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Crl.O.P.Nos.13636, 13637, 13641 & 13643 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :29.07.2024

Pronounced on :05.08.2024

CORAM:

THE HONOURABLE DR JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.13636, 13637, 13641 & 13643 of 2024

Crl.O.P.No.13636 of 2024:

R.Pandiyarajan

..Petitioner/A-4

/versus/

Union rep.by
The Intelligence Officer,
NCB, Chennai,
R.R.No.23 of 2023

.. Respondent/
Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C to set aside the order passed in Crl.M.P.No.1197 of 2024, dated 20.02.2024 on the file of the Principal Special Judge under EC & NDPS Act, Chennai.

For Petitioner	:Mr.M.G.Martin Manivanan for Mr.S.Karthik
For Respondent	:Mr.N.P.Kumar, Spl.P.P (NCB Cases)



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Crl.O.P.No.13637 of 2024:

R.Pandiyarajan

..Petitioner/A-4

/versus/

Union rep.by
The Intelligence Officer,
NCB, Chennai,
R.R.No.23 of 2023

.. Respondent/
Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C to set aside the order passed in Crl.M.P.No.240 of 2024, dated 12.01.2024 on the file of the Principal Special Judge under EC & NDPS Act, Chennai.

For Petitioner	:Mr.M.G.Martin Manivanan for Mr.S.Karthik
For Respondent	:Mr.N.P.Kumar, Spl.P.P (NCB Cases)

Crl.O.P.No.13641 of 2024:

M.Allah Pichai

..Petitioner/A-6

/versus/

Union rep.by
The Intelligence Officer,
NCB, Chennai,
R.R.No.23 of 2023

.. Respondent/
Complainant



Crl.O.P.Nos.13636, 13637, 13641 & 13643 of 2024

Criminal Original Petition has been filed under Section 482 of Cr.P.C to set aside the order passed in Crl.M.P.No.240 of 2024, dated 12.01.2024 on the file of the Principal Special Judge under EC & NDPS Act, Chennai.

For Petitioner :Mr.M.G.Martin Manivanan for
Mr.S.Karthik
For Respondent :Mr.N.P.Kumar, Spl.P.P
(NCB Cases)

Crl.O.P.No.13643 of 2024:

M.Allah Pichai

..Petitioner/A-6

/versus/

Union rep.by
The Intelligence Officer,
NCB, Chennai,
R.R.No.23 of 2023

.. Respondent/
Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C to set aside the order passed in Crl.M.P.No.1197 of 2024, dated 20.02.2024 on the file of the Principal Special Judge under EC & NDPS Act, Chennai.

For Petitioner :Mr.M.G.Martin Manivanan for
Mr.S.Karthik
For Respondent :Mr.N.P.Kumar, Spl.P.P
(NCB Cases)



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COMMON ORDER

These four Criminal Original Petitions are by Pandiyarajan and Allah Pitchai, who are the 4th and 6th accused in C.C.No.7922/2024 pending on the file of the Principal Special Court for NDPS cases at Chennai.

2. The 4th accused Pandiarajan is the petitioner in Crl.O.P.Nos.13636 and 13637 of 2024

3. The 6th accused M.Allah Pichai is the petitioner in Crl.O.P.Nos.13641 and 13643 of 2024.

4. Before the Special Court, the petitioners along with other accused persons filed application for bail on 05/02/2024 under Section 37 of NDPS Act r/w Section 167(2) of Cr.P.C. and taken on file in Crl.M.P.No.1197/2024. Prior to this petition, the Intelligence Officer of NCB, Chennai filed petition u/s 36 A (4) of the NDPS Act for extension



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of time to file the complaint otherwise than the police report and taken on file in Crl.M.P.No.240/2024.

5. The Learned Special Court Judge, allowed the petition Crl.M.P. No:240/2024 on 12/01/2024 filed by the prosecution for extension of time and dismissed the bail petition filed by the petitioners herein, in Crl.M.P.No.1197/2024 on 20/02/2024.

