



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.04.2023

CORAM

THE HONOURABLE Mr. JUSTICE V. SIVAGNANAM

Crl.R.C.No.74 of 2023

Visham @ Santhosh

... Petitioner

Vs.

The State

Rep. by the Inspector of Police,
H-3 Tondiarpet Police Station,
Chennai

... Respondent

Criminal Revision filed under Section 397 and 401 of Cr.P.C., to set aside the order passed in Crl.M.P.No.5556 of 2022 on 14.11.2022 by the learned Principal Special Judge under NDPS Act, Chennai and enlarge the petitioner on statutory bail in Cr.No.160 of 2022 on the file of the respondent Police.

For Petitioner : Mr.N.Nishar Ahamed

For Respondent : Mr.R.Vinoth Raja,
Government Advocate (Crl. Side)

ORDER

This criminal revision has been filed challenging the order passed in Crl.M.P.No.5556 of 2022, dated 14.11.2022 by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai, in and by



which, the learned Principal Special Judge has dismissed the bail application filed by the petitioner under section 167(2) Cr.P.C.

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2. The learned counsel appearing for the petitioner contended that the respondent police registered a case against the petitioner and other persons in Cr.No.160 of 2022 for the offences punishable under sections 8(c), r/w. 22(C) and 29(i) of NDPS Act, 1985 and Section 77 of the juvenile Justice (Care and Protection of Children Act). The petitioner was arrested on 08.05.2022 and remanded to judicial custody. After the expiry of statutory period of 180 days, the respondent police, has not filed a final report. Hence the petitioner filed statutory bail application before the trial court. The trial court, by passing the impugned order dated 14.11.2022, dismissed the bail petition on the ground that the application filed by the prosecution in Crl.M.P.No.5434 of 2022 on 28.10.2022, seeking extension of statutory period of investigation is pending consideration and the same is posted for further proceedings. The learned Special Judge, without deciding the petition seeking extension of statutory period of investigation, dismissed the statutory bail application. It is against the principle stated by the Hon'ble Supreme Court. He further submitted that petition seeking extension of statutory period of investigation was kept pending by the learned Judge without deciding the same on the same day when



deciding the statutory bail application. In the circumstances, dismissing the statutory bail application on the ground that merely the prosecution has filed a petition seeking extension of time for completing investigation, will take away the right of the petitioner/accused. Therefore, the petitioner is entitled for statutory bail. Thus, he seeks to set aside the impugned order and grant bail to the petitioner.

3. The learned Govt. Advocate (crl.side) submitted that the prosecution has filed an application seeking extension of statutory period of investigation on 28.10.2022 before completion of 180 days and it was received by the learned Judge in Crl.M.P.No.5434 of 2022 and the same was allowed by extending time for further period of 180 days for completion of investigation. Hence, the petitioner is not entitled for statutory bail. Therefore, 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.



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5. On a perusal of records, it is seen that the respondent police registered a case against the petitioner and other persons in Cr.No.160 of 2022 for the offence punishable under sections 8(c), r/w. 22(C), 29(i) of NDPS Act, 1985 and Section 77 of the juvenile Justice (Care and Protection of Children Act) for illegal possession of ELZA-10-Nitrazepam 10 Mg Total 4100 Tablets, TIXXY 0.5 (Alprazolam Tablets 0.5 mg) - 750 tablets, pursuant to which, the respondent police arrested the petitioner along with accused persons and remanded them to judicial custody on 08.05.2022. Since the respondent police has not filed final report within 180 days as mandated under section 167(2) of Cr.P.C., the prosecution filed an application seeking time for completing investigation under section 36(A)(4) of NDPS Act on 28.10.2022 before completion of 180 days. Further, it is noticed that the petitioner filed statutory bail application on 04.11.2022, after completion of 180 days. It is noticed that in the impugned order, the learned trial judge has taken on his file the extension application filed by the respondent police in Crl.MP.No.5434 of 2022 for consideration on 28.10.2022 and kept the same pending for filing counter. But he has not decided the same filed for seeking extension, while deciding statutory bail application filed by the petitioner in Crl.M.P.No.5556 of 2022.



6. It is the settled principle by the 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** that the court is to require to examine the availability of the right on the compulsive bail on the date of its considering the question of bail and not barely on the date of the presentation of the petition for bail. Further, it is also held that if application for grant of bail on such default as well as prayer for extension of time to complete investigation made, both to be considered together and bail can be granted only on rejection of prayer for extension of time. In this case, the learned Judge not followed the principle as stated by the Honourable Supreme Court. Considering the fact that the statutory bail application was filed on 04.11.2022, but undeciding the application for extension of time for investigation filed by the respondent police, the trial judge has dismissed the statutory bail application alone on 14.11.2022 and posted the application for extension of time for filing counter. Thus it is clear that in the instant case, the learned trial Judge has not considered both the applications on the same day and without deciding Crl.M.P.No.5434 of 2022 seeking time extension application filed by the prosecution, he dismissed the statutory bail application filed by the petitioner which is in violation of the principle laid down by the



Supreme Court in cases cited supra. Therefore, the impugned order passed by the trial judge is unsustainable and the same is liable to be set aside. In view of the foregoing discussions, the impugned order is set aside and statutory bail is granted to the petitioner.

7. Accordingly, the impugned order dated 14.11.2022 passed in Crl.M.P.No.5556 of 2022 by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai, is set aside and Statutory Bail is granted to the petitioner and the petitioner is ordered to be released on bail on executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each, before the VII Metropolitan Magistrate, GT Court, Chennai on the following conditions;

(a) the sureties shall affix their photographs and left thumb impression in the surety bond and the Court concerned may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(b) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(c) the petitioner to appear before the respondent police on the first working day of every month at 10.30 a.m., until further orders.



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(d) the petitioner shall not abscond either during investigation or trial;

(e) on breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in *P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]*; and;

(f) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

8. With the above directions, this Criminal Revision Case is allowed.

19.04.2023

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Index: Yes/No

Internet: Yes/No

Note: Issue copy on 21.04.2023



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V. SIVAGNANAM, J.

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- To
- 1.The Principal Special Judge Principal Special Court
under EC & NDPS Act, Chennai.
 - 2.The VII Metropolitan Magistrate,
G.T.Court, Chennai
 - 3.The Inspector of Police,
H-3 Tondiarpet Police Station,
Chennai.
 - 4.The Public Prosecutor,
Madras High Court,
Chennai.
 5. The Superintendent, Central Prison,
Puzhal, Chennai.

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