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CRL. R.C. Nos. 1093 & 1104/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
04.07.2024	10.07.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. R.C. NOS. 1093 & 1104 OF 2024

CRL. R.C. No.1093/2024

Mathew

.. Petitioner

- Vs -

State, rep. by
The Inspector of Police
T-11, Somangalam P.S.
Chennai.

.. Respondent

CRL. R.C. No. 1104/2024

1. Rathina Sabapathi @ Poochi
2. Murugan @ Kutti @ Ragavendren

.. Petitioners

- Vs -

State of Tamil Nadu
rep. By The Inspector of Police
T-10, Manimangalam Police Station
Chennai.

.. Respondent



CRL. R.C. Nos. 1093 & 1104/2024

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Crl. R.C. No.1093 of 2024 filed u/s 397 r/w 401 Cr.P.C. praying this Court to call for the records in Crl. M.P. No.5602 of 2024 dated 3.6.2024 on the file of the Principal Special Court under EC & NDPS Act, Chennai and set aside the same and enlarge the petitioner on bail pending trial in Cr. No.279 of 2023.

Crl. R.C. No.1104 of 2024 filed u/s 397 r/w 401 Cr.P.C. praying this Court to set aside the order passed in Crl. M.P. No.5387 of 2024 ordered on 29.05.2024 on the file of the Principal Special Court under EC & NDPS Act, Chennai and enlarge the petitioners on mandatory bail u/s 167 (2) Cr.P.C. in Crime No.421 of 2023 pending on the file of the respondent.

For Petitioners : Mr. R.Sankarasubbu in
Crl. R.C. No.1093/2024
Mr. M.S. Ramesh in
Crl. R.C. No. 1104/2024

For Respondents : Mr. A.Gopinath, GA (Crl. Side)

COMMON ORDER

Through the revision petitions, the petitioners in the respective petitions have assailed the order of the Principal Special Court under EC & NDPS Act, Chennai, in and by which the Special Court, while dismissed the petition seeking



mandatory bail, had allowed the petition filed by the prosecution seeking extension of time. Assailing the said orders, the present revision petitions have been preferred.

FACTS IN CRL. R.C. NO. 1093 OF 2024

2. The petitioner/accused was apprehended during illicit transportation of commercial quantity of Amphetamine and was remanded to judicial custody on 28.11.2023. The accused was produced before the learned Judicial Magistrate, Sriperumbudur and was remanded to judicial custody on the same day. The seized contraband was produced before the Court on 20.12.2023 and the same was taken on file. It is the further case of the prosecution that in the course of investigation, the seized contraband was sent to the Forensic Science Laboratory, Chennai for chemical analysis vid Nar. No.1848 of 2023 dated 22.11.2023 and report is yet to be received.

3. It is the further case of the prosecution that the time for filing the charge sheet is 180 days, but as the investigation in the case is taking longer time, as crucial documents have to be collected and the other persons, who have



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colluded in the transportation of contraband has to be investigated, including identifying the source of main supplier, the learned Special Public Prosecutor had filed a report and filed Crl. M.P. No.5047/2024 seeking extension of time u/s 36A (4) of the Narcotic Drugs & Psychotropic Substances Act (for short 'the NDPS Act') on the 169th day, which is within the statutory period.

4. Pending the petition for extension of time, the petitioner/accused preferred Crl. M.P. No.5602/2024 praying for mandatory bail u/s 167 (2) Cr.P.C. upon completion of 180 days of detention.

5. While the Special Court allowed Crl. M.P. No.5047/2024 filed by the prosecution vide order dated 29.05.2024, however, dismissed the petition in Crl. M.P. No.5602/2024 filed by the accused vide order dated 03.06.2024, against which the present revision petition has been filed.

FACTS IN CRL. R.C. NO. 1104 OF 2024

6. The petitioner/accused was arrested by the respondent on 23.11.2023 alleging that the accused/petitioners were in possession of 54 grams of



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Amphetamine. The accused was produced before the Judicial Magistrate, Sriperumbudur and was remanded to judicial custody on the same day. The seized contraband was produced before the Court on 18.01.2024 and the same was taken on file. In the absence of drawal of sample from the contraband, the entire contraband was sent to the lab for chemical analysis and report is yet to be received.

