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CrI.R.C.No.101 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2024
PRONOUNCED ON : 27.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.101 of 2024

M.Sarath @ Kili Sarath

... Petitioner

Vs.

State, Rep. by
Inspector of Police,
PEW, Gummidipoondi,
Cr.No.264 of 2023.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order passed in CrI.M.P.No.10050 of 2023 dated 12.01.2024 on the file of the Principal Special Judge under EC & NDPS Act, Chennai.

For Petitioner	:	Mr.M.G.Martinmanivannan
For Respondent	:	Mr.R.Kishore Kumar, Government Advocate (CrI. Side)

ORDER

The petitioner/A4 has filed a statutory bail in CrI.M.P.No.10050 of 2023 in Crime No.264 of 2023 before the learned Principal Special Judge, Principal Special Court Under EC & NDPS Act, Chennai. The learned



Judge *vide* order, dated 12.01.2024 dismissed the same, against which, the present Criminal Revision Case.

2.The learned counsel for the petitioner submitted that the respondent Police registered a case against the petitioner/A4 and other accused persons for offence under Sections 8(c), 20(b)(ii)(c) and 29(1) of The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') in Crime No.264 of 2023. The accused were arrested on 18.06.2023. Since the investigation not completed and charge sheet not filed, the petitioner on 187th day filed statutory bail under Section 167(2) Cr.P.C., on 22.12.2023. Earlier to it, the respondent Police filed a petition under Section 36-A(4) of NDPS Act on 177th day i.e., on 11.12.2023 in Crl.M.P.No.9594 of 2023 seeking extension of statutory period of investigation for further 180 days. Notice was ordered on 19.12.2023, arguments in Statutory bail petition was made on 03.01.2024 and it was reserved for orders on 04.01.2024. Finally, on 12.01.2024 a common order in both the petitions passed allowing the extension of period of investigation in Crl.M.P.No.9594 of 2023 and dismissing the statutory bail



of the petitioner in Crl.M.P.No.10050 of 2023. The learned counsel further submitted that in view of the decision of Hon'ble Apex Court in the case of ***“M.Ravindran Versus Intelligence Officer, Directorate of Revenue Intelligence*** reported in ***(2021) 2 Supreme Court Cases 485***” and this Court in ***“Ajith Versus State Rep. by The Inspector of Police, E-9, Thazhambur Police Station, Chennai-600130 in Crl.R.C.No.924 of 2023, dated 22.06.2023***” followed the ***“Judgebir Singh @ Jasbir Singh Samra @ Jasbir & Ors., Versus National Investigating Agency in Criminal Appeal No.1011 of 2023***” the impugned order passed by the Court below is not legally sustainable.

3.The learned Government Advocate [Crl. Side] appearing for the respondent Police filed a counter and submitted that on 18.06.2023 at about 05.00 hours, the defacto complainant/Sub-Inspector of Police, attached to the respondent Police Station was on duty, at that time, he received a secret information about illegal transport of narcotic substance, based on that, he went along with police team to the scene of occurrence i.e., Gummidipoondi Kattukollai Street nearby Auto Stand. At that time, the petitioner/A4 along



with other accused came from there suspiciously. When they saw the Police team, they tried to escape from the spot and the respondent police secured them and conducted search and seized 36 kgs Ganja from the accused persons [A1 to A6] under seizure mahazar in presence of witnesses. Thereafter, the Inspector of Police arrested the accused and recorded their confession statements. After that, the arrested accused along with the seized contrabands taken to the respondent Police station. A case was registered in in No.264 of 2023 for offence under Sections 8(c) r/w 20(b)(ii)(C) and 29(1) of NDPS Act, 1985 against the accused persons on 18.06.2023 and remanded them to judicial custody.

4.He further submitted that the charge sheet ought to be filed before the concerned court within 180 days. On 11.12.2023, the learned Special Public Prosecutor filed extension application of statutory period of investigation under Section 36-4(A) of NDPS Act before the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai on 177th day. On 18.12.2023, the respondent Police served summon informing the prosecution side filed an extension application of statutory period to the



accused and obtained an acknowledgment. Thereafter, the respondent Police produced the acknowledgment before the Court below in Crl.M.P.No.9594 of 2023 in Crime No.264 of 2023 and the same was allowed on 12.01.2024 and extended further period of investigation of 90 days. The admitted position is that on 177th day i.e., 11.12.2023, the respondent Police filed petition under Section 36-A(4) of NDPS Act. Notice was served to the petitioner on 18.12.2023 and thereafter, the impugned order passed on 12.01.2024 and the petitioner filed a statutory bail petition on 187th day i.e., on 22.12.2023. In view of the extension petition filed earlier, the petitioner is not entitled for any statutory bail. Hence, prays for dismissal of the Criminal Revision Case.

5.It is further submitted that in this case, the investigation was completed and charge sheet filed through e-Filing on 17.12.2023 at about 18:59:58 hours and SR.No.CC/11028/2023 assigned on 20.12.2023 since 18.12.2023 and 19.12.2023 being a Court holiday. The objections raised by the learned counsel for the petitioner in additional grounds is that in e-Court proceedings on 17.12.2023 it is found that “Oath is not recorded”, hence, it



cannot be stated as defective charge sheet/incomplete charge sheet filed and the same is not proper.

