



Crl.R.C.Nos.203 and 230 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.03.2024
PRONOUNCED ON : 04.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.Nos.203 and 230 of 2024

Rafiq Nasar

... Petitioner in
both Crl.RCs.

Vs.

State rep. by
The Intelligence Officer,
NCB, Chennai.

... Respondent in
both Crl.RCs.

PRAYER in Crl.RC.No.203 of 2024: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records and set aside the order passed in Crl.M.P.No.7825 of 2023 dated 31.10.2023 by the learned Principal Special Judge under EC & NDPS Act Cases, Chennai in NCB F.No.48/1/05/2023-NCB/MDS on the file of the respondent and grant bail to the petitioner.

PRAYER in Crl.RC.No.230 of 2024: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records and set aside the order passed in Crl.M.P.No.329 of 2024 dated 01.02.2024



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by the learned Principal Special Judge under EC & NDPS Act Cases, Chennai in NCB F.No.48/1/05/2023-NCB/MDS on the file of the respondent and grant bail to the petitioner.

For Petitioner : Mr.M.S.Charles
in both Crl.RCs.

For Respondent
in both Crl.RCs. : Mr.N.P.Kumar
Special Public Prosecutor

COMMON ORDER

Crl.R.C.No.203 of 2024 is filed by the petitioner/A2 challenging the order passed in Crl.M.P.No.7825 of 2023 filed by the respondent under Section 36A(4) of NDPS Act by the learned Principal Special Judge under EC & NDPS Act Cases, Chennai vide order dated 31.10.2023 granting further extension of six months to complete the investigation.

2.Crl.R.C.No.230 of 2024 is filed by the petitioner/A2 challenging the order passed in Crl.M.P.No.329 of 2024 filed by the petitioner under Section 167(2) Cr.P.C. seeking statutory bail which was dismissed by the learned Principal Special Judge under EC & NDPS Act Cases, Chennai vide order



dated 01.02.2024.

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3.Since the petitioner and the respondent are one and the same and both the cases arise out of R.R.No.14 of 2023, both the criminal revision petitions are taken up together for disposal and a common order is passed.

4.The gist of the case is that the petitioner/A2 in R.R.No.14 of 2023 was arrested by the respondent on 14.05.2023 for the offence under Sections 8(c) r/w. 22(c), 28 and 29 of NDPS Act. The petitioner/A2 along with one Ziaudeen/A1 were arrested for having illegal possession of 2 kgs of white colour crystalline substance believed to be Amphetamine and remanded to judicial custody on 14.05.2023. The seized articles from the accused were produced before the NDPS Court in A.No.750/2023 and B.No.518/2023. The contraband samples were sent for analysis and the lab report dated 20.06.2023 confirms the presence of Methamphetamine Hydrochloride which is a psychotropic substance and the seized contraband is of commercial quantity. Since the investigation of the case could not be completed within the stipulated time, the learned Special Public Prosecutor filed a petition under Section 36A(4) of NDPS Act seeking extension of



further period of six months for completing the investigation and this petition was filed before the Lower Court on 12.10.2023 i.e. 152nd day. The learned Special Public Prosecutor prayed that more incriminating documents are to be collected, the associates of the accused and the supplier of contraband from Andhra Pradesh is yet to be traced, CDR and CAF details and bank details are yet to be received, the trail of money to be found and the investigation is at the crucial stage and hence, sought for extension. The Trial Court issued notice to the petitioner and the other accused and thereafter, granted extension of time for a further period of six months to complete the investigation. Hence, the Trial Court allowed Crl.M.P.No.7825 of 2023 and consequently, the petitioner's statutory bail application in Crl.M.P.No.329 of 2024 filed under Section 167(2) Cr.P.C. dismissed. Aggrieved against these orders, the above two revision petitions are filed.

