and on 182nd day, the petitioner filed a bail petition under



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Section 167(2) Cr.P.C. The learned Principal Special Judge under EC & NDPS Act took both the petitions on the same day and dismissed the bail petition of the present revision petitioner and allowed the petition filed by the Investigating Officer under Section 36(A) (4) of NDPS Act.

3.Heard Mr.R.Sankarasubbu, learned counsel for the revision petitioner and Mr.R.Vinothraja, learned Government Advocate (Crl. Side) for the respondent.

4.Mr.R.Sankarasubbu, learned counsel for the revision petitioner contended that when the trial court judge did not allow the petition sought for extension of time for completing investigation within 180 days he ought to have granted default bail to the accused. He relied on the various decisions of Hon'ble Supreme Court to contend that if the charge sheet has not been filed before expiry of 90 days or 180 days, as the case may be, the accused is deemed to have been released on bail under Section 167(2) Cr.PC and the courts will not have any right to remand the accused beyond the period prescribed under the statute.

5.Per contra, Mr.R.Vinothraja, learned Government Advocate (Crl. Side) contended that on 179th day itself, the prosecution has filed



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the petition seeking extension of time. The present revision petitioner had filed this bail petition on 182nd day and therefore, the trial court judge was perfectly right in denying default bail to the present revision petitioner.

6.A Full Bench of the Hon'ble Supreme Court in ***M.Ravindran Vs The Intelligence Officer, Directorate of Revenue Intelligence*** reported in ***(2021) 2 SCC 485*** had held thus :

"25. Therefore in conclusion :

25.1. Once the accused files an application for bail under the proviso to Section 167(2) he is deemed to have “availed of” or enforced his right to be released on default bail, accruing after expiry of the stipulated time-limit for investigation. Thus, if the accused applies for bail under Section 167(2) CrPC read with Section 36-A(4), NDPS Act upon expiry of 180 days or the extended period, as the case may be, the court must release him on bail forthwith without any unnecessary delay after getting necessary information from the Public Prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigating agency.

25.2. The right to be released on default bail continues to



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remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the charge-sheet or a report seeking extension of time by the prosecution before the court; or filing of the charge-sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher court.

25.3. However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a charge-sheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate 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.

25.4. Notwithstanding the order of default bail passed by the court, by virtue of Explanation I to Section 167(2), the actual release of the accused from custody is contingent on the directions passed by the competent court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the court, his continued detention in custody is valid."



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7. In the instant case, the investigating officer has filed the petition for extension of time within a prescribed period i.e. on 179th day and therefore, the right of the accused under Section 167 (2) Cr.P.C. get automatically extinguished. Hence, the Criminal Revisions are dismissed.

8. In the result,

- i. both the Criminal Revision Cases are dismissed.
- ii. The orders passed in Crl.M.P.No.1863/2023 & Crl.M.P.No.1877/2023 dated 13.04.2023 on the file of the Principal Special Court Judge under EC & NDPS Act Cases, are confirmed.

08.08.2023

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

To

1. The Inspector of Police, B1, North Beach Police Station,

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2. The Principal Special Court under EC & NDPS Act.

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