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Crl.O.P No.30895 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.30895 of 2022

Gunse Sathiyavathi

... Petitioner/A-2

vs.

State rep by
The Inspector of Police,
N-1 Rayapuram Police Station,
Chennai.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.3306 of 2022 by the Principal Special Court EC and NDPS Court, Chennai-104 dated 11.08.2022.

For Petitioner : Mr.V.K.Sathiamurthy

For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side)

ORDER

This petition has been filed challenging the order passed by the Court below in Crl.M.P.No.3306 of 2022, dated 11.08.2022, allowing the extension of time for completion of investigation.



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2. The respondent registered an F.I.R. in Crime No.37 of 2022 for offence under Sections 8(c) r/w. Section 20(b)(ii)(c) and 29(1) of the NDPS Act. There are totally five accused persons and the petitioner has been arrayed as A2.

3. The petitioner was arrested and remanded to judicial custody on 13.01.2022. The prosecution was not able to complete the investigation within the statutory period of 180 days and hence an application came to be filed in Crl.M.P.No.3306 of 2022 before the Court below seeking for extension of time to complete the investigation. This application was filed on 08.07.2022 which was the 176th day. The 180 days came to an end on 12.07.2022. Hence the petitioner filed bail application seeking for mandatory bail under Section 167(2) of Cr.P.C. on 14.07.2022.

4. The bail petition that was filed by the petitioner came to be dismissed by an order dated 19.07.2022. Ultimately, the application filed by the respondent seeking for extension of time to complete the investigation was allowed by the Court below by an order dated 11.08.2022.



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5. The petitioner challenged the order of dismissal passed in the application filed by him in Crl.M.P.No.3311 of 2022 seeking for mandatory bail, before this Court in Crl.R.C.No.1395 of 2022. The said petition came to be dismissed by an order dated 12.10.2022 mainly on the ground that the petitioner did not challenge the order granting extension of time to complete the investigation. In view of the same, this Court took the view that the petitioner without challenging that order, cannot merely challenge the dismissal of the application seeking for mandatory bail. Pursuant to the said order, the present petition has been filed before this Court challenging the order passed by the Court below in Crl.M.P.No.3306 of 2022 dated 11.08.2022.

6. Heard the learned counsel for the petitioner and the learned Government Advocate appearing on behalf of the respondent.

7. This Court has carefully considered the submissions made on either side and materials available on record.



8. The main ground that has been urged by the learned counsel for petitioner is that the 180th day came to an end on 12.07.2022 and on that day the Court below did not grant extension of time for completing the investigation. In view of the same, it was contended that the petitioner is entitled for mandatory bail and the Court below ought to have considered the application filed by the petitioner under Section 167(2) of Cr.P.C.

9. The ground that was urged by the learned counsel for the petitioner was already considered by this Court in the Criminal Revision Cases that were filed by A3/Manikandan and A5/Surya in Crl.R.C.No.299 of 2023 and Crl.R.C.No.1613 of 2022, respectively. For proper appreciation, the relevant portions in the order passed in Crl.R.C.No.299 of 2023, dated 27.03.2023 are extracted hereunder:

“5.On perusal of records, the fact reveals that the petitioner is the 3rd accused in Crime No.37 of 2022. The respondent police registered a case against the petitioner for the offences under Sections 8(c) r/w 20(b)(ii)(c) and 29(1) of the NDPS Act and seized the contraband of 160 kgs ganja, from the accused persons on 14.01.2022 and thereafter, they arrested and remanded the accused to judicial custody on 14.01.2022. Further, on perusal of the records, it is noticed that the statutory bail application was dismissed on 10.08.2022 in Crl.M.P.No.3335 of 2022. The extension of time application in Crl.M.P.No.3306 of 2022 was granted on 11.08.2022, i.e, on the next day of dismissal of statutory bail application. This Court, vide order



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dated 06.03.2023, called for an explanation from the learned Special Judge, Principal Special Court under EC & NDPS Act, Chennai, since in the impugned order, it is recorded that the extension of time application was granted on the same day itself, i.e. 10.08.2022. In this regard, the learned Judge has submitted his remarks, vide proceedings dated 20.03.2023 in Dis.No.1877/2023, wherein, it has been stated as follows:-

“Though two Crl.M.P.No.3335/2022 u/s.167 Cr.P.C. and Crl.M.P.No.3306/2022 u/s.36(A) NDPS Act were taken into consideration on the very same day and had instructed my steno to allow 36(A) NDPS Act petition and dismiss 167(2) Cr.P.C. simultaneous manner. Without knowing the significant, my steno had typed the 167 Cr.P.C as not maintainable on 10.08.2022 and on 11.08.2022, the 36(A) NDPS Act petition in Crl.M.P.No.3306/2022 was allowed. So as on date on 10.08.2022, there is no such order in 36(A) petition. Hence, order as such passed in 167 Cr.P.C on 10.08.2022 without pronouncing order in 36A petition as not maintainable is a pure error done by this court. I have not done wantonly. I tender my apology. Due to pressure of work, this mistake had occurred.”

6. From the above remarks, it is clear that though the learned Principal Special Judge, Special Court under EC and NDPS Act, Chennai has stated that on the same day, i.e, 10.08.2022, he disposed both applications, i.e. Crl.M.P.No.3335 of 2022 and Crl.M.P.No.3306 of 2022, but the records would not support the averments stated in the impugned order. It is also admitted that extension of time application was allowed on 11.08.2022.

7. In view of Section 167(2) of Cr.P.C., final report has to be filed within 180 days. Since the respondent police has not filed the final report within 180 days, the petitioner filed an application under Section 167(2) of Cr.P.C, r/w 36(A) of NDPS Act, in Crl.M.P.No.3335 of 2022 for statutory bail and the same was dismissed as not



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maintainable by the trial Court on 10.08.2022 by giving a reason that the respondent police filed a petition in Crl.M.P.No.3306 of 2022 under Section 36A(4) of NDPS Act seeking further extension of time for completion of investigation is ordered. Therefore, the observation made by the trial Court in Crl.M.P.No.3335 of 2022 is incorrect and the petitioner is entitled for statutory bail.

*8. In view of the dictum laid down by the Constitution Bench of our Honourable Supreme Court in 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**, if an accused filed an application for statutory bail, on the expiry of the period contemplated under the proviso to Sub Section (2) of Section 167 Cr.P.C., and offering him to release him on bail, no final report had been filed by the respondent police, then the accused has to be released on bail and the right conferred upon him under the aforesaid provision of Cr.P.C., must be enforced. Merely dismissing such application on the ground of receiving petition for extension of time and kept the same pending without passing any order on that application would frustrate the right of the accused. Therefore, in view of the above discussions, the order of the trial court is unsustainable and the same is liable to be set aside.”*

10. The above reasoning that was given by this Court for A3 and A5, will equally apply to the petitioner also and the petitioner is entitled for grant of mandatory bail.



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11. Accordingly, this Criminal Original Petition is allowed and the petitioner is enlarged on statutory bail on the following conditions:

(i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty five thousand only) along with two sureties, each for a likesum to the satisfaction of the Principal Special Judge, Special Court under EC & NDPS Act, Chennai.

(ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhaar card or Bank pass Book to ensure their identity; and

(iii) The petitioner shall appear before the trial Court as and when required.

18.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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Note: Issue order copy on 19.07.2023



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N. ANAND VENKATESH, J.

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To

- 1.The Inspector of Police,
N-1 Rayapuram Police Station,
Chennai.
- 2.The Principal Special Judge,
EC and NDPS Court,
Chennai-104.
- 3.The Public Prosecutor,
High Court, Madras.

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