6. Challenging the above two orders, these Criminal Original Petitions are filed under Section 482 of Cr.P.C.

7. Since the facts and issue involved is one and same, all the four petitions are taken together and the common order passed.

8. Prosecution case:

On 24th July, 2023, based on specific information that ganja being transported from Vizag to Chennai for onward transport to Srilanka through Rameshwaram, surveillance was mounted near Karanodai Toll



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gate by the NCB officials. At midnight of 24/25 July, 2023, a TATA truck bearing registration No: TN 31 BD 6347 was intercepted and from the vehicle, 432.700 Kg of ganja seized. One Mr.KadarBasha (Driver-A-1) and the co-passenger Mr.Senthil Kumar (A-2) were interrogated. On their information, V.Velu, Pandiayarajan and Jahir Hussain were summoned to NCB office and their statements were recorded. All these accused persons admitted their respective role in procuring ganja from Vizag and its transport to Chennai in TATA Truck. They were all arrested on 26/07/2023.

9. The arrested accused persons disclosed the name of Allah Pitchai who played a pivotal role in arranging finance for procuring the ganja and also his involvement in organising the illegal transportation of ganja outside India through Rameswaram. The said Allah Pitchai was arrested on 28/07/2023.

10. These two petitioners along with other accused persons filed petition for bail pleading innocence. They claim no contraband was



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recovered from them and during the time of arrest, they were neither in conscious possession or physical possession of the contraband. Merely based on the confession of co-accused, they are implicated in the crime. Further, they contended that the respondent/NCB not filed the final report within 180 days from the date of their arrest as stipulated under the NDPS Act. Hence they are entitled for statutory bail under Section 167(2) of CrPC.

11. The Special Court dismissed the bail petition recording that the respondent/complainant had filed petition on 05/01/2024 u/s 36A(4) of th NDPS Act for extension of time by six months for completing the investigation. The notice to the accused person was attempted to be served through the prison authority, but the accused persons refused to receive it and made endorsement in the notice on 09/01/2024. Considering the facts and circumstances stated in the petition, same was allowed on 12/01/2024.



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12. In Crl.O.P.No:13636/2024 filed by Pandiyarajan and Crl.O.P.No.13643/2024 filed by Allah Pichai, the order of the Special Court passed in Crl.M.P. 1197/2024 is challenged on the ground that, the mandatory bail petition ought not to have been dismissed quoting the order passed in Crl.M.P.No.240/2024 extending the time for investigation. The petition for bail in Crl.M.P.No.1197/2024 was filed on 05/02/2024. On that day, it was 190th day for Pandiyarajan (A-4) and 189th day for Allah Pitchai(A-6). Crl.M.P.No.240/2024 filed by the NCB on 05/01/2024 was taken on file on 09/01/2024 and order passed without affording opportunity. Relying on the Supreme Court Judgment in *Jigar @ Jimmy Pravinchandra Aditya –vs- State of Gujarat in Crl.A No: 1656/2022 arising out of SLP (cri) No: 7696 of 2021 dated 23/09/2023*, reported in [2022 SCC OnLine 1290], it is contended on behalf of the petitioners that the Special Court ought not to have extended the time for filing final report, but should have dismissed it and allowed the statutory bail petition.



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13. In Crl.O.P.No.13637/2024 by Pandiyarajaan and Crl.O.P. No.13643/2024 by Allah Pitchai, the order passed in Crl.M.P.No.240/2024, dated 12/012024 is challenged on the ground that, no specific reason given by the Public Prosecutor for extension of time other than that, “efforts are underway to trace the whereabouts of the absconding accused Pounpandi”. This is not a sufficient reason to extend the time and not in compliance to the dictum laid down by the Hon'ble Supreme Court in *Sanjay Kumar Kedia @ Sanjay Kedia –vs- Intelligence Officer, NCB and another*. It is contended that, the petition for extension of time allowed without the presence of the petitioners and also without giving a fair chance to contest the same and it is against the principle laid in *Jigar @ Jimmy Pravindchdra Aditya case* and followed by Co-ordinate Bench of this Court in *Mohammed Zoha –vs- State, rep. By its Inspector of Police, Pallikaranai in Crl.R.C.No: 671/2023*.