5.The contention of the learned counsel for the petitioner/A2 is that the petitioner was arrested on the confession of co-accused in this case and no recovery made from the petitioner. The petitioner was arrested on 14.05.2023 and the respondent in a hasty manner filed a petition under



Section 36A(4) of NDPS Act on 152nd day well prior to 180th day. The respondent had come to the preconceived notion that documents cannot be collected well before 180th day and filed petition seeking extension of time, the respondent failed to give details as to what are the documents and from whom it was sought for and what is the stage of the investigation. But on the other hand, the respondent merely stated that tower details, contact details and bank transaction details are to be collected. This is only to deny the petitioner of his constitutional right of statutory bail. He would submit that in this case notice to the petitioner and other accused was not properly served. On 20.10.2023, notice shown as served and the case was posted for orders on 31.10.2023. He would further submit that from the impugned order in Crl.M.P.No.7825 of 2023, it can be seen that the Lower Court recorded that arguments of the learned Special Public Prosecutor heard, accused have been put on notice and upon perusing the material papers and records and hearing the arguments, order was passed on 31.10.2023. The petitioner and other accused not given proper chance to make their objections. The Trial Court proceeded after giving notice without hearing the accused, by construing that the accused have no say in the matter is not proper. Though the scope of objections may be limited, the accused have



every right to point out to the Court the flaws in the prayer of the petitioner and to further confirm that the Trial Court is satisfied with the twin requirement of compliance. In view of the same, the extension of time granted is not proper. Consequently, the petitioner is entitled for statutory bail and hence, the order passed in Crl.M.P.No.329 of 2024 to be set aside and the petitioner to be granted statutory bail.

6.In support of his contention, the learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in the case of ***Jigar alias Jimmy Ravinchandra Adatiya vs. State of Gujarat*** reported in [2023] 6 SCC 484 and the decision of this Court in the case of ***Harsh Goel vs. The State rep. by the Inspector of Police, T-14 Mangadu Police Station, Chennai in Crl.Rc.Nos.1005 and 1081 of 2023 dated 30.06.2023*** and submitted that in this case the petitioner and other accused were produced on 20.10.2023 and on the same day, notice was served but on the date of consideration, the accused persons were not heard.

7.The learned Special Public Prosecutor filed a counter stating that based on the specific information, the officers of Narcotics Control Bureau,



Chennai Zonal Unit seized 2 kgs of Methamphetamine from two persons named Ziaudeen and Rafiq Nasar/petitioner herein on 13.05.2023 under the provisions of NDPS Act. Summons dated 13.05.2023 under Section 67 of NDPS Act was served on the accused persons to appear before the NCB Officer at NCB, Chennai for further enquiry. Accordingly, both the accused appeared and their voluntary statement recorded in which they admitted their guilt in procure, possession, attempt to transport and entered into criminal conspiracy for the illicit trafficking of seized contraband. Based on their confession statement, the accused persons were arrested and remanded to judicial custody. During the course of investigation, letters were sent to the service providers for obtaining the CDR and CAF details of both the accused. Further, a person from Andhra Pradesh, who is said to be the supplier is to be traced and arrested. Apart from that, request letters were sent to IG Registration, Chennai to find out the property details of both the accused which may lead to financial investigation in this case. Hence, the petition seeking extension of time to complete the investigation was filed. It is submitted that after granting extension of time, CDR and CAF of both the accused was received from the concerned service providers which is under scrutinization. Further, a reply letter was received from Karur Vysya Bank,



Triplicane Branch for the bank transaction of the petitioner herein in which it was found that there are numerous doubtful transactions made by some persons during the month of April 2023. A reply letter was received from IG Registration, Chennai on 22.01.2024 stating that the petitioner acquired some property during the year 2022 in the jurisdiction of Elayangudi and Cheyyur which are suspected to acquire from the illegal drug trafficking money and letters were sent to the concerned Sub-Registrar Offices for the detailed documents. It is further submitted that the seized contraband is of commercial quantity and therefore, the petitioner is not entitled for statutory bail. Hence, he prayed for dismissal of these petitions.

