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CrI.O.P.No.25808 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.03.2023

DATED : 14.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

CrI.O.P.No.25808 of 2022

L.Balachandar

.. Petitioner

VS

1.Union of India through Intelligence Officer
Narcotics Control Bureau
Madurai Sub Zone, Chennai Zonal Unit.

.. Respondent

Prayer: This Criminal Original Petition filed under Section 482 of Cr.P.C., to set aside the cancellation bail order dated 1st August 2022 made in C.M.P.No.658 of 2022 passed by the learned Special Judge for EC/NDPS Act cases, Salem and restore the default bail order dated 21st July 2022 in C.M.P.No.631 of 2022 in NCB.F.No.48/1/13/2021-NCB/MDS on the file of the respondent.

For Petitioner : Ms.Mamta Pandey

For Respondent : Mr.N.P.Kumar
Special Public Prosecutor
Narcotics Control Bureau cases



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ORDER

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This petition is filed for the relief to set aside the cancellation bail order dated 01.08.2022 made in C.M.P.No.658 of 2022 passed by the learned Special Judge for EC/NDPS Act cases, Salem and restore the default bail order dated 21.07.2022 in C.M.P.No.631 of 2022 in NCB.F.No.48/1/13/2021-NCB/MDS on the file of the respondent.

2. The learned counsel for the petitioner submits that the petitioner was arrested by the respondent Police on 21.11.2021 for the alleged offences under Section 8(c) read with Sections 20(b)ii(c), 28 and 29 of the NDPS Act and remanded in judicial custody by the Judicial Magistrate V, Vellore.

3. The learned counsel for the petitioner would further submit that the petitioner filed a bail petition under Section 167 of the Code of Criminal Procedure in C.M.P.No.486 of 2022 on 20.05.2022 and the Office made note on the bail petition that “charge sheet was not filed”. When this bail petition was filed, the petitioner was in custody for 189 days. The Trial Court dismissed the petition. The petitioner, again filed a bail petition under Section 167(2) of the Code of Criminal Procedure in C.M.P.No.631 of 2022 on 11.07.2022. On



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the date of filing the petition, the petitioner completed 233 days of judicial custody. The Office, also made an endorsement on the bail petition that “charge sheet was not filed” and then struck off the word “not”. The learned Trial Judge granted the bail order, stating that the accused was remanded on 22.11.2021 and is in custody for 239 days and the concerned police has not yet filed the final report, thereby, the petitioner / accused is entitled for bail under Section 36(A)(4) of the NDPS Act. Thereafter, the respondent / complainant filed a petition in C.M.P.No.658 of 2022 under Section 439 of the Code of Criminal Procedure and 37 of the NDPS Act to cancel the bail. The learned Trial Judge, allowed the petition and canceled the bail granted in C.M.P.No.631 of 2022. Challenging the order passed in C.M.P.No.658 of 2022, this petition is filed.

4. The learned counsel appearing for the petitioner submitted that, it is seen from the note put up by the Office in C.M.P.No.486 of 2022 and C.M.P.No.631 of 2022 that “charge sheet was not filed”. That was the reason for grant of bail in C.M.P.No.631 of 2022. Even in the order in C.M.P.No.658, the learned Special Judge for EC/NDPS Act cases, Salem referred at least in two places that the charge sheet was filed in this case on 17.07.2022. If the charge sheet was filed on 17.07.2022, it goes without saying that the charge



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sheet was not filed within 180 days from the date of the first remand on

22.11.2021 and therefore, the accused is entitled for bail under Section 167(2)

of the Code of Criminal Procedure. Therefore, the order of the learned Special

Judge for EC/NDPS Act cases, Salem, canceling the bail granted in

C.M.P.No.631 of 2022 is not correct. The learned Special Judge for EC/NDPS

Act cases, Salem is not entitled to cancel his own order, as it is barred by

Section 362 of the Code of Criminal Procedure. Therefore, the learned counsel

for the petitioner prays for setting aside the order of the learned Special Judge

for EC/NDPS Act cases, Salem and for restoring the bail granted in

C.M.P.No.631 of 2022. In support of her submissions, she relied on the

judgment reported in *[2022 LiveLaw (SC) 283]* in the case of **Ganesh Patel vs**

Umakant Rajoria for the proposition that the application for recalling the order

is maintainable only when it is an application seeking procedural review and

not a substantive review.

