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Crl.R.C.No.324 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2024

DELIVERED ON : 04.06.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.R.C.No.324 of 2024

and

Crl.M.P.No.2998 of 2024

Logeshwaran @ Logu

... Petitioner/A1

Vs.

State Rep. by its
The Inspector of Police,
B1 North Beach Police Station,
Chennai.
(Cr.No.185 of 2023).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records on the file of the Principal Special Court under EC and NDPS Act, Chennai in Crl.M.P.No.460 of 2024 in Cr.No.185 of 2023 on the file of the respondent police and set aside the order dated 31.01.2024.

For Petitioner : Mr.G.Ezhil Balaji

For Respondent : Mr.S.Raja Kumar

Additional Public Prosecutor



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ORDER

This petition has been filed challenging the order passed in Crl.M.P.No.460 of 2024 in Crime No.185 of 2023 dated 31.01.2024 passed by the learned Principal Special Judge, Principal Special Court under EC and NDPS Act, Chennai.

2.The petitioner/A1 in Crime No.185 of 2023, who was arrested by the respondent police on 23.06.2023 for offence under Sections 8(c) r/w 22(C) and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'NDPS Act') along with two others, had filed a statutory bail application under Section 167(2) of Cr.P.C. in Crl.M.P.No.460 of 2024 and the same was dismissed by the trial Court by order dated 31.01.2024, against which, the present revision.



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3.The contention of the learned counsel for petitioner is that the petitioner was arrested in the above crime number and he is in prison from 23.06.2023, i.e., for more than 180 days. The respondent police not filed charge sheet within the statutory period, hence, the petitioner is entitled for statutory bail. He further submitted that the petitioner earlier filed a statutory bail application on the 181st days under Section 167(2) of Cr.P.C. in Crl.M.P.No.9842 of 2023 on 20.12.2023. The respondent filed a petition under Section 36A(4) of the NDPS Act in Crl.M.P.No.9689 of 2023 seeking further extension of statutory period of investigation and the same was allowed only on 04.01.2024. Admittedly, the petitioner's statutory bail application in Cr.l.M.P.No.9842 of 2023 was pending at that time. Hence, the petitioner has made his inclination to offer sureties much earlier to the order passed in the extension petition on 04.01.2024. He further submitted that the co-accused in this case similarly placed filed a statutory bail application before the trial Court and the same was dismissed, against which, he filed a



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revision before this Court in Crl.R.C.No.131 of 2024. This Court, by order dated 08.02.2024, set aside the dismissal order passed by the trial Court and granted bail. The petitioner is similarly placed and the accrued constitutional right of statutory bail cannot be denied to the petitioner, on technicality.

4.He further submitted that the petitioner not instructed the earlier counsel B.Stephenraj to withdraw the statutory bail application in Crl.M.P.No.9842 of 2023. Hence, the act of his erstwhile counsel in withdrawing his earlier bail application on 09.01.2024 will not deny constitutional right of statutory bail which accrued to the petitioner on 20.12.2023. Though this was argued in detail before the trial Court in Crl.M.P.No.460 of 2024, the trial Court not considered the same, without any reference, dismissed the statutory bail application for the reason that the respondent police already filed a petition under Section 36A(4) of NDPS Act for extension of statutory period for 180 more days for completion of



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investigation and the period of investigation already extended by the trial Court for further period of 150 more days on 04.01.2024. Hence, prays for allowing this petition.

5.The learned Additional Public Prosecutor submitted that the petitioner/A1 along with one Vignesh and Ramkumar, who are A2 and A3 in this case, were found fighting among themselves. On seeing the police party, who were on patrol duty, the petitioner and other accused attempted to flee from the scene and they were apprehended, questioned by the respondent police. At that time the petitioner admitted that on 22.03.2023, an unidentified person, who was in possession of Methamphetamine powder (Psychotropic Substance), had demanded Rs.10,000/- to hand over the powder to them. The petitioner and other accused paid the money and collected Methamphetamine powder and they had a dispute with regard to sharing of the powder and making profit out of it. Hence, there was a scuffle



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between them. Thereafter, following statutory provisions all the three were arrested, contraband seized, the accused produced for remand, investigation proceeded, samples sent for chemical analysis and the lab report is yet to be received. Hence, charge sheet could not be filed within time. Therefore, they filed a petition under Section 36A(4) of the NDPS Act before the trial Court on 15.12.2023, which is 177th day of remand, well within the period. Thereafter, notice was ordered to the petitioner and other accused. The accused had received the notice on 21.12.2023 and the trial Court, by order dated 04.01.2024, extended and granted further period in Crl.M.P.No.9689 of 2023 to complete investigation.

6.He further submitted that the petitioner's earlier statutory bail application in Crl.M.P.No.9842 of 2023 was recorded withdrawn on 09.01.2024 and thereafter the present petition for statutory bail was filed on 10.01.2024. The trial Court found that extension of statutory period already



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granted on 04.01.2024, finding the petition devoid of any merits, dismissed the statutory bail application in Crl.M.P.No.460 of 2024. The petitioner's contention is that earlier statutory bail application in Crl.M.P.No.9842 of 2023 was filed on 20.12.2023 and during its pendency on the 181st day, i.e., on 20.12.2023 no orders passed granting extension of time for completing the investigation beyond 180 days. This contention can be considered in the present petition. The petitioner is aggrieved, may be permitted to challenge the order passed in Crl.M.P.No.9842 of 2023 dated 09.01.2024. Accordingly, he prays for dismissal of the petition.

