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Crl.R.C.No.1613 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.R.C.No.1613 of 2022

Surya.

...

Petitioner

/vs/

The State of Tamil Nadu,
Rep. by the Inspector of Police,
N-1, Royapuram Police Station,
Chennai.

..

Respondent

Prayer : Criminal Revision Case is filed under Section 397 and 401 of Cr.P.C., to set aside the dismissed bail order dated 04.08.2022 in respect of default bail application under Section 167(2) of Cr.P.C., vide Crl.M.P.No.3295 of 2022 passed by the Learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai, connected with Crime No.37 of 2022, on the file of respondent police.

For Petitioner

...

Mr.W.Camyles Gandhi

For Respondent

...

Mr.C.E.Pratap,
Government Advocate (Crl.Side)



ORDER

WEB COPY Challenging the impugned order dated 04.08.2022 passed in CrI.M.P.No.3295 of 2022 in Crime No.37 of 2022 on the file of Special Court under EC & NDPS Act, Chennai, the present Criminal Revision Case has been filed.

2. The Learned Counsel for the petitioner contended that the petitioner is the 5th accused and the respondent police registered the case against this petitioner along with other persons in Crime No.37 of 2022 for offences under Sections 8 (c) r/w 20(b)(ii)(c) and 29(1) of NDPS Act and he was arrested and remanded to judicial custody from 14.01.2022. The allegation is that the contraband of 160 kgs of Ganja has been seized from the accused. As mandated under Section 167(2) of Cr.P.C, the limitation period for filing final report is within 180 days, so far, no final report has been filed before the statutory period. Hence, the petitioner is entitled for statutory bail. Therefore, the petitioner filed an application before the trial Court in CrI.M.P.No.3295 of 2022, which was dismissed on the ground that the respondent police filed an application on 08.07.2022 i.e., 176th day, before completion of 180 days, under Section 36A(4) of NDPS Act, for extension of time for filing final report. The extension petition was permitted by this



Court on the same day. Therefore, the trial Court ordered extension of time only on 11.08.2022. Therefore, the observation made by the Court in the dismissal order is unsustainable. Hence, this petition has been filed seeking to set aside the impugned order passed by the trial Court and to enlarge the petitioner on bail under Section 167 (2) of Cr.P.C.

3. The Learned Government Advocate (Cr.L.Side) for the respondent submitted that the petitioner was arrested by the respondent police in crime No.37 of 2022 for offences under Sections 8 (c) r/w 20(b)(ii)(c) and 29(1) of NDPS Act. Further, he submitted that within the statutory period of 180 days, the respondent police has not filed the final report, but he filed an application under Section 36A(4) of NDPS Act, on 08.07.2022 before the completion of 180 days. Though the trial Court in the impugned order mentioned that the extension of time was ordered on the same day itself, but the order was passed only on 11.08.2022.

4. Heard the Learned Counsel for the petitioner and the Learned Government Advocate (Cr.L.Side) for the respondent. Perused the records.

5. On perusal of records, the fact reveals that the petitioner is the 5th



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.

6. 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., in Crl.M.P.No.3295 of 2022 for statutory bail and the same was dismissed as not maintainable by the trial Court on 04.08.2022 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.3295 of 2022 is incorrect and the petitioner is entitled for statutory bail.

7. 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

8. Accordingly, the Criminal Revision Case is allowed and the petitioner/accused 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 Court under EC & NDPS Act, Chennai.
- (ii) The petitioner and the sureties shall affix their photographs



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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.

23.01.2023

Index : Yes/No.

Internet : Yes/No.

bsm

Note: Issue order copy on 25.01.2023

To,

1. The Learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai.
2. The Inspector of Police, N-1, Royapuram Police Station, Chennai.
3. The Superintendent, Central Prison, Puzhal.
3. The Public Prosecutor, High Court, Madras



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V.SIVAGNANAM, J.

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