7. It is the further case of the prosecution that the time for filing the charge sheet is 180 days, but as the investigation in the case is taking longer time, as crucial documents have to be collected and the other persons, who have colluded in the transportation of contraband has to be investigated, including identifying the source of main supplier, the learned Special Public Prosecutor had filed a report and filed Crl. M.P. No.5061/2024 seeking extension of time u/s 36A (4) of the NDPS Act' on the 174th day, which is within the statutory period.

8. Pending the petition for extension of time, the petitioner/accused preferred Crl. M.P. No.5387/2024 on the 181st day praying for mandatory bail u/s 167 (2) Cr.P.C. upon completion of 180 days of detention.



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9. However, vide a common order dated 29.05.2024, the Special Court allowed Crl. M.P. No.5061/2024 filed by the prosecution and dismissed the petition in Crl. M.P. No.5387/2024 filed by the accused, against which the present revision petition has been filed.

SUBMISSIONS IN CRL. R.C. NO. 1093/2024

10. Learned counsel appearing for the petitioner submitted that the Special Court did not have power to extend the time for investigation after the 180th day as the right of the petitioner to seek statutory bail accrues then. It is the further submission of the learned counsel that on the day when the order had come to be passed, i.e., on 29.05.2024, 180 days having passed, as per the mandate u/s 167 (2) Cr.P.C., the petitioner is entitled for statutory bail, as no orders have been passed on the application for extension. The order on the application for extension having been passed on 29.5.2024, , i.e., on the 183rd day, the petitioner ought to have been granted statutory bail, as on the 181st day, the petition for statutory bail had been filed by the petitioner. In this



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regard, learned counsel for the petitioner placed reliance on the decision of this Court in ***Ranjithraj & Anr. – Vs – State of T.N. (CDJ 2024 MHC 1779) & Yuvaraj @ Kaisama Yuvaraj – Vs – The State (Crl. R.C. No.179/2024 – Dated 23.02.2024).***

11. It is the further submission of the learned counsel that the petition for statutory bail takes precedence over the petition for extension of time, as the statutory bail is an off-shoot of the guarantee provided for by the petitioner under Article 21 of the Constitution. However, without properly appreciating the above, the Special Court had dismissed the petition for statutory bail while allowing the petition for extension of time by two months, which is perverse and unsustainable.

12. It is the further submission of the learned counsel that the report of the Special Public Prosecutor, which is a mandate to seek for extension beyond the period of 180 days, which is provided for under proviso to Section 36A (4), clearly spells out that the said report should indicate the progress of investigation and also the specific reasons for the detention of the accused



beyond the period of 180 days. However, the report of the Special Public Prosecutor is silent and merely speaks about the further investigation that needs to be taken up and in the absence of compliance of Section 36A (4), the mandate u/s 167 (2) Cr.P.C. has to be given to the petitioner and he ought to have been enlarged on bail. However, without properly appreciating the same, the Special Court had, through a general order had allowed extension of time and detained the petitioner by dismissing the statutory bail application, which is perverse and requires interference.

SUBMISSIONS IN CRL. R.C. NO. 1104/2024

13. Learned counsel appearing for the petitioners submitted that the Special Court, through a common order, had decided the plea for extension of time sought for by the prosecution and the statutory bail sought for by the accused, which is wholly impermissible.

14. Similar to the submission advanced by the learned counsel in the other revision petition, on the same lines, learned counsel for the petitioners



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submitted that the petition for extension of time was filed on the 174th day, but it was not decided and after the passage of 180 days period, when the petitioners were entitled for statutory bail, for which petitions were filed, both the petitions were taken up together and decided in favour of the prosecution and against the accused. On the date when the petitions were taken up, there being no order in favour of the prosecution, the detention of the petitioners is wholly illegal and they ought to have been granted statutory bail. However, without deciding the grant of statutory bail, the plea for extension was first decided, which is against the dictum laid down by this Court in *Ranjithraj & Yuvaraj case (supra)*.