6.The learned counsel for the petitioner citing e-Court report submitted that on 17.12.2023, charge sheet was not accepted for the reason that “Oath is not recorded”. One of the co-accused Counsel filed a memo to pursue the Court bundle before the Trial Court and found that the final report uploaded only on 20.12.2023 in SR.CC/11028/2023. The petitioner filed the statutory bail application under Section 167(2) Cr.P.C., in CrI.M.P.No.10050 of 2023 before the trial Court on 22.12.2023 at about 10.30 hours. The final report has been uploaded only on 20.12.2023 and a communication to the respondent to cure the defects on or before 04.01.2023 which was rectified only on 09.01.2024 which would amply proved that the charge sheet filed on 17.12.2023 is an incomplete defective charge sheet. Further, the learned counsel for the petitioner referred to the decision of the Hon'ble Apex Court in the case of “***Rajalakshmi @ Mithra Versus Inspector of Police, R-2, Kodambakkam***” wherein the trial Court had observed that the charge sheet under Section 173(2) Cr.P.C., is not



complete unless it is accompanied by the material papers (statements etc.,) as contemplated under Section 173(5) of Cr.P.C., and the investigation of this case was not completed within 180 days and the complete charge sheet was not filed by the investigating agency within statutory period, hence, allowed the statutory bail in that case. Further, he replied upon the judgment of this Court in the case of “***Mohamed Husan Kuthous @ Kuthous @ Thuyavan Versus State rep by Inspector of Police, Town Police Station, Karaikal in Crl.A.Nos.1317 & 1319 of 2022*** reported in ***(2024) 1 MLJ (Crl.) 177***” wherein the Division Bench of this Court had granted statutory bail to the accused therein.

7.This Court considered the rival submissions and perused the materials available on record.

8.This Court has got clarification from the IT wing of this Court and found that the respondent Police filed the charge sheet on 17.12.2023 at 18:59:58 hours. The “oath is not recorded” is only in case of filing is done without digital authentication and Aadhar card details and it is required only



when OTP is received through mobile. In this case, on 17.12.2023, charge sheet in SR.No.CC/11028/2023 has been filed through e-filing which is confirmed which is as per the Madras High Court e-Filing Rules, 2020. Thereafter only, the petitioner filed the statutory bail on 22.12.2023. In view of the same, the petitioner's claim of entitlement of statutory bail does not arise. There was some clarification sought by the trial Court and the check slip has been issued which was clarified and submitted by the respondent Police and the case has been taken on file as C.C.No.30 of 2024. The Hon'ble Apex Court clearly held that the filing of charge sheet is sufficient. In this case, charge sheet filed on 17.12.2023. The submission of the learned counsel for the petitioner in additional grounds that the present revision allowed on 08.02.2024 and thereafter, posted for clarification, is not correct. No orders was passed on that day and only clarification was sought.

9.The Hon'ble Apex Court recently on 24.01.2024 in the case of “*Central Bureau of Investigation vs. Kapil Wadhwan and Others in Crl.M.C.No.6544 of 2022*” referring to various earlier judgments held that



once charge sheet has been filed against the accused within prescribed time, the accused cannot claim his statutory right of default bail under Section 167(2) of Cr.P.C. on the ground that investigation qua other accused was pending. It would be apposite to extract the following relevant paragraphs:

“23. The benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to the offender only when a chargesheet is not filed and the investigation is kept pending against him. Once however, a chargesheet is filed, the said right ceases. It may be noted that the right of the investigating officer to pray for further investigation in terms of sub-section (8) of Section 173 is not taken away only because a chargesheet is filed under sub-section (2) thereof against the accused. Though ordinarily all documents relied upon by the prosecution should accompany the chargesheet, nonetheless for some reasons, if all the documents are not filed along with the chargesheet, that reason by itself would not invalidate or vitiate the chargesheet. It is also well settled that the court takes cognizance of the offence and not the offender. Once from the material produced along with the chargesheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The



pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of chargesheet would neither vitiate the chargesheet, nor would it entitle the accused to claim right to get default bail on the ground that the chargesheet was an incomplete chargesheet or that the chargesheet was not filed in terms of Section 173(2) of Cr.P.C.

24. In *Dinesh Dalmia (supra)*, this Court has elaborately explained the scope of Section 167(2) vis-à-vis Section 173(8) Cr.P.C. The paragraphs relevant for the purpose of this appeal are reproduced hereinbelow: -

"19. A charge-sheet is a final report within the meaning of sub- section (2) of Section 173 of the Code. It is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence thereupon should be taken or not. The report is ordinarily filed in the form prescribed therefor. One of the requirements for submission of a police report is whether any offence appears to have been committed and, if so, by whom. In some cases, the accused having not been arrested, the investigation against him may not be complete. There may not be sufficient material for arriving at a decision that the absconding accused is also a person by whom the offence appears to have been committed. If the investigating officer finds sufficient evidence even against such an accused who had been absconding, in our opinion, law does not require that filing of the charge-sheet must await the arrest of the accused.

