



Crl.R.C.(MD).No.375 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 11.04.2023

Pronounced on : 05.06.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.375 of 2023

Parimaladoss @ Doss

... Petitioner/
Accused No.5

Vs.

The Inspector of Police,
NIB-CID,
Sivagangai,
Sivagangai District.
(Crime No.12 of 2020)

... Respondent/
Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to the order dated 01.02.2023 passed in Cr.M.P.No.1275 of 2022 in C.C.No.02 of 2021 on the file of the Additional District and Sessions Judge/Presiding Officer, Special Court for EC & NDPS Act cases, Pudukottai and set aside the same and further direct the trial Court to accept the bonds and sureties on the side of the petitioner for his due appearance in C.C.No.02 of 2021.



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For Petitioner : Mr.D.Selvam

For Respondents : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

ORDER

This Criminal Revision is directed against the order passed in Cr.M.P.No.1275 of 2022 in C.C.No.02 of 2021 dated 01.02.2023 on the file of the Special Court for EC and NDPS Act cases, Pudukottai, dismissing the petition seeking permission to execute bond with sureties for the appearance of the revision petitioner/fifth accused under Section 88 of the Code of Criminal Procedure.

2. The case of the prosecution is that on 22.06.2020, on receipt of secret information, at about 12.00 noon the police party went to the spot and intercepted a white color XYLO car bearing Registration No.TN-22-CH-4986 and on search, 144kgs of Ganja was found in the car, that the third accused, who had driven the said car, has given a voluntary confession statement, that the police party had recovered the contraband of 144kgs of Ganja, a sum of Rs.90,000/- and a mobile phone from the third accused and that after



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completing the investigation, final report came to be filed against five persons including the revision petitioner herein for the offences under Sections 8(c) r/w 20(b)(ii)(C), 29(1) and 25 of NDPS Act.

3. Since the revision petitioner was absconding, charge sheet was taken on file in C.C.No.02 of 2021 and Non-Bailable Warrant (NBW) was issued against the revision petitioner.

4. It is not in dispute that the revision petitioner has earlier moved an application for anticipatory bail in Crl.O.P.(MD)No.2957 of 2021 and the same was ordered to be dismissed on 30.04.2021 and subsequently, moved another application in Crl.O.P.(MD)No.16263 of 2021 and the same was also ordered to be dismissed on 28.10.2021.

5. It is also not in dispute that the revision petitioner has then moved an application under Section 88 Cr.P.C. in Cr.M.P.No.1275 of 2022 seeking permission to execute bond with sureties for his future appearance in the case pending in C.C.No.02 of 2021 on the file of the Special Court for EC and NDPS Act cases, Pudukottai. The respondent has filed a memo of objection



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raising serious objections to grant the relief claimed under Section 88 Cr.P.C.

The learned Special Judge, after enquiry, has passed the impugned order dated 01.02.2023 dismissing the said petition. Aggrieved by the order of dismissal, the fifth accused has now come forward with the present criminal revision.

6. When the matter was taken up for admission, the learned counsel appearing for the revision petitioner would strongly contend that the learned Special Judge has passed an one lined blanket order without assigning any reasons and that therefore, the order is legally unsustainable. This Court, after perusing the records and by taking note of the docket entry as “Orders pronounced. In the result, this petition is dismissed”, directed the learned counsel appearing for the revision petitioner to apply and get the certified copy of the fair order, as it was not an one lined order. Accordingly, the revision petitioner's side has produced the copy of the detailed order passed by the learned Special Judge in Cr.M.P.No.1275 of 2022 in C.C.No.02 of 2021, wherein, the learned Special Judge, on considering the petitioner's averments and the objections raised by the other side and also taking note of the judgments relied on by the petitioner's side, has passed the impugned order.



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7. The learned counsel appearing for the revision petitioner would submit that the trial Court ought to have noted that the word “custody” appearing in Section 170 Cr.P.C. does not contemplate either police or judicial custody, but merely connotes the production of the accused by the investigating officer before the Court, while filing the charge sheet, that the trial Court has also failed to consider that the investigating officer was able to complete the entire investigation and filed the charge sheet and now the case is pending before the trial Court, that the trial Court ought to have followed the decisions of the Hon'ble Supreme Court in *Siddharth Vs. State of Uttar Pradesh and another* reported in *(2022) 1 SCC 676* and in *Satender Kumar Antil Vs. Central Bureau of Investigation and another* reported in *2022 LiveLaw (SC) 577* and that mere perusal of the records produced by the prosecution would go to show the existence of reasonable grounds for the belief that the revision petitioner is not guilty, to satisfy the condition precedent and lift the embargo under Section 37 of NDPS Act, but the same was not considered by the trial Court.