15. It is the further submission of the learned counsel that production of the accused before the Special Court is mandatory for the purpose of extension of remand, as provided for u/s 167 (2) (b) (ii) of Cr.P.C. However, when the petition of the prosecution for extension of time was sought for, the petitioners were not produced before the Special Court and they were not heard thereby, the petitioners were deprived of their valuable right, provided u/s 167 (2) (b) (ii) of the Code, which renders the order of grant of extension of time illegal and unsustainable.



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16. In support of the aforesaid plea, learned counsel placed reliance on the decision of the Apex Court in ***Jigar @ Jimmy Pravinchandra Adatiya – Vs – State of Gujarat (CDJ 2022 SC 1043)***.

17. In line with the submission of the learned counsel in the other revision petition, in the same breath, learned counsel for the petitioners submitted that no detailed report indicating the progress of investigation has been filed by the Special Public Prosecutor before the Special Court, which is *sine qua non* to fulfilling the mandate u/s 36A (4) of the NDPS Act. Further, the specific reasons for which extension of time has been sought for has not been spelt out. The prosecution has merely submitted that lab report is yet to be received and that crucial documents pertaining to the investigation has to be collected and the persons, who colluded with the petitioners have to be apprehended, including the main supplier, who is source of the contraband. However, it is the submission of the learned counsel that the aforesaid reasons are parrot-like versions, which does not reveal the nature of further investigation that requires to be undertaken vis-a-vis the investigation which had already taken place and in



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the absence of the aforesaid details, the petition of extension of remand cannot be entertained. However, the Special Court, through a stereotype order, as is being passed in all the cases, has passed the order hereto, which is perverse, showing total non-application of mind to the relevant legal provisions and the precedents on the issue.

18. It is the further submission of the learned counsel that even the counter of the respondents reveal that the aspects of investigation which is to take place are with regard to examination of some more witnesses and report of the Forensic Sciences Laboratory to be obtained. These cannot be said to be detailed reasons for the purpose of seeking extension of time, as already a period of 180 days has elapsed and the investigation that had been conducted by the prosecution has not been spelt out. The aforesaid aspects have not been properly appreciated by the Special Court and, therefore, the order passed by the Special Court requires to be interfered with and the petitioners ought to be granted statutory bail.



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19. Per contra, learned Government Advocate (Crl. Side), submitted that the prosecution had followed the mandate u/s 36A (4) of the NDPS Act by filing the report of the Special Public Prosecutor. It is the further submission of the learned Special Public Prosecutor that the has been filed well before the completion of 180 days, i.e., on the 169th and 174th day respectively. Merely because the Special Court had not taken up the extension petitions and that they were taken up only after the completion of 180 days cannot be put against the prosecution.

20. It is the further submission of the learned Government Advocate that on the date when the extension petitions were filed, the petitioners were under remand and till the extension petition is decided by the Special Court, no right would accrue to the petitioner insofar as statutory bail is concerned. Only if the petition for extension is held in favour of the accused, the right to statutory bail accrues to the petitioners. Therefore, at the end of 180 days, pending a petition for extension of time, right for statutory bail would not stand accrued to the petitioner. The Special Court, deciding the extension application of the prosecution, granted extension and, therefore, no right stood accrued to the



petitioners and, therefore, rightly, the petition for statutory bail stood dismissed, which is in line with the provision of law and precedents and, therefore, no interference is warranted with the same.

21. In support of the aforesaid submissions, learned Government Advocate placed reliance on the following decisions :-

- i) *Kannan & Ors. – Vs – State & Ors. (MANU/TN/0870/2022);*
- ii) *Varun & Anr. – Vs – State (Crl. O.P. No.901/2024 – Dated – 01.02.2024);*
- iii) *Sathish & Anr. – Vs – The State & Anr. (Crl. O.P. (MD) No.3225/2022 – Dated