7.Considering the submissions made and on perusal of the material it is seen that in this case, the petitioner and other accused were arrested by the respondent police in Crime No.185 of 2023 on 23.06.2023. Later, they were remanded to judicial custody. Crl.M.P.No.460 of 2024 is the second statutory bail application filed by the petitioner on 10.01.2024. The



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respondent filed a petition under Section 36A(4) of the NDPC Act in
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Crl.M.P.No.9689 of 2024 on 15.12.2023, i.e., on the 177th day and sought further time for completing the investigation and the trial Court by order dated 04.01.2024, granted the same. In view of the same, the order passed in Crl.M.P.No.460 of 2024 dismissing the statutory bail application cannot be interfered with.

8. With regard to the petitioner's contention that earlier he filed statutory bail application in Crl.M.P.No.9842 of 2023 on 20.12.2023, i.e., on 181st day, but no orders passed. The extension petition for completing the investigation was filed by the respondent in Crl.M.P.No.9689 of 2023 on 15.12.2023, i.e., 177th day, kept pending. Notice served to the accused on 21.12.2023 as could be seen in the typed set. Admittedly, on 21.12.2023 no order granting extension to complete investigation passed. The extension was granted in Crl.M.P.No.9689 of 2023 only on 04.01.2024. In view of the



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same, the petitioner accrued the right of statutory bail, since his first statutory bail application in Crl.M.P.No.9842 of 2023 was pending consideration. In all fairness, the trial Court ought to have decided one way or other the statutory bail application on or after 20.12.2023, atleast on 04.01.2024 when orders passed in Section 36-A(4) petition, but for what reason no order passed on that day is not known.

9.The learned counsel for the petitioner produced the E-Court status report of the case from which it is seen that petitioner's statutory bail application in Crl.M.P.No.9842 of 2023 was filed on 20.12.2023. Thereafter, orders have been passed on 09.01.2024 and the nature of disposal in the E-Court status report it is recorded as 'Uncontested-Withdrawn' and the Advocate, who represented the petitioner then is one B.Stephenraj. For what reason Crl.M.P.No.9842 of 2023 was withdrawn is not known. Though the learned counsel for petitioner contended that the petitioner has not instructed



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or authorised his erstwhile counsel to withdraw the statutory bail application, such contention is not made in the present petition or found in the impugned order. Snatching and denying petitioner's statutory right is a serious one, it cannot be denied by flip shot method. Admittedly, the petitioner was arrested on 23.06.2023. The 181st day falls on 20.12.2023, on which day, charge sheet not filed. The petitioner has shown his inclination to offer sureties seeking statutory bail. The Trial Court ought to have followed the Supreme Court judgments, wherein it is held that the statutory bail applications have to be decided without delay and the only requirement for the trial Court while considering the statutory bail petition is that from the records to find out whether charge sheet filed or not, whether petitioner/accused will be available for trial.

10. In this case, charge sheet not filed and petition seeking extension period invoking Section 36A(4) of the NDPS Act in



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Crl.M.P.No.9689 of 2023 filed on 15.12.2023, as seen from the Court seal in the petition annexed in the typed set. Likewise the copies served to the accused including the petitioner on 21.12.2023. It is available in the typed set of papers. For what reason the petitioner's erstwhile counsel withdrawn the petition, needs to be ascertained, when the petitioner had not authorised or given any such instructions. It is for the petitioner to take action for snapping his statutory right of bail against the said lawyer, if he has acted without instruction, the withdrawal done by the erstwhile counsel without petitioner's authorisation and approval, is a serious professional misconduct. In such event, the petitioner to file an affidavit putting forth the details and The Bar Council of Tamil Nadu to take appropriate disciplinary action against the Advocate for professional misconduct. The petitioner is at liberty to challenge the uncontested withdrawal of Crl.M.P.No.9842 of 2023 dated 09.01.2024. In view of the admitted position as stated above, once the unauthorised withdrawal is set aside in Crl.M.P.No.9842 of 2023, the



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petitioner's entitlement for his accrued statutory right for bail can be considered.

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11.In view of the above, the second statutory bail order dated 31.01.2024 passed in Crl.M.P.No.460 of 2024 in Crime No.185 of 2023 by the learned Principal Special Judge, Principal Special Court under EC and NDPS Act, Chennai, cannot be interfered. As stated above, the petitioner is at liberty to challenge the withdrawal and consequently dismissal of his first statutory bail petition in Crl.M.P.No.9842 of 2023 dated 09.01.2024.

12.With the above observations, this Criminal Revision Case is disposed of. Consequently, connected Criminal Miscellaneous Petition is closed.

04.06.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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To
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- 1.The Inspector of Police,
B1 North Beach Police Station,
Chennai..
- 2.The Principal Special Judge,
Principal Special Court under EC and NDPS Act,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

rsi

Pre-delivery order in
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