



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2024

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THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.3798 of 2024

Chandrasekar

... Petitioner

Vs.

The State Rep. by:
The Inspector of Police, DCB,
B-1, North Beach Police Station,
Chennai.
(Crime No.83 of 2023)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 12.10.2023 made in Crl.M.P.No.6864 of 2023, on the file of the Principal Special court under EC & NDPS Act, Chennai 104 and allow the above criminal Original petition.

For Petitioner : Mr.S.Jayaprakash

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This criminal original petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner in Crl.M.P.No.6864 of 2023 seeking for statutory bail by an order dated 12.10.2023.



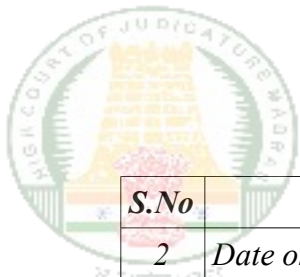
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2.The petitioner was arrested in the course of investigation in Crime No.83 of 2023 and was remanded to judicial custody on 23.03.2023. Apart from the petitioner, there is yet another accused person in this case. The petitioner has been ranked as A2. The 180th day gets over on 19.09.2023. Since no order was passed extending the period of investigation under Section 36A(4) of NDPS Act, the petitioner filed an application seeking for statutory bail on the 181st day. In the meantime, the respondent had also filed an application under Section 36A(4) on the 174th day seeking for extension of time. The Court below dealt with both the applications together and passed the common order on 12.10.2023, allowing the application for extension of time to complete the investigation and dismissing the application filed by the accused seeking for statutory bail. Aggrieved by the same, the present criminal original petition has been filed before this Court.

3.The respondent has filed the status report. Paragraph No.15 of the status report gives the entire particulars and the same is extracted hereunder:

15.It is submitted that the relevant dates and events of the case are as follows:

S.No	Events	Dates
1	Date of arrest	23.03.2023



S.No	Events	Dates
2	<i>Date on which 180th day completes</i>	<i>19.09.2023</i>
3	<i>Exception of investigation filed u/s.36(A)(4) NDPS Act (Crl.M.P.No.6864 of 2023)</i>	<i>13.09.2023 ie., (174th day)</i>
4	<i>Notice Served on</i>	<i>19.19.2023</i>
5	<i>Statutory bail application filed under Section 167 (ii) Cr.P.C. (Crl.M.P.No.7065 of 2023-A1) (Crl.M.P.No.7066 of 2023-petitioner/A2)</i>	<i>20.09.2023 ie., 181st day</i>
6	<i>Common order passed under Section 36(A)(4) NDPS Act and u/s 167(2) Cr.P.C.,</i>	<i>12.10.2023</i>

4. When the matter was taken up for hearing, the learned Additional Public Prosecutor brought to the notice of this Court that the co-accused had approached this Court and filed Crl.R.C.No.1863 of 2023 challenging the dismissal of the application filed under Section 167(2) of Cr.P.C., seeking for statutory bail. This revision petition was allowed by an order dated 07.02.2024 and the petitioner therein (A1) was enlarged on bail by imposing certain conditions. A copy of the order was also placed before this Court.

5. The learned counsel for the petitioner submitted that the order passed in the criminal revision must also enure in favour of the petitioner (A2). Therefore, the learned counsel sought for enlargement of the petitioner on statutory bail by imposing necessary conditions.

6. This Court had dealt with the issue of dealing with the application filed for



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extension of time to complete the investigation and the application filed for statutory bail and had given certain guidelines in *Varun vs. State, rep. by the Inspector of Police, Sular Police Station* reported in *2024 1 MWN Crl 229*.

7. Unfortunately, in the instant case, the Court below had dealt with both the application filed for extension of time and the application filed for statutory bail together and has passed the common order. Such procedure that was adopted by the Court below is patently illegal. In the instant case, admittedly, the application seeking for extension of time to complete the investigation was filed on the 174th day itself. Hence, the Court below ought to have acted upon this application by issuing notice to the accused person and dealt with the same first. If ultimately, this application is not entertained or it is dismissed, the Court below should have thereafter entertained the application seeking for statutory bail and passed an order. This anomaly that was noticed in many cases where the Special Court while dealing with the application for extension of time to complete the investigation and the application seeking for statutory bail simultaneously was brought to end by this Court in the judgment referred *supra*. This is yet another case where a wrong procedure has been followed by the Court below and as a result, on the day when the statutory bail was filed, there was no order passed in the application filed seeking for extension of time to complete the investigation. Therefore, the indefeasible right of the accused person started operating and there is no other option except to grant statutory bail to the accused



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8.The co-accused (A1) has already been granted statutory bail by this court in CrI.R.C.No.1863 of 2023 by an order dated 07.02.2024. Therefore, the same relief will enure in favour of the petitioner also. This is in view of the fact that as on the date when the statutory bail was filed before the Court below, there was no order available extending the period for completion of investigation.

9.This Court expects that atleast in future, the Special Court across Tamil Nadu will follow the guidelines given by this Court in *Varun's* case referred *supra* and will not continue to commit the same illegality of dealing with both the applications seeking for extension of time to complete the investigation and application filed seeking for statutory bail and passing common orders.

10.In the result, the order passed by the Court below in CrI.M.P.No.6864 of 2023, dated 12.10.2023, is hereby 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.10,000/- (Rupees Ten Thousand only) along with two sureties each for a like sum, before the Principal Special Judge, Principal Special Court under EC & NDPS Act, 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;

(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 petitioners 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.



12. With the above directions, this Criminal Original Petition is allowed.

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Index: Yes/No
Internet: Yes/No
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To

1. The Principal Special court under EC & NDPS Act, Chennai 104.
2. The Inspector of Police, DCB,
B-1, North Beach Police Station,
Chennai.
3. The Public Prosecutor,
High Court of Madras,
Chennai.



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N.ANAND VENKATESH,J.

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