8. In *Siddharth Vs. State of Uttar Pradesh and another* reported in *(2022) 1 SCC 676*, the Hon'ble Apex Court has observed that in the normal



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and ordinary course the police should always avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of cooperation is provided by the accused to the investigating officer in completing the investigation and it is only in cases of utmost necessity that arrest becomes necessary, for instance when custodial investigation becomes necessary or when there is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond or in other similar circumstances. The Hon'ble Apex Court has further held that the word “custody” appearing in Section 170 Cr.P.C. does not contemplate either police or judicial custody, but it merely connotes the presentation of the accused by the investigating officer before the Court at the time of filing the charge sheet whereafter the role of the Court starts. The Hon'ble Apex Court has then held that personal liberty and reputation of a person are important aspects of our constitutional mandate and that merely because an arrest can be made because it is lawful does not mandate that arrest must be made.

9. It is pertinent to note that the appellant, in the case referred above, along with 83 other private persons were sought to be roped in FIR, which was



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registered 7 years ago and the allegations against the appellant therein is that he claims to be a supplier of stone for which royalty was paid in advance to these holders and claims not to be involved in the tendering process.

10. The Hon'ble Supreme Court in ***Satender Kumar Antil Vs. Central Bureau of Investigation and another*** reported in ***(2021) 10 SCC 773*** has issued guidelines for grant of bail by categorizing the offences into 4 categories and the same are extracted hereunder:-

(A) Offences punishable with imprisonment of 7 years or less not falling in categories B and D.

(B) Offences punishable with death, imprisonment for life or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA (Section 43D(5)), Companies Act 212(6), etc.

(D) Economic offences not covered by Special Acts.

11. In B and D categories, the Hon'ble Supreme Court has mentioned that on appearance of the accused in Court pursuant to process issued bail



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application to be decided on merits and with regard to category C 'same as categories B and D with the additional condition of compliance of the provisions of bail under Section 37 of NDPS Act, Section 45 of PMLA, Section 212(6) of Companies Act, Section 43D(5) of UAPA, POCSO, etc.'

12. At this juncture, it is also necessary to refer the passages relied on by the learned counsel appearing for the revision petitioner in ***Satender Kumar Antil Vs. Central Bureau of Investigation and another*** reported in ***2022 LiveLaw (SC) 577 (11.07.2022)***,

“31. When the courts seek the attendance of a person, either a summons or a warrant is to be issued depending upon the nature and facts governing the case. Section 87 gives the discretion to the court to issue a warrant, either in lieu of or in addition to summons. The exercise of the aforesaid power can only be done after recording of reasons. A warrant can be eitherailable or non-bailable. Section 88 of the Code empowers the Court to take a bond for appearance of a person with or without sureties.

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33. On the exercise of discretion under Section 88, this Court in Pankaj Jain v. Union of India, (2018) 5 SCC 743, has held that:

“12. The main issue which needs to be answered in the present appeal is as to whether it was obligatory for the Court to release the appellant by accepting the bond under Section 88 CrPC on the ground that he was not arrested during investigation or the Court has rightly exercised its jurisdiction under Section 88 in rejecting the application filed by the appellant praying for release by accepting the bond under Section 88 CrPC.

13. Section 88 CrPC is a provision which is contained in Chapter VI “Processes to Compel Appearance” of the Code of Criminal Procedure, 1973. Chapter VI is divided in four sections — A. Summons; B. Warrant of arrest; C. Proclamation and Attachment; and D. Other rules regarding processes. Section 88 provides as follows:

*“88. Power to take bond for appearance.—
When any person for whose appearance or*



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arrest the officer presiding in any court is empowered to issue a summons or warrant, is present in such court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such court, or any other court to which the case may be transferred for trial.”

14. We need to first consider as to what was the import of the words “may” used in Section 88.

xxx xxx xxx

22. Section 88 CrPC does not confer any right on any person, who is present in a court. Discretionary power given to the court is for the purpose and object of ensuring appearance of such person in that court or to any other court into which the case may be transferred for trial. Discretion given under Section 88 to the court does not confer any right on a person, who is present in the court rather it is the power given to the court to facilitate his appearance, which clearly indicates that use of the word “may” is discretionary and it is for the court to exercise its discretion when



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situation so demands. It is further relevant to note that the word used in Section 88 “any person” has to be given wide meaning, which may include persons, who are not even accused in a case and appeared as witnesses.”