8.The learned Special Public Prosecutor further submitted that on 12.10.2023, a petition seeking extension of time was filed and notice was served to the accused persons on 20.10.2023. Further, the petition for extension of time was served on the accused persons which was acknowledged by the accused persons. Further, on 20.10.2023 arguments were heard and the case was posted for orders on 31.10.2023 and thereafter order was passed. To prove the same, the learned Special Public Prosecutor produced the e-Court adjudication. There is no violation of any conditions



as contended by the petitioner. The learned Special Public Prosecutor further referring to the decision relied on by the learned counsel for the petitioner submitted that in the case of ***Jigar alias Jimmy Pravinchandra Adatiya***, what is contemplated is that application made by the Special Public Prosecutor for extension of time is being considered and the accused to be produced before the Court either physically or virtually and only in case of failure to produce the accused before the Court at the time of consideration of the application for extension of time will amount to violation of right guaranteed under Article 21 of the Constitution of India. In this case, admittedly the accused appeared on 20.10.2023, on that day the petition for extension of time was considered and the case was adjourned for orders on 31.10.2023, on which date order was passed and hence, there is no violation. Further, referring to the decision of this Court in the case of ***Harsh Goel***, the learned Special Public Prosecutor submitted that in that case, the accused was not produced either physically or virtually before the Court but in the present case, it is not so. Hence, the decisions referred to by the learned counsel for the petitioner are not applicable to the facts of the present case.

9.Considering the submissions made and on perusal of the materials, it



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is not in dispute that the petitioner/A2 was arrested on 14.05.2023 and the respondent filed a petition under Section 36A(4) of NDPS seeking extension of time on 12.10.2023. Notice was served on the accused persons and the petitioner along with other accused appeared before the Lower Court on 20.10.2023. Further, the accused persons received the petition seeking extension of time and they have acknowledged the receipt of the same. A scanned reproduction of the petition filed for extension of time is as follows:



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**IN THE COURT OF THE HON'BLE PRINCIPAL SPECIAL JUDGE FOR NDPS ACT
CASES, CHENNAI**

***R.R. NO. 14 OF 2023**
In
IN NCB F.No. 48/1/05/2023-NCB/MD5
(ON THE FILE OF THE PETITIONER)

Union of India through Jr.Intelligence Officer
Narcotics Control Bureau
Chennai Zonal Unit
Chennai-77.

..... Petitioner/Complainant

Vs.

1. Ziaudeen, Male/55 years, *Received copy*
S/O-Mohamed Yasin, *20/10/2023*
No-805, 3rd cross, 9th street, S.A.Colony,Vyasarpadi,
Chennai-600039. (R.P.NO- 99747) *20-10-2023* Accused 1

2. Rafiq Nasar,R, Male/52 years, *Received copy*
S/O-Rasul Khan, No-29,Bangaru street, *20/10/2023*
Anna Salai,Chennai-600002. (R.P.NO- 99748) *20/10/2023* Accused 2

**PETITION FOR EXTENSION OF TIME FOR FILING COMPLAINT UNDER SEC 36
A (4) OF NDPS ACT THE REPORT OF THE SPL PUBLIC PROSECUTOR**

The Complainant/Petitioner humbly submits as follows:

01. Based on specific information, the officers of Narcotics Control Bureau, Chennai Zonal Unit seized 2 kgs of Methamphetamine from the possession of two persons named Ziaudeen, Male/55 years, S/O-Mohamed Yasin at House No-805, 3rd cross, 9th street, S.A.Colony,Vyasarpadi, Chennai-600039 and Rafiq Nasar,R, Male/52 years S/O-Rasul Khan, No-29,Bangaru street, Anna Salai,Chennai-600002 on 13.05.2023 under the provisions of NDPS Act.

02. Thereafter, summons dated 13.05.2023 u/s 67 of the NDPS Act, 1985 was served upon Ziaudeen and Rafiq Nasar,R who were in possession of the seized 2 kgs of Methamphetamine to appear before the NCB officer at NCB, Chennai office on 13.05.2023 for further enquiry. Accordingly, both are appeared and recorded their voluntary statement u/s 67 of the NDPS Act, 1985 dated 14.05.2023 in which they inter alia admitted their guilt in procure, possession, attempt to transport and entered into criminal conspiracy for the illicit trafficking of seized 2 kgs of Methamphetamine which came to be seized at Ziaudeen house No- House No-805, 3rd cross, 9th street, S.A.Colony,Vyasarpadi, Chennai-600039 on 13.05.2023.