14. The Learned Special Public Prosecutor for NCB submitted that the dictum laid in the judgments relied by the petitioners are not



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violated in this case. By distorting the facts, these petitions are filed with oblique motive. The 4th accused Pandiyarajan was arrested on 26/07/2023 and the 6th accused Allah Pitchai was arrested on 28/07/2023. The petition for extension of time was filed on 05/01/2024 assigning reasons. The petitioners refused to receive the copy of the petition, when it was served through the Prison authority. On all the hearing dates, they were produced through VC and their counsels were physically present in the Court at the time of hearing. The petition for default bail was filed on 05/02/2024, after the extension of time granted on 12/01/2024. Therefore, the dictum laid in *Judgebir Singh @ Jasbir Singh* cited supra or the judgment in *Jigar @ Jimmy Pravindchandra Aditya* cited supra have no relevance to the facts of this case.

15. A detailed counter and additional counter filed stating the material against these petitioners, which incriminates them in the trafficking of 432.700 kg of ganja from Vizag to Chennai and their attempt for onward transportation to Srilanka through Rameshwaram.



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16. Perusal of the records indicate that Pandiyarajan (A-4) was arrested on 26/07/2023 and Allah Pitchai (A-6) was arrested on 28/07/2023. Their earlier petition for regular bail was dismissed and the second petition seeking statutory bail was filed by these two petitioners along with other accused under Section 167(2) of Cr.P.C . This petition numbered as Crl.M.P.No.1197/2024 was filed on 05/02/2024 in filing No:1354/2024. The first hearing date was 06/02/2024. After hearing the learned counsel for the petitioners and the Public Prosecutor for NCB, the petition for statutory bail was dismissed on 20/02/2024.

17. Much prior to filing of the statutory bail petition, the IO, NCB had filed petition under Section 36 A (4) of NDPS Act for extension of time. Records indicates that this petition was filed on 05/01/2024 in filing No: 248/24. The first hearing date of this petition was 09/01/2024. After contest, it was allowed on 12/01/2024.



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18. Therefore, it is very obvious, that the petition for extension of time was filed much before expiry of 180 days and order was passed on 12/01/2024 long before filing of the petition seeking bail on default. After voluntary refusal to receive the copy of the petition, the petitioners feign ignorance of the order passed in Crl.M.P.No.240/24 and had filed petition seeking statutory bail. The Special Court has extended the time to file report after being satisfied with the reasons. In suppression of these facts with distorted version, the petitioners are before this Court.

19. This Court opines that it is necessary to place on record the relevant portion of the Special Judge order in Crl.M.P.No.240/2024, dated 12/01/2024 to prevent any future attempt by the petitioners to distort the facts.

“3.Heard. Entire records perused. From the overall perusal of records. A1 to A5 were arrested for having illegal possession of 432.700 kgs of ganja and were remanded to judicial custody on 27.07.2023. The said contraband was seized by the respondent. The contraband and other properties were also seized from the accused persons by the respondent. The contraband and other properties were also produced before



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this Court in A.No.1056 of 2023 and B.No.699/2023 respectively. The samples were also sent to Lab for analysis and the other properties were also returned to the petitioner for safe custody. On the basis of statement of co-accused, A6 was subsequently arrested and remanded to judicial custody. The learned Special Public Prosecutor had submitted that the detailed financial investigation against all the accused are to be ascertained and the incriminating documents are to be collected and other associates are to be apprehended and 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. The seized contraband is of commercial quantity. The investigation of this case is not yet completed. Under such circumstances, the learned Special Public Prosecutor had filed the present petition u/s 36A(4) of the NDPS Act for extension of further 6 months time for completing the investigation of this case. This petition has filed before this Court on 05.01.2024 i.e 162nd day within the statutory period. The accused persons had refused to receive the notices. As the petition has been filed within the statutory period along with proper report stating the progress of investigation, this Court has to give sufficient opportunity to investigate the matter in a proper manner. As per Section 36A(4) of the NDPS Act, “.....PROVIDED that, if it is not possible to complete the investigation within the said period of one hundred and eight days, the Special Court may extend the said period up to one year on the receipt of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond



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the said period of one hundred and eighty days.” In this case, the seized contraband of 432.700 kgs of ganja is of commercial quantity. The plea of the prosecution is convincing and the prosecution is not expected to detail each and every aspect of the progress of the case and certainly not for the accused to know it all. Of course it is expected that the prosecution agency will speed up the investigation. Considering the facts and circumstances of the case, the request of the prosecution is to be conceded and thus the time is extended for completion of investigation for further period of six months.”

20. Similarly, in their petition for statutory bail filed in Crl.M.P.No.1197/2024, the Learned Special Judge has recorded in para 3 and 4 as below:-

“3.Reply received. The learned Special Public Prosecutor had contended that in the above case, the petition u/s 36A(4) of the NDPS Act has filed in Crl.M.P.No.240 of 2024 for further extension of statutory period for investigation and the same was allowed on 12.01.2024 and the time was extended for completion of investigation for further period of six months and objected for granting bail.

4.From the over all perusal of records, A1 to A5 were arrested for having illegal possession of 432.700 kgs of ganja and were remanded to judicial custody on 27.07.2023. The said contraband was seized by the respondent. The contraband and other properties were also produced before this



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Court in A.No.1056/2023 and B.No.699/2023 respectively. The samples were also sent to Lab for analysis and the other properties were also returned to the petitioner for safe custody. On the basis of statement of co-accused, A6 was subsequently arrested and remanded to judicial custody. The learned Special Public Prosecutor had submitted that the detailed financial investigation against all the accused are to be ascertained and the incriminating documents are to be collected and other associates are to be apprehended and 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. The seized contraband is of commercial quantity. The investigation of this case is not yet completed. The present petition has been filed by the petitioners/accused A1 to A6 u/s 167(2) of Cr.P.C seeking mandatory bail on the ground that the respondent police have not completed the investigation and have also not filed the charge sheet within the statutory period. Before that, the respondent/complainant had already filed a petition u/s 36A(4) of NDPS Act for extension of time for six months for completion of investigation in Crl.M.P.No.240/2024 on 05.01.2024 i.e. 162nd day within the statutory period and the period of investigation has been extended by this Court for completion of investigation for further period of six months in Crl.M.P.No.240/2024 on 12.01.2024. At this juncture, the present petition which is filed u/s 167(2) of Cr.P.C., is liable to be dismissed.”



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21. Reverting to the judgments relied by the petitioners counsel, this Court on reading those judgments without any doubt hold that these judgment does not apply to the facts of the case in hand.

22. In Jigar @ Jimmy Pravinchandra case, the Hon'ble Supreme Court while discussing the effect of not filing the report within the time prescribed under Section 167(2) of the CrPC and the effect of the failure of the respondents to produce the accused before the Special Court at the time of consideration of the petition for extension of time, the Hon'ble Supreme Court recorded that the petition for extension of time on the report of the Public Prosecutor was passed by the Special Court on the very same the report submitted. Further, the order extending the period of investigation was passed without the accused being produced physically or virtually. Since the accused had no notice for extension of time granted by the Court, the Hon'ble Supreme Court held that the order of the Special Court extending time is illegal.



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23. Whereas in the case in hand, the petitioners had refused to receive the copy of the petition and had stated that they will not receive it without their Advocate advice. On the dates of hearing, they were produced through VC from the Prison.