13. It is pertinent to note that the revision petitioner in the grounds of revision itself has specifically admitted the position of law that the revision petitioner cannot claim the orders under Section 88 Cr.P.C. as a matter of right and that the use of the word “may” would only indicate that it is discretionary.

14. No doubt, the learned counsel appearing for the revision petitioner has relied on the judgment of Punjab and Haryana High Court in ***Arun Sharma Vs. Union of India and others*** in support of his contention and the relevant passages are extracted hereunder:-

“10.

.....

12. The limitation on the power to release on bail in Section 437 CrPC is in the nature of a restriction on that power, if



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reasonable grounds exist for the belief that the accused is guilty. On the other hand, the limitation on this power in Section 37 of the NDPS Act is in the nature of a condition precedent for the exercise of that power, so that, the accused shall not be released on bail unless 8 of 17 the court is satisfied that there are reasonable grounds to believe that he is not guilty. Under Section 437 CrPC it is for the prosecution to show the existence of reasonable grounds to support the belief in the guilt of the accused to attract the restriction on the power to grant bail; but under Section 37 NDPS Act it is the accused who must show the existence of grounds for the belief that he is not guilty, to satisfy the condition precedent and lift the embargo on the power to grant bail. This appears to be the distinction between the two provisions which makes Section 37 of the NDPS Act more stringent.

11. On the same principles, in absence of anything inconsistent in PMLA with section 88 of CrPC, when a person voluntarily appears before the Special Court for PMLA pursuant to issuance of process vide summons or warrant, and offers submission of bonds for further appearances before the



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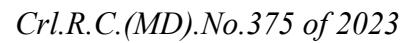
Court, any consideration of his application for furnishing such bond, would be necessarily governed by section 88 of the CrPC read with section 65 of PMLA. Section 88 of the CrPC reads as follows-

.....

This Section 88 (corresponding to section 91 of CrPC, 1898) would not apply qua a person whose appearance is not on his volition, but is brought in custody by the authorities as held by the Constitution Bench of the Hon'ble Supreme Court in Madhu Limaye v. Ved Murti, AIR 1971 SC 2481 wherein it was observed that-

"18.....In fact Section 91 applies to a person who is present in Court and is free because it speaks of his being bound over, to appear on another day before the Court. That shows that the person must be a free agent 10 of 17 whether to appear or not. If the person is already under arrest and in custody, as were the petitioners, their appearance depended not on their own volition but on the volition of the person who had their custody....."

Thus, in a situation like this where the accused were not arrested under section 19 of PMLA during investigations and



12. We find that as explained by the Hon'ble Supreme Court in *Union of India v. Thamisharasi* (supra), the embargo under Section 45(1)(ii) of PMLA being similar to that under section 37 of NDPS will operate in a different field occupied by section 437 and would override the same, but would have no bearing on application of the provisions of section 88 and section 167(2) of CrPC. The absence of any provision in PMLA inconsistent with section 88 and section 167(2) of CrPC is significant.”

15. The above judgment was passed on 22.07.2016, long before the judgment of the Hon'ble Supreme Court in ***Satender Kumar Antil's case***. As already pointed out, the Hon'ble Supreme Court has categorized the offences punishable under NDPS Act in C category and in addition to the compliance of the conditions contemplated for B and D categories, compliance of additional condition of the provisions of bail under NDPS Act Section 37 is made necessary.



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16. Even the Hon'ble Apex Court in ***Pankaj Jain Vs. Union of India and another*** reported in ***(2018) 5 SCC 743*** has specifically held that Section 88 Cr.P.C. does not confer any right on a person, who is present in the Court and moreover, as rightly contended by the learned Additional Public Prosecutor, nowhere it has been stated that Section 88 will prevail over the Special provision under Section 37 of NDPS Act.

17. The learned counsel appearing for the revision petitioner has relied on the decision of this Court in ***Uthayavan Vs. The State represented by its Inspector of Police, NIB-CID, Madurai*** in Crl.R.C.(MD)No.435 of 2021, wherein, a learned Judge of this Court, by observing that there was no specific overtact in respect of possession of ganja as against the petitioner therein and the allegation against the petitioner therein was that he drove his vehicle in a speedy manner and fled away, set aside the order passed by the Special Court under Section 88 Cr.P.C. in dismissing the petition and further directed the petitioner therein to execute a bond for Rs.10,000/- with two sureties for like sum to the satisfaction of the concerned trial Court under Section 88 of Criminal Procedure Code.



