



WEB COPY



Crl.R.C.No.1715 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.R.C.No.1715 of 2022

Mohan

...

Petitioner

/vs/

The State represented by,
The Inspector of Police,
P-2, Otteri Police Station,
Chennai.

Crime No.490 of 2022

.. Respondent

Prayer : Criminal Revision Petition is filed under Section 397 and 401 of Cr.P.C., to set aside the order passed in CrI.M.P.No.5929 of 2022 orderd on 29.11.2022 on the file of the Principal Special Court for NDPS Act cases at Chennai and enlarge the petitioner on bail under Section 167 (2) of Cr.P.C., in crime no.490 of 2022, pending on the file of the respondent.

For Petitioner

... Mr.Ramesh

For Respondent

... Mr.V.Meganathan,
Government Advocate (Crl.Side)



ORDER

WEB COPY Challenging the impugned order dated 29.11.2022 passed in CrI.M.P.No.5929 of 2022 in Crime No.490 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 respondent police registered a case against the petitioner as the first accused in Crime No.490 of 2022 for offences under Section 8 (c) r/w 20(b)(ii)(c) of NDPS Act and he was arrested and remanded to judicial custody from 24.05.2022. As mandated under Section 167(2) of Cr.P.C, within 180 days, final report has not been filed. Hence, the petitioner filed statutory bail application before the trial Court in CrI.M.P.No.5929 of 2022, which was dismissed on the ground that the respondent police filed a petition on 18.11.2022 under Section 36A(4) of NDPS Act, for extension of time for filing final report. It was unsustainable. Hence, 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 (Crl.Side) for the respondent submitted that the respondent police filed an application under Section 36A(4) of NDPS Act, on 18.11.2022. As on date, no order has been passed in the application for extension of time for filing the final report, but the petition filed to enlarge the petitioner on bail has been dismissed.

4. On perusal of the records the fact reveals that the petitioner is A1 in Crime No.490 of 2022. The respondent police registered a case against the petitioner for the offences under Section 8(c) r/w 20(b)(ii)(c) of the NDPS Act and he was arrested and remanded on 24.05.2022. The respondent police seized the contraband of 22 kg ganja, which is of commercial quantity. After investigation, the respondent police has not filed final report within statutory period of 180 days. Hence, the petitioner filed a petition under Section 167(2) of Cr.P.C., in Crl.M.P.No.5929 of 2022 for statutory bail on 21.11.2022. Further, the facts reveals that the respondent police filed a petition under Section 36A(4) of NDPS Act, only on 179th day i.e., 18.11.2022 for extension of time for filing final report. The trial Court refused to grant bail to the petitioner, since Extension Petition filed by the respondent police has been pending. Therefore, on the date of deciding bail application filed by the petitioner, 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 CrI.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 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

5. Accordingly, the impugned order is set aside and the petitioner/accused is enlarged on statutory bail on the following conditions,



Crl.R.C.No.1715 of 20__

V.SIVAGNANAM, J.

bsm

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