03. Based on their voluntary confessional statements dated 14.05.2023, incriminating documents and material objects seized on 13.05.2023, the above said Ziaudeen, Male/55 years, S/O-Mohamed Yasin and Rafiq Nasar,R, Male/52 years S/O-Rasul Khan who have committed



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offences under Section 8(c) r/w Sec 22(c), 28 and 29 of NDPS Act, 1985 as amended and punishable under Section 8(c) r/w Sec. 22(c), 28 and 29 of the same Act were placed under arrest at 10.00 hrs and 10.30 hrs respectively on 14.05.2023 under the sections of the NDPS Act and further remanded into judicial custody. Now both the accused are lodged in central prison Puzhal Chennai.

04. The respondent humbly submits that, in this case, Indian currency of Rs-32,84,000/- was recovered from the house search of Rafiq Nasar,R, Male/32 years S/O-Rasul Khan, House No-29,Bangaru street, Anna Salai,Chennai-600002 and Bank account statement of Rafiq Nasar,R yet to be received from SBI and KVBL for analyzing the bank account transactions. Moreover Call data records of Mobile number 7358583406 which was maintained by Rafiq Nasar,R yet to be received from Bharthi Airtel. It is very essential to scrutinizing the telephonic communications done for this illegal drug trafficking. Apart from that, Bank statements and CDR of accused Ziauddeen is still awaited, Letters were sent to IG Registration, Chennai for find out the property details of both the accused which may leads to the Financial Investigation in this case.

05. Investigation to a large extent is pending against them. It is essential that the incriminating facts revealed by the accused in their admissions be verified and also that the other associates named by them involved in drug trafficking be traced and apprehended. lot of investigation pertaining to them is yet to be completed. Details of are under and also the tracing and apprehending of other drug traffickers in this same drug trafficking ring is to be achieved.

06. Further, a person belongs from Andhra Pradesh, who has been named as the main supplier arranged the seized drug in this case is to be traced and arrested. Also, the other drug traffickers associated with this drug trafficking ring are also yet to be traced and apprehended.

07. On the basis of the reasons cited above, it is prayed that this Hon'ble Court may be pleased to extend the time for investigation and further filing of complaint against the accused in this case so that a complete and proper investigation may be conducted against the above said accused. This extension will give time for detailed investigation in this case and it will also give the opportunity to arrest further drug traffickers involved in this same drug trafficking ring.

08. It is therefore prayed that an extension of 6 months of time for investigation and further filing of complaint against the above mentioned all accused be granted for the reasons mentioned above. Actual due date of complaint filing in this is 08.11.2023 but, due to paucity of time available for investigations pertaining to the revelations made by the accused, it is prayed that this duration for filing of complaint be extended by 6 months ~~in 08.11.2024~~ for the reasons cited above.

It is therefore prayed that extension of 6 months for filing of complaint against above mentioned all accused be granted and thus render justice.

Dated at Chennai this the 12th day of October, 2023.

A. Seltaduraj
(A. SELTADURAJ)
SPL. PUBLIC PROSECUTOR
NCIS, CHENNAI





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10. Further, from the petition it is seen that the reason and justification for seeking further extension of time has been clearly stated. The Trial Court finding reason and justification for extending the time, granted the same by order dated 31.10.2023. The conditions stipulated by the Apex Court is that application has to be made by the Special Public Prosecutor with justifiable reasons and in this case, the same has been complied with. The other condition is that the accused to be produced before the Court, notice to be served and informed about the petition seeking extension of time. In this case, the petitioner and other accused appeared before the Court on 20.10.2023, notice was served on the same day, the petition copy was served on the accused and the same acknowledged by them. From the e-Court adjudication, it is seen that the case was thereafter posted for orders on 31.10.2023, on which date order granting extension of time for further period of six months granted. Further, in this case, the order granting extension of time was passed on 173rd day i.e., well before 180th day. Hence, this Court finds no illegality or infirmity in the order passed by the Lower Court in Crl.M.P.No.7825 of 2023.



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11. Accordingly, Crl.R.C.No.203 of 2024 stands dismissed and consequently, Crl.R.C.No.230 of 2024 also dismissed.

04.06.2024

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

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To

- 1.The Intelligence Officer,
NCB, Chennai.
- 2.The Principal Special Judge under
EC & NDPS Act Cases,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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Pre-delivery order made in

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