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18. The learned counsel appearing for the revision petitioner as well as the learned Additional Public Prosecutor appearing for the respondent has cited the order passed in Crl.R.C.(MD)No.735 of 2022 (***State, represented by its Inspector of Police, Pamban Police Station, Ramanathapuram District Vs. L.Antony Adimai***). A learned Judge of this Court, by observing that even in the case of exercising jurisdiction under Section 88 Cr.P.C. provision under Section 37 of NDPS Act must be complied, allowed the revision and thereby dismissed the petition filed under Section 88 Cr.P.C. and further directed the trial Court to take necessary steps to secure the accused and remand him immediately pending trial and the relevant portion is extracted hereunder:-

“6. I am not inclined to agree with the point argued by the respondent's Counsel. Even in the case of exercising jurisdiction under Section 88 of Cr.P.C, provision under Section 37 of NDPS Act must be complied. If not there will be no purpose for section 37 of NDPS Act, as rightly pointed out by the State. If such a power is truly exercised by the trial court in respect of the special offences under the provision of NDPS Act, then accused who are absconding, who are not available for interrogation during the investigation period, may appear before the Special Court and seek exercise of power under Section 88 of Cr.P.C., will



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have serious consequences, which in effect will dilute the rigour and the object of Section 37 of NDPS Act. So, when we approach this issue from this angle, then consequential answer will be that the exercise made by the trial Court is absolutely without jurisdiction.”

19. In ***Intelligence Officer, Narcotics Control Bureau, Madurai Sub Zone, Madurai Vs. Markandan*** in Crl.O.P.(MD)Nos.809, 813 and 816 of 2020, by following the judgment of this Court in Crl.R.C.(MD)No.735 of 2022 referred above, another learned Judge of this Court has allowed the petitions and thereby set aside the order passed under Section 88 Cr.P.C. permitting the accused therein to execute bond for his appearance.

20. The learned Judge of this Court in the above decision case, observed that as per Section 37(1)(b), the accused shall not be permitted to execute any bond unless the twin conditions provided under Section 37 of NDPS Act are complied with and the relevant passage is extracted hereunder:-

“7. a) Section 37 of NDPS Act reads as follows:

“37. Offences to be cognizable and non-bailable..



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(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless.

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations



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under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”

b) As per Section 37 (1)(b), the accused shall not be permitted to execute any bond unless the twin conditions provided under Section 37 are complied with. The conditions are that the Public Prosecutor has to be given an opportunity to oppose such application for release and where the Public Prosecutor opposes the application, the Court has to be satisfied with reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. The learned Judge, by allowing the applications filed under Section 88 CrPC without giving opportunity to the Public Prosecutor and satisfying himself about the other conditions provided, has passed the impugned orders.”

21. Considering the above provisions of law and also the legal position reiterated by the Hon'ble Supreme Court above referred, this Court is in entire agreement with the decisions arrived at by the learned Judges of this Court in Crl.R.C.(MD)No.735 of 2022 and Crl.O.P.(MD)Nos.809, 813 and 816 of 2020.



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22. In the petition filed under Section 88 Cr.P.C., similar to that of the application seeking bail for commercial quantity under NDPS Act, the accused has to necessarily satisfy the twin conditions contemplated under Section 37 of NDPS Act. Suppose in a case registered under the provisions of NDPS Act for possessing commercial quantity of narcotic drugs, a police officer without arresting the accused has filed a final report and the same is taken on file and if that accused is permitted to execute a bond with sureties under Section 88 Cr.P.C., the same would have the effect of nullifying the very object of introducing the Special provision of Section 37 of NDPS Act.

23. Considering the above, the impugned order dismissing the petition filed under Section 88 Cr.P.C. cannot be found fault with. Hence, this Court concludes that the revision is absolutely devoid of merits and the same is liable to be dismissed.

24. In the result, this Criminal Revision Case is dismissed.

05.06.2023

NCC : Yes/No
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To

- 1.The Inspector of Police,
NIB-CID,
Sivagangai,
Sivagangai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

esm

**Pre-Delivery order made in
Crl.R.C.(MD)No.375 of 2023**

Dated : 05.06.2023