5. In reply, the learned Special Public Prosecutor for the respondent submits that, the respondent is the Union of India, represented through the Intelligence Officer, Narcotics Control Bureau. After the investigation was over, the respondent filed complaint in this case on 17.05.2022, before the



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expiry of 180 days from the date of the first remand on 22.11.2021. Even in the bail order passed in C.M.P.486 of 2022, it was submitted by the learned counsel for the petitioner that “the respondent Police has filed charge sheet within a stipulated period. Therefore, it is obvious that the complaint was filed in this case on 17.05.2022. The office made a wrong endorsement in the bail petition in C.M.P.No.486 of 2022, stating that “charge sheet was not filed”. In C.M.P.No.631 of 2022, though the endorsement was made as “charge sheet was not filed”, subsequently, the word “not” was struck off. The learned Trial Judge, believing that the charge sheet was not filed, granted bail in C.M.P.No.631 of 2022. Petitioner has not mentioned the dismissal of C.M.P.No.486 of 2022 in C.M.P.No.631 of 2022. The learned counsel for the petitioner neither in the bail petition nor at the time of argument stated anything with regard to the dismissal of the bail petition filed under Section 167(2) of the Code of Criminal Procedure two times. Therefore, the Court granted bail under Section 167(2) of the Code of Criminal Procedure for not filing final report within the stipulated time. In the said circumstances, the order canceling the default bail is in accordance with law. He relied on the judgment of the Hon'ble Supreme Court, reported in *[2014 0 Supreme(Mad) 215]* in the case of ***Sampath Shylaja Kumar vs The State*** for the proposition that Sub-section (2)



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of Section 439 makes it clear that the Court of Sessions have been empowered to cancel the bail. If the bail has been granted on erroneous grounds, then the same can be challenged. For the same proposition, he relied on the judgment reported in *[2020 0 Supreme(SC) 668]* in the case of ***Venkatesan Balasubramaniyan vs Intelligence Officer, D.R.I.Bangalore***, wherein, it was observed as follows:

“8.

Section 439(2) reads as under:

“439.Special powers of High Court or Court of Sessions regarding bail.-(1)

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”

9. The proviso to Section 167 itself clarifies that every person released on bail under Section 167(2) shall be deemed to be so released under Chapter XXXIII. Therefore, if a person is illegally or erroneously released on bail under Section 167(2), his bail can be cancelled by passing appropriate order under Section 439(2) CrPc.

.....”

6. Considered the rival submissions and perused the records. The issue here is whether the complaint was filed in this case within 180 days of the first



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remand of the accused on 22.11.2021. The petitioner filed a typed-set of papers containing copies of the complaint filed in this case. The copy of the complaint shows that the complaint was filed in the Court on 17.05.2022 and Serial Number of the receive register is also entered in the complaint. The Serial Number of the receive register is 1783. Finding that there is obvious contradiction in the order of the learned Special Judge for EC/NDPS Act cases, Salem, with regard to the date of filing of the complaint, this Court directed the learned Special Judge for EC/NDPS Act cases, Salem to clarify as to the date on which the complaint had been filed in this case, after verifying the records and send the report with appropriate proof. The order reads as follows:

“ Heard the learned counsel appearing for the parties.

2. This Court finds from the records produced especially from the complaint filed in this case that the complaint was filed before the concerned Court on 17.05.2022. However, the order of the learned Judge in Crl.M.P.No.658 of 2022 shows that charge sheet was filed on 17.07.2022. In order to clarify as to the date on which the complaint has been filed in the Court, this Court directs



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*the learned Special Judge for EC/NDPS Act Cases, Salem,
to verify the records and send a report as to the date on
which the complaint was filed by the respondent / Union of
India through Intelligence Officer, Narcotics Control
Bureau with appropriate proof.*

3. Post the matter on 20.01.2023.”

7. The learned Special Judge for EC/NDPS Act cases, Salem, sent the reply stating that the charge sheet was filed on 17.07.2022. It is also mentioned that Tmt.Azima, the concerned staff, after making an endorsement that “charge sheet was not filed”, subsequently deleted the word “not”. Disciplinary proceedings is initiated against her and it is pending.

8. If the charge sheet was filed on 17.07.2022, it is obvious that the charge sheet was filed only after 180 days from 22.11.2021. As a matter of Right, the accused is entitled for bail. However, the learned Judge stated in his report that, since the charge sheet was filed by the concerned Police on 17.07.2022, the accused was not entitled for bail under Section 167(2) of the Code of Criminal Procedure and therefore, the bail granted in C.M.P.No.631 of 2022 was canceled in C.M.P.No.658 of 2022. No proof was sent along with this



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report, as called for by this Court, to show the date of filing of the charge sheet.

