



Crl.R.C.No.481 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 27.03.2024	Orders Pronounced On 15.04.2024
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Crl.R.C.No.481 of 2024
and Crl.M.P.No.4585 of 2024

Ganesan

... Petitioner

Vs.

The Inspector of Police,
Nallipalayam Police Station,
Namakkal District.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the order passed in Crl.M.P.No.140 of 2024 dated 09.02.2024 pending on the file of the Additional District Judge & Presiding Officer, Special Court under EC & NDPS Act Cases, Salem [FAC].

For Petitioner : Mr.V.K.Sathiamurthy

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



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ORDER

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Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 18.03.2024, which reads as follows:

“The petitioner/accused in Spl.C.C.No.27 of 2024 filed a petition in Crl.M.P.No.140 of 2024 before the learned Additional District Judge, Special Court under EC & NDPS Act, Salem to recall the Non Bailable Warrant issued against him in Spl.C.C.No.115 of 2023. The learned Additional District Judge, by order dated 09.02.2024, dismissed the petition, against which, the present revision has been filed.

2.The contention of the learned counsel for petitioner is that in this case initially one Ilavarasan and Kumar were shown as A1 and A2 in Crime No.56 of 2022. On 26.03.2022, the respondent police received a secret information about the transportation of Ganja in Tavera car bearing Registration No.KL-7-AT-6464. The said vehicle was intercepted and enquired the Ilavarasan and Kumar. During search, 6 white plastic bags each containing 40 kgms of Ganja, totally 240 kgs. of ganja was



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seized. Thereafter, another two persons were arrayed as accused and on the confession it was also revealed that they had purchased the contraband from one Uthupalam Nayudu Apparav, who is said to have given to the petitioner, who is at Chinnamanur, Theni District. Thereafter, a case was registered on 26.03.2022 in Crime No.56 of 2022, charge sheet filed for offence under Sections 8(c), 20(b)(ii)(C), 29(1) and 25 of the 'Narcotic Drugs and Psychotropic Substances Act' (hereinafter 'NDPS Act') against A1 to A5, in which, the petitioner was shown as A2. Since the petitioner was absconding, the trial Court issued NBW against the petitioner on 28.11.2022 and the case was split up as against the petitioner in Spl.C.C.No.27 of 2024 on 03.02.2024.

3.The contention of the learned counsel for petitioner is that the petitioner has been falsely implicated in this case. The case projected against the petitioner as though he was absconding, is not sustainable. In paragraph 5 and 6 of the revision petition, it was mentioned that CrI.O.P.No.14174 of 2023 was filed seeking anticipatory bail to the petitioner. The respondent police informed this Court that the petitioner was arrested in another case registered against him under NDPS Act and they are taking steps to remand him in the present case, i.e.,Crime



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No.56 of 2022. Recording the said representation, the anticipatory bail petition was dismissed on 06.07.2023. Thereafter, the petitioner filed another anticipatory bail petition in Crl.O.P.No.17134 of 2023. At that time also the same representation was made by the respondent police and the case was dismissed.

4.The further contention of the petitioner is that the petitioner was not arrested when the orders were passed in Crl.O.P.Nos.14174 and 17134 of 2023. Thereafter, the petitioner filed Crl.O.P.No.749 of 2024 in Spl.C.C.No.27 of 2024 seeking to quash the charge sheet. At that time, it was represented that NBW was pending against the petitioner. Hence, this Court directed the petitioner to file a petition to recall the NBW issued against him. Thereafter, the petitioner filed a petition to recall the NBW in Crl.M.P.No.140 of 2024. The trial Court, by order dated 09.02.2024, dismissed the same for the reason that this Court had directed to dispose of Spl.C.C.No.115 of 2022 and the split up case against the petitioner also needs to be disposed of without delay. Further, the petitioner not appeared before the trial Court.

