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Crl.R.C.No.623 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.623 of 2024

Darling Vincent

... Petitioner

Vs.

State rep. by:
The Inspector of Police,
H-6, RK Nagar Police Station,
Chennai.
(Crime No.148 of 2023)

... Respondent

Prayer:

Criminal Revision Case filed Section 397(1) and 401 of Criminal Procedure Code, seeking to call for the records and set aside the order of dismissal passed in Crl.M.P.No.6917 of 2023 with regard to prayer sought under Section 167(2) of Cr.P.C. passed on 12.10.2023 by the learned Principal Special Judge under EC & NDPS Act, Chennai and enlarge the petitioner/ accused on bail pending investigation in Crime No.148 of 2023 on the file of the respondent police.

For Petitioner : Mr.M.Thiyagarajan
For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side)



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ORDER

The criminal revision case has been filed seeking to call for the records and set aside the order of dismissal passed in Crl.M.P.No.6917 of 2023 with regard to prayer sought under Section 167(2) of Cr.P.C. passed on 12.10.2023 by the learned Principal Special Judge under EC & NDPS Act, Chennai and enlarge the petitioner/ accused on bail pending investigation in Crime No.148 of 2023 on the file of the respondent police.

2.The case of the petitioner is that the petitioner is arrayed as an accused and he was arrested on 14.03.2023 for the alleged offence under Sections 8(c) r/w. 22(C), 25 and 29(1) of NDPS Act on the basis of the complaint given by the Sub – Inspector of Police attached with the respondent. The case of the prosecution is that based on the secret information, on 14.03.2023 at about 10.30 a.m., in a place near Ezhil Nagar Bridge, Tondiarpet, the petitioner along with three others were found in possession of 60 grams of Methapatamine without valid licence for the purpose of selling it to drug addicts.

3.The further case of the petitioner is that based on the



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confession of the arrested accused, some other persons were also made as an accused in this case. Except a few accused including the petitioner, most of the other accused were released on bail. The respondent Police fearing that they would not be able to complete the investigation within 180 days from the date of remand, filed petition in Crl.M.P.No.6411 of 2023 under Section 36(A)(4) of NDPS Act on 29.08.2023 i.e., 169th day of the petitioner's remand and the said petition was not decided till the 184th day of the remand. Hence the petitioner filed petition under Section 167(2) of Cr.P.C. on the 184th day of remand before the trial Court and the same was taken on file as Crl.M.P.No.6917 of 2023 and notice was ordered to the respondent.

4.The further case of the petitioner is that the trial Court in order to defeat the rights of the petitioner, clubbed both, the petition filed by the prosecution as well as by the petitioner and adjourned the matter to 30.10.2023. Thereafter the trial Court suo motu advanced the date of hearing from 30.10.2023 to 12.10.2023 and on 12.10.2023, the trial Court by way of common order allowed the petition filed by the prosecution and dismissed the petition filed by the petitioner. Challenging the grant of extension of statutory period of investigation, the petitioner filed Crl.R.C.No.1997 of 2023 before this Court and this



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Court vide order dated 13.02.2024 dismissed the revision and observed that if the petitioner's right under Section 167(2) of Cr.P.C. is not considered, it is for the petitioner to agitate the same by a separate petition, pursuant to which, the petitioner has filed the present revision challenging the dismissal order dated 12.10.2023 passed by the trial Court in Crl.M.P.No.6917 of 2023.

5.The learned counsel appearing for the petitioner submitted that though this Court confirmed the grant of extension of statutory period of investigation, granted liberty to the petitioner to file a separate petition, however, instead of filing separate petition, the petitioner has filed this revision. The learned counsel further submitted that there is no legal bar for entertaining Crl.M.P.No.6917 of 2023 filed under Section 167(2) of Cr.P.C. for mandatory bail, however the trial Court dismissed the same, which is not sustainable one.

6.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent.

7.Admittedly, the petitioner is arrayed as A2 and he was



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arrested on 14.03.2023. It is undisputed fact that the petitioner filed CrI.M.P.No.6917 of 2023 under Section 167(2) of Cr.P.C. for mandatory bail and the prosecution filed CrI.M.P.No.6411 of 2023 under Section 36(A)(4) of NDPS Act for extension of statutory period of investigation. The trial Court clubbed both the petitions and adjourned the matter to 30.10.2023. Thereafter the trial Court suo motu advanced the date of hearing from 30.10.2023 to 12.10.2023 and on 12.10.2023, the trial Court by way of common order allowed the petition filed by the prosecution and dismissed the petition filed by the petitioner. Thereafter the petitioner chosen to file revision only as against the grant of extension of statutory period of investigation in CrI.M.P.No.6411 of 2023 and the said revision was dismissed by this Court on 13.02.2024. In the very same order, this Court observed that if the petitioner's right under Section 167(2) of Cr.P.C. is not considered, it is for the petitioner to agitate the same by a separate petition, pursuant to which, the petitioner has filed the present revision.

8.The issue that arise for consideration in this revision is that whether the petitioner is entitled for mandatory bail or not.



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9.Once the trial Court allowed the petition filed by the prosecution for grant of extension of statutory period of investigation and the same was confirmed by this Court in the revision filed by the petitioner, the petitioner is not entitled to file revision before this Court challenging the dismissal of the petition under Section 167(2) of Cr.P.C. for mandatory bail and the petitioner is only entitled to file petition for regular bail before the trial Court.

10.In view of the above, this revision is dismissed. Liberty is granted to the petitioner to file separate petition seeking bail before the trial Court.

01.04.2024

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Index: Yes/ No
Speaking Order: Yes/ No
NCC: Yes/ No

To

- 1.The Principal Special Judge under EC & NDPS Act,
Chennai.
- 2.The Inspector of Police,
H-6, RK Nagar Police Station,
Chennai.
(Crime No.148 of 2023)

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M.DHANDAPANI,J.
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