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CrI.RC No.121 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 27.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CrI.RC No.121 of 2023

Pindi Rajubabu

... Petitioner

Vs.

The State: Rep.by the Inspector of Police,
N-1, Royapuram Police Station,
Chennai.
(Crime No.80/2022)

... Respondent

Prayer: Criminal Revision Petition filed under Section 397 & 401 Cr.P.C. to call for the records relating to the order dated 29.08.2022 in CrI.M.P.No.3658/2022 in CC No.145/2022 passed by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai and set aside the same.

For Petitioner : Mr.G.Mageshkumar

For Respondent : Mr.V.Meganathan,

Government Advocate (CrI. Side)



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ORDER

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This petition has been filed to set aside the order dated 29.08.2022 passed in CrI.M.P.No.3658/2022 in CC No.145/2022 by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.

2. The respondent police registered a case in Crime No.80/2022 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C), 29(1) of NDPS Act against A1 to A3 and petitioner herein is A2. The case of the prosecution is that, on receipt of a secret information about the sale of Ganja, the respondent police went to the scene of occurrence on 30.01.2022 at 8.00 a.m., where, the accused persons were found in possession of 112 kgs of Narcotic substances (Commercial quantity), and hence the above case was registered as stated above and the contraband were seized. On the same day, the accused persons were arrested and were confined to Judicial Custody. The petitioner/A3 and other accused namely Yarpili Nagasuresh/A2, filed a bail petition under Section 167(2) of Cr.P.C. in CrI.M.P.No.3658/2022 before the Trial Court and it was dismissed by the Trial Court, vide order dated



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29.08.2022. Challenging the above order, the petitioner filed the present Criminal Revision Case to set aside the above order and to grant bail to him

3. The learned counsel for the petitioner submitted that, the investigating officer has not completed the investigation, within the statutory period of 180 days and hence, as per Section 167(2) of Cr.P.C., it is mandated to grant statutory bail to the petitioner. He further submitted that, the respondent police filed the final report only on 03.08.2022 and it was taken on file by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai as Calender Case No.145/2022 and to support his argument, he filed the Case Status. He also submitted that, since the respondent police failed to file the final report, within the statutory period and filed the final report only on 03.08.2022, the petitioner is entitled for statutory bail. However, without considering the legal aspects, the Trial Court has erred in dismissing the bail petition in Crl.M.P.o.3658 of 2022, vide order dated 29.08.2022 and hence, the above order has to be set aside the petitioner may be granted bail.



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4. Mr.V.Meganathan, learned Government Advocate (CrI.Side) takes notice for the sole respondent and submitted that, the investigating officer filed final report on 03.08.2022 and the same was taken on file as C.C.No145/2022 by the learned Special Judge, I Additional Special Court for Exclusive Trial of Cases under NDPS Act, Chennai.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (CrI.Side) appearing for the sole respondent and I have perused the materials on record.

6. A perusal of the records reveals that the respondent police registered a case in Crime No.80/2022 against A1 to A3 for the offences punishable under Sections 8(c) r/w 20(b)(ii)(C), 29(1) of NDPS Act and petitioner herein is A2. According to the respondent police, the accused persons were found in possession of 112 kgs of Narcotic substances, which is commercial in nature and the contraband were seized and the accused persons, including the petitioner herein, were arrested and confined to Judicial Custody on 30.01.2022. After expiry



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of 180 days, the petitioner/A3 along with A2, filed a bail petition in CrI.M.P.No.3658/2022 on 01.08.2022 before the Trial Court under Section 167(2) of Cr.P.C. and it was dismissed by the Trial Court, vide order dated 29.08.2022. In the case status filed by the counsel for the petitioner, it is mentioned that the final report was filed on 03.08.2022 with filing No.4102/2022, i.e. subsequent to the filing of bail application. Therefore, it is clear that, the investigating officer has not filed the final report within 180 days, as mandated under Section 167(2) of Cr.P.C.

7. At this juncture, it is worthwhile to point out that, as per 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 CrI.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



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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. 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, this Criminal Revision Case is allowed by setting aside the impugned order passed by the Trial Court in Crl.M.P.No.3658 of 2022 in C.C.No.145 of 2022 dated 29.08.2022, with the following conditions.

(i) The petitioner is directed to be enlarged on bail on condition that the petitioner ***shall execute a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties each for a like sum to the satisfaction of the learned the I Additional Special Judge for Exclusive Trial of Cases under 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 Aadhar card or Bank pass Book to ensure their identity.



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(iii) The petitioner shall appear before the Trial Court, on all hearing dates.

27.01.2023

Index:Yes/No
Internet:Yes/No
mst

To

1. The I Additional Special Judge for Exclusive Trial of Cases under NDPS Act, Chennai.
2. The Superintendent, Central Prison, Puzhal.
- 3.The Public Prosecutor, High Court, Madras.



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V.SIVAGNANAM, J.

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