5.Learned counsel further submitted that today, learned Additional Public Prosecutor filed his counter. But in the counter there is no reference to the specific points



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raised by the petitioner in paragraph 5, 6 and 7 of the petition. He further submitted that in this case it is strange to see that 240 kgs. of Ganja have been seized from one Ilavarasan and Kumar and another 60 kgs. of Ganja from one Chinnamanur Rani. But strangely the said Chinnamanur Rani not arrayed as an accused in this case. In this case, the petitioner and Chinnamanur Rani have been arrayed as accused based on the confession of one Ganesan.

6.The learned Additional Public Prosecutor seeks time to file his additional counter giving answers to the points raised by the petitioner. In the meanwhile, the petitioner is directed to produce the order copies in CrI.O.P.Nos.14174 and 17134 of 2023, quash petition filed before this Court in CrI.O.P.No.749 of 2024 and the charge sheet copy summarizing the case of the Investigating Officer.

7.Post the case on 25.03.2024.”

2.The learned Additional Public Prosecutor produced the Special Report of the respondent police, copy of the charge sheet along with statement of witnesses in Spl.C.C.No.115 of 2023 and a copy of FIR in



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Crime No.717 of 2023 of Tallakulam Police. The learned Additional Public Prosecutor further referring to the Special report of Special Sub-Inspector of Police, Nallipalayam Police Station submitted that on 07.11.2023 on the instructions of Deputy Superintendent of Police, the Sub-Inspector and a team of Police Personnels deputed to execute the Non-Bailable Warrant on the accused Ganesan in Crime No.56 of 2022, the police team went to Chinnamanur Police Station, enquired one Rajesh, who informed that against Ganesan/petitioner herein, the Chinnamanur Police registered a case in Crime No.253 of 2022 and on completion of investigation, charge sheet filed in C.C.No.1116 of 2022. The accused Ganesan in absconding in this case also and hence, a special team was formed to arrest him. He informed the said Ganesan is residing near Chinnamanur Forest Office and one Ranjangam enquired, who informed that he purchased the house six months before, in an auction, from Aptus Finance Company, Cumbum and he is not aware about the previous owner. Thereafter, the team visited the office of the Finance Company, enquired accountant Thavamani, obtained the address of Ganesan's mother Chithayi and his relative Eswari residing at Singarayapuram, Varisanadu, both



informed that the said Ganesan was lastly visited them a year before and thereafter his whereabouts not known. They gave the address of Ganesan's daughters who were residing in Cumbum. The elder son-in-law of Ganesan, Asai enquired, who informed that for his daughter's puberty function Ganesan failed to attend and thereafter, he is not in talking terms with the said Ganesan. His younger daughter Sangeetha was also enquired who informed that for the past one year Ganesan not visiting them. At that time, one Singadevan, Advocate from Madurai called and informed that Ganesan will be produced before the Court. With these facts, the special report dated 11.11.2023 submitted.

3.He further submitted that during the period, yet another Ganesan of Maniyarampetti, Podithasanpatti, Andipatti Taluk was arrested in Crime No.717 of 2023 for possession of 5 kgs of ganja along with one Virumandi with 4 kgs of ganja on 29.06.2023 by the Tallakulam Police. This Ganesan's father name is also Karuthakannu Thevar and there is similarity of name, father name, age, Taluk, social background and their place of activities and their involvement in Narcotic cases. Hence, the respondent



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police by mistake informed that the petitioner Ganesan was arrested and he is in prison in Crime No.717 of 2023, to this Court when the 5th anticipatory bail application and 6th anticipatory bail application of Ganesan/petitioner came up for hearing on 06.07.2023 and 17.08.2023. Later it came to know that Ganesan arrested and detained in Crime No.717 of 2023 was not the Ganesan/petitioner herein. This mistake in identity is being blown out of proportion by the petitioner's counsel as though Ganesan/petitioner herein has been falsely implicated and he is not involved in the above case.

