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Crl.R.C.No.1556 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.01.2023

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THE HONOURABLE Mr. JUSTICE V. SIVAGNANAM

Crl.R.C.No.1556 of 2022

1. Ajithkumar
2. John Solomon

... Petitioners

Vs.

State, represented by
the Inspector of Police,
Thiruppalaivanam Police Station,
Thiruvallur District

... Respondent

Criminal Revision filed under Section 397 and 401 of Cr.P.C., to set aside the order passed in Crl.M.P.No.5205 of 2022, dated 31.10.2022 by the learned Principal Special Judge for NDPS Act, Chennai by allowing the Revision Petition.

For Petitioners : Mr. T.S. Sasikumar

For Respondent : Mr.V. Meganathan, GA, (crl.side)

ORDER

This criminal revision has been filed challenging the order passed in Crl.M.P.No.5205 of 2022, dated 31.10.2022 by the learned Principal Special



Judge for NDPS Act, Chennai, in and by which, the learned Principal Special Judge has dismissed the bail application filed by the petitioners under section 167(2) Cr.P.C.

2. The learned counsel appearing for the petitioners contended that the petitioners are arrayed as A1 and A2 in Crime No.53 of 2022 on the file of respondent police. They were arrested on 20.04.2022 for the alleged offences punishable under section 8(c) r/w.22(b) and 29(1) of the NDPS Act and they are in custody from 20.04.2022. The limitation period for filing final report or charge sheet is 180 days, but the respondent police did not file any final report within 180 days. Therefore, as per section 167(2) Cr.P.C., which confers right on the accused persons to be released on bail on the expiry of the period contemplated under such section, the petitioners filed their bail petition before the trial court on 17.10.2022, but the trial court has dismissed the said bail petition on the ground that the respondent police had filed a petition seeking extension of time for filing final report in Crl.M.P.No.5053 of 2022, but in the said petition, no order was passed by the trial court granting extension of time for filing final report. In the circumstances, dismissing the statutory bail application on the ground that merely the respondent police have filed a petition seeking extension of time for filing final report, will take away



the right of the petitioners/accused. Therefore, the impugned order is unsustainable and the same is liable to be set aside. Thus, he seeks to set aside the impugned order and grant bail to the petitioners.

3. The learned Govt. Advocate (crl.side) submitted that the respondent police filed a petition in Crl.M.P.No.5053 of 2022 under Section 36A(4) of NDPS Act for extension of time for filing final report. He fairly conceded that no order was passed on that petition while passing the impugned order on 31.10.2022 and the said petition was allowed only on 23.12.2022. He would further submit that since the application for extension of time is filed within 180 days, the impugned order is sustainable and hence, there is no reason to interfere with the order passed by the trial court and pleaded to dismiss the criminal revision petition.

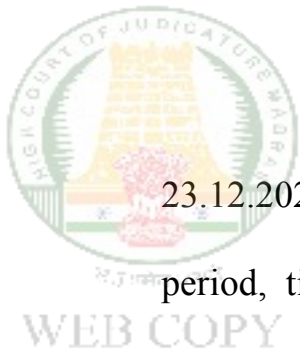
4. I have considered the submissions made on either side and perused the entire materials available on record.

5. On a perusal of records, the fact reveals that the respondent police, while patrolling behind Palaverkadu Light House, they found the petitioners/A1 and A2 along with A3. On seeing them, made an attempt to



escape from that place, however, they have been caught by the police and on enquiry, they seized LSD-Stamps 33 nos., MDMA Tablet-30 nos., Samsung A71 and Samsung A30s Galaxy cell phones from the accused persons, pursuant to which, a case has been registered on 19.4.2022 for the offences punishable under sections 8(c), 22(b) and 29(1) of Narcotic Drugs and Psychotropic Substances Act, 1985 in Cr.No.53 of 2022 and they were remanded to judicial custody on 19.4.2022. Admittedly, the petitioners are in custody since 19.4.2022.

6. As mandated under Section 167(2) of Cr.P.C., the final report should be filed by the respondent police within a period of 180 days from the date of arrest. Since the police failed to file final report within 180 days, the petitioners filed a petition on 19.10.2022 seeking statutory bail after completion of 180 days. The respondent police had also filed an application under section 36 A(4) of NDPS Act in Crl.M.P.No.5053 of 2022 before the trial court seeking extension of time for filing final report. Admittedly, the said petition was filed before completion of 180 days. Unfortunately, the trial court has not passed any order upon such extension petition filed by the respondent police. On verification of facts, it is further revealed that the trial court passed its order on the application for extension of time only on



23.12.2022. Therefore, it is clear that on the date of completion of statutory period, time for filing final report was not extended by the trial court .

7. The legislative mandate confers right on the accused to be released on bail on the expiry of the period contemplated under the proviso to subsection (2) of Section 167 Cr.P.C., if the accused offering himself to be released on bail. In this case, the accused were remanded to judicial custody on 19.04.2022. Till the completion of 180 days, the respondent police did not file final report. It is seen that the respondent police filed a petition for extension of time for filing final report which was received by the trial court in Crl.M.P.No.5053 of 2022, but in that petition, no order was passed as to whether the time for filing final report is extended or rejected. In these circumstances, the trial court without passing any order on time extension petition, rejected the bail petition filed by the petitioners/accused. Further, on perusal of records, it reveals that the trial court allowed the petition in Crl.M.P.5053 of 2022 seeking extension of time only on 23.12.2022. Therefore, on the date of deciding bail application filed by the petitioners, the time for filing final report was not extended. Therefore, 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, 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 charge sheet 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.

8. Accordingly, the Criminal Revision Case is allowed and the impugned order passed by the Principal Special Judge for NDPS Act, Chennai is set aside and the petitioners/accused are enlarged on statutory bail on the following conditions;

- (i) Each of the petitioners shall execute a bond for a sum of Rs.1,00,000/- (Rupees one lakh only), with two sureties, each for a



like sum to the satisfaction of the Principal Special Judge for NDPS Act, Chennai

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

(iii) The petitioners shall appear before the respondent police everyday at 10.30 a.m. for a period of three months and thereafter as and when required for interrogation.

05.01.2023

msr

Index:Yes/No

Internet:Yes/No

To

- 1.The Principal Special Judge for NDPS Act, Chennai
- 2.The Inspector of Police,
E2, Thirupalaivanam Police Station, Thiruvallur District.
- 3.The Public Prosecutor, High Court, Madras.
4. The Superintendent, Central Prison,
Puzhal, Chennai.

Note: Issue copy on 10.01.2023.



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V. SIVAGNANAM, J.

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