20. Indisputably, the power of the investigating officer to make a prayer for making further investigation in



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terms of sub-section (8) of Section 173 is not taken away only because a charge-sheet under sub-section (2) thereof has been filed. A further Investigation is permissible even if order of cognizance of offence has been taken by the Magistrate.

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22. It is true that ordinarily all documents accompany the charge-sheet. But, in this case, some documents could not be filed which were not in the possession of CBI and the same were with GEQD. As indicated hereinbefore, the said documents are said to have been filed on 20-1-2006 whereas the appellant was arrested on 12-2-2006. The appellant does not contend that he has been prejudiced by not filing of such documents with the charge-sheet. No such plea in fact had been taken. Even if all the documents had not been filed, by reason thereof submission of charge-sheet itself does not become vitiated in law. The charge-sheet has been acted upon as an order of cognizance had been passed on the basis thereof. The appellant has not questioned the said order taking cognizance of the offence. Validity of the said charge-sheet is also not in question.

23 to 27.....

28. It is now well settled that the court takes cognizance of an offence and not the offender. (See Anil Saran v. State of Bihar [(1995) 6 SCC 142: 1995 SCC (Cri) 1051] and Popular Muthiah v. State [(2006) 7 SCC 296: (2006) 3 SCC (Cri) 245].)

29. The power of a court to direct remand of an accused either in terms of sub-section (2) of Section 167 of the Code or sub-section (2) of Section 309 thereof will depend on the stages of the trial. Whereas sub-section (2) of Section 167 of the Code would be attracted in a case where cognizance has not been



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taken, sub-section (2) of Section 309 of the Code would be attracted only after cognizance has been taken.

30. If submission of Mr Rohatgi is to be accepted, the Magistrate was not only required to declare the charge-sheet illegal, he was also required to recall his own order of taking cognizance. Ordinarily, he could not have done so. (See Adalat Prasad v. Rooplal Jindal [(2004) 7 SCC 338: 2004 SCC (Cri) 1927] Subramaniam Sethuraman v. State of Maharashtra [(2004) 13 SCC 324: 2005 SCC (Cri) 242: (2004) 7 Scale 733] and Everest Advertising (P) Ltd. v. State, Govt. of NCT of Delhi [(2007) 5 SCC 54: (2007) 2 SCC (Cri) 444: JT (2007) 5 SC 529].) It is also well settled that if a thing cannot be done directly, the same cannot be permitted to be done indirectly. If the order taking cognizance exists, irrespective of the conduct of CBI in treating the investigation to be open or filing applications for remand of the accused to police custody or judicial remand under sub-section (2) of Section 167 of the Code stating that the further investigation was pending, would be of no consequence if in effect and substance such orders were being passed by the court in exercise of its power under sub-section (2) of Section 309 of the Code.

31 to 37.....

38. It is a well-settled principle of interpretation of statute that it is to be read in its entirety. Construction of a statute should be made in a manner so as to give effect to all the provisions thereof. Remand of an accused is contemplated by Parliament at two stages, pre-cognizance and post-cognizance. Even in the same case, depending upon the nature of charge-sheet filed by the investigating officer in terms of Section 173 of the Code, a cognizance may be taken as against the person against whom an offence is said to have been



made out and against whom no such offence has been made out even when investigation is pending. So long a charge-sheet is not filed within the meaning of sub-section (2) of Section 173 of the Code, investigation remains pending. It, however, does not preclude an investigating officer, as noticed hereinbefore, to carry on further investigation despite filing of a police report, in terms of sub-section (8) of Section 173 of the Code.

39. The statutory scheme does not lead to a conclusion in regard to an investigation leading to filing of final form under sub-section (2) of Section 173 and further investigation contemplated under sub-section (8) thereof. Whereas only when a charge-sheet is not filed and investigation is kept pending, benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to an offender, once, however, a charge-sheet is filed, the said right ceases. Such a right does not revive only because a further investigation remains pending within the meaning of sub-section (8) of Section 173 of the Code."

25. In view of the afore-stated legal position, we have no hesitation in holding that the chargesheet having been filed against the respondents-accused within the prescribed time limit and the cognizance having been taken by the Special Court of the offences allegedly committed by them, the respondents could not have claimed the statutory right of default bail under Section 167(2) on the ground that the investigation qua other accused was pending. Both, the Special Court as well as the High Court having committed



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serious error of law in disregarding the legal position enunciated and settled by this Court, the impugned orders deserve to be set aside and are accordingly set aside.”

10.In the result, this Court does not find any merit for consideration in this criminal revision case. Accordingly, the criminal revision case stands dismissed confirming the impugned order, dated 12.01.2024 in Crl.M.P.No.10050 of 2023 passed by the learned Principal Special Judge under EC & NDPS Act, Chennai.

27.03.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

- 1.The Principal Special Judge under EC & NDPS Act,
Chennai.
- 2.The Inspector of Police,
PEW, Gummidipoondi.
- 3.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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