Therefore, this Court, on 20.01.2023, passed the following orders:

2. On an earlier occasion ie., on 05.01.2023, this Court passed the following order:

This Court finds from the records produced especially from the complaint filed in this case that the complaint was filed before the concerned Court on 17.05.2022. However, the order of the learned Judge in Crl.M.P.No.658 of 2022 shows that charge sheet was filed on 17.07.2022. In order to clarify as to the date on which the complaint has been filed in the Court, this Court directs the learned Special Judge for EC/NDPS Act Cases, Salem, to verify the records and send a report as to the date on which the complaint was filed by the respondent/Union of India through Intelligence Officer, Narcotics Control Bureau with appropriate proof. .Post the matter on 20.01.2023

3. Pursuant to which, the learned Special Judge for EC/NDPS Act Cases, Salem sent a report in D.No.58 of 2022 dated 19.01.2023 stating that charge sheet was filed on 17.07.2022. If the charge sheet was filed on 17.07.2022, the petitioner/accused, no doubt is entitled for default bail, for the reason that the petitioner was arrested on 22.11.2021. It is clear that the learned Judge without understanding the direction issued by this Court stated that



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charge sheet was filed on 17.07.2022. The case was registered against the petitioner by the Narcotics Control Bureau. It would only file a complaint, not a charge sheet. As already indicated, the copy of the complaint filed in the type set of paper shows that the complaint was filed before the concerned Court on 17.05.2022 and it has the Court seal dated 17.05.2022 with receipt No.1783.

4. Therefore, this Court again directs the learned Special Judge for EC/NDPS Act Cases, Salem to apply his mind and provide correct information as to the date of filing of the complaint in this case along with the proof of receiving of the complaint and entering in the register, and submit a further report.

5. Post the matter after two weeks.”

9. Thereafter, the learned judge sent a reply dated 14.02.2023, stating that the Intelligence Officer filed a complaint on 17.05.2022. The date seal was suffixed on 17.05.2022 and his predecessor Presiding Officer made his initial on the every page of the said complaint dated 17.05.2022. The relevant entry is made in Serial number 1783 dated 17.05.2022 in the Court receive register. Due to oversight and typographical error, the month was wrongly noted as 17.07.2022, instead of 17.05.2022 in the order. The learned Judge also enclosed a copy of the complaint, showing the receipt of the complaint on 17.05.2022 in



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receive register serial number 1783 and also the relevant page of the receive register.

10. From the report dated 14.02.2023, the copy of the complaint, copy of the receive register, it is quite clear that the complaint in this case was filed by the respondent on 17.05.2022. Even in the typed-set of papers filed by the petitioner, the copy of the complaint filed by the petitioner shows that the complaint was filed on 17.05.2022. The staff made wrong endorsement as “charge sheet was not filed”, leading to grant of bail in C.M.P.No.631 of 2022. The dismissal of the bail petition in C.M.P.No.486 of 2022 was not mentioned in C.M.P.No.631 of 2022.

11. It is now informed that appropriate disciplinary proceedings were initiated against the staff concerned for making wrong entry with regard to the filing of charge sheet. This Court also finds that the Presiding Officer Mr.A.M.Ravi was also not careful enough to inform the Court after pointing out the contradictions with regard to the date of filing of the complaint. He gave a wrong information stating that the charge sheet was filed on 17.07.2022. Only after pointing out the contradictions in his order, the first report, he sent the



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second report stating that the complaint was filed on 17.05.2022. It shows that he did not apply his mind before passing the order and sending the first report.

12. Be that as it may. Now, it is made clear that the complaint was filed in this case on 17.05.2022, within a period of 180 days from the date of the first remand on 22.11.2021. Thus this Court is of the view that the petitioner is not entitled for default bail under Section 167(2) of the Code of Criminal Procedure. Default bail came to be ordered because of the wrong entry made by the Court staff, with regard to the filing of the charge sheet. Therefore, this Court finds that there is no illegality in canceling the bail to the petitioner in C.M.P.No.658 of 2022 by the learned Special Judge for EC/NDPS Act cases, Salem and accordingly, this petition is dismissed.

14.03.2023

Index: Yes/No
Speaking/Non speaking order
Neutral Citation: Yes/No
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To

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1. Union of India through Intelligence Officer
Narcotics Control Bureau
Madurai Sub Zone, Chennai Zonal Unit.
2. The Public Prosecutor
Madras High Court.



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G.CHANDRASEKHARAN.J.,

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