4.The learned Additional Public Prosecutor further submitted that in Crime No.56 of 2023, the occurrence is on 26.03.2022 and in Crime No.717 of 2023 the occurrence is on 29.06.2023 and hence, the contention of the petitioner is not sustainable. Further, the other contention of the learned counsel for the petitioner is that though one Rani was shown as A4 in the FIR and the confusion of A1 is that they handed over 60 kgs of ganja to Rani and the petitioner on 26.03.2022 at about 9.00 a.m. in Vathalagundu and the said Rani had been let of in the final report is also not sustainable. The Investigating Officer after sustained investigation found that the said



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Rani already arrested in Crime No.46 of 2022 by Usilampatti Police on 25.03.2022 for possession of 5 kgs of ganja for the offence under Section 8(c) r/w. 20(ii)(B) of NDPS Act and produced before the Magistrate and she was in judicial custody. In such circumstances, the accused in this case who are all professional offenders well trained to divert and to save Ganesan/petitioner had given false information as though on 26.03.2022 they handed over a bag containing 60 kgs of ganja to Ganesan and Rani in Vathalagundu. During investigation, this falsity was confirmed and thereafter only, the said Rani name deleted from the case. During investigation, the role of Bhavaniraj, who purchased the Travera car tampered and erased the engine number and chassis number, used the vehicle for smuggling and transportation of ganja, also having connections in Bombay and from Bombay account, fastag payments were made. The fastag details and bank details collected. The petitioner is arrayed as A2, his bank transactions, telephonic conversation, tower location all collected, confirm the active participation of the petitioner in financing the other accused in the offence. A3 and A4, Elavarasan and Kumar who travelled in the car along with the contraband and A5 is Uthupalam Naidu of Andhra



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Pradesh, a supplier who sourced the ganja from State of Andhra Pradesh, all are arrayed as accused in the charge sheet. After conclusion of investigation, listing 21 witnesses and materials and reports, charge sheet filed, with great difficulty accused arrested in this case. The petitioner alone due to well networking, with source of money and men, unable to be arrested. After filing of the charge sheet, the same was taken on file as Spl.C.C.No.115 of 2022. Since the petitioner was absconding, the case against the petitioner got split up and Spl.C.C.No.27 of 2024 assigned. He further submitted that the case is now posted for furnishing copies and for trial, due to abscondence of the petitioner, the trial of the case is stalled. He would further submit that the petitioner involved in transportation of ganja of commercial quantity of 300 kgs and he is also involved in offence of similar nature. The conduct of the petitioner would prove the rigor of Section 37 of NDPS Act against him and hence, bail cannot be granted to him, more so, recall of Non-Bailable Warrant without his appearance cannot be entertained considering the antecedents, conduct and severity of the case.



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5.The learned counsel for the petitioner relying upon the order passed in ***CrI.O.P.No.4514 of 2016 dated 02.03.2016 [S.Sundar vs. State by Inspector of Police, Vigilance and Anti-Corruption, City II Detachment, Chennai-35]*** submitted that this Court on an earlier occasion held that the accused cannot be asked to be present in Court as condition precedent to recall NBW.

6.Considering the submissions made and materials produced by the petitioner and the learned Additional Public Prosecutor, this Court finds that the contention of the petitioner cannot be accepted. This Court as well as the Apex Court had time and again held that it is the prerogative of the concerned Court to consider the recall of NBW with or without the presence of the accused. It is the enormity and the seriousness of the case to be considered. In this case, Section 37 of NDPS Act would be attracted against the petitioner and further, the petitioner is involved in a Narcotic case of commercial quantity. The petitioner has also got yet another case under NDPS Act. The similarity in the name, father name, age and social background, nature of activities, cause some mistaken identity and hence,



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the respondent police took it that Ganesan arrested in Crime No.717 of 2023 by Tallakulam Police, is the petitioner but later found both Ganesan are not one and the same, they are two different individuals. In view of the same, this Court finds that the impugned order passed by the Trial Court needs no interference.

7. Accordingly, the Criminal Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

15.04.2024

Speaking Order/Non Speaking Order

Index : Yes/No

Neutral Citation: Yes/No

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To

- 1.The Inspector of Police,
Nallipalayam Police Station,
Namakkal District.
- 2.The Additional District Judge &
Presiding Officer,
Special Court under EC & NDPS Act Cases,
Salem [FAC].
- 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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