24. In *Judgebir Singh @ Samra @ Jasbir and others –vs- NIA* cited supra, the Hon'ble Supreme Court referring *Jigar @ Jimmy* case has held as below:-

AN EYE-OPENER LITIGATION FOR THE NIA/STATE POLICE

76. As is evident from the chronology of dates and events referred to in the earlier part of our judgment, the final report under Section 173(2) of the CrPC was filed in the Court of SDJM, Ajnala on 15.11.2019. 15.11.2019 was the 161st day from the date of arrest of two of the appellants before us, namely, Jasbir Singh and Varinder Singh. They were the first to be arrested on 08.06.2019. The Punjab Police applied to the Court of the Additional Sessions Judge, Amritsar, for extension of time to complete the investigation invoking the proviso to Section 43D(2)(b) of the UAPA on 04.09.2019. When this application for extension of time was filed only two days were left for 90 days to expire. This is suggestive of the fact that the 91st day would have fallen on 07.09.2019. What is important to highlight is that the Additional Sessions Judge, Amritsar, looked into the extension application dated 04.09.2019 filed by the Punjab Police and ultimately, extended the time limit vide its order dated 17.09.2019



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i.e., on the 101st day. By the time, the Additional Sessions Judge, Amritsar, passed an order extending the time, the period of 90 days had already expired. Indisputably, there was no charge sheet before the Court on the 91st day i.e., on 07.09.2019. The reason why we say that this is a grey area is because what would have happened if the appellants Jasbir Singh and Varinder Singh had preferred an application seeking statutory/default bail under Section 167(2) of the CrPC on the 91st day i.e., on 07.09.2019. The application seeking extension of time was very much pending. The Additional Sessions Judge could not have even allowed such application promptly i.e., on or before the 90th day without giving notice to the accused persons. The law is now well settled in view of the decision of this Court in the case of Jigar alias Jimmy Pravinchandra Aditya v. State of Gujarat reported in 2022 SCC OnLine SC 1290 that an opportunity of hearing has to be given to the accused persons before the time is extended up to 180 days to complete the investigation. The only error or lapse on the part of the appellants Jasbir and Varinder Singh was that they failed to prefer an appropriate application seeking statutory/default bail on the 91st day. If such application would have been filed, the court would have had no option but to release them on statutory/default bail. The Court could not have said that since the extension application was pending, it shall pass an appropriate order only after the extension application was decided. That again would have been something contrary to the well settled position of law. This litigation is an eye opener for the NIA as well as the State investigating agency that if they want to seek extension, they must be careful that such extension is not prayed for at the last moment.

77. The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the court. However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, or a report seeking



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extension of time is preferred before the Magistrate or any other competent court, the right to default bail would be extinguished. The court would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the CrPC”.

25. The facts of the case in hand:

(i)The petition for extension of time filed on 05/01/2024, which was the 165th day.

(ii)The order extending time to complete the investigation within 6 months was passed on 12/01/2024 (i.e) before the expiry of 180 days.

(iii)The report has been filed on 03/07/2024 before the expiry of the extended period.

(iv)The petition for bail under section 167(2) Cr.P.C. filed only on 05/02/2024, after the time was extended under Section 36 A (4) of NDPS Act.

26. Thus, on the date of filing the petition for statutory bail, the ground for seeking bail on default was not in existence. Unlike the facts



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in *Judgebir Singh case*, in the case in hand, the prosecution has not sought for extension of time at the last moment. In fact, they have filed petition well in advance taking note of the word of caution given by the Hon'ble Supreme Court in *Judgebir Singh case* and obtained order of extension of time well before expiry of 180 days.

27. The petitioners consciously and deliberately refuse to receive notice in the extension petition. Thereafter, to get statutory bail, suppressing the fact that they attended the Court through VC, filed petition for bail. The Learned Special Judge has diligently perused the records and had passed the order assigning reasons.

28. For the reasons stated above, **these Criminal Original Petitions are dismissed as devoid of merit.**

05.08.2024

Index:yes
Speaking order/non speaking order
Neutral citation:yes/no
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To:

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



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Dr.G.JAYACHANDRAN,J.

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delivery Common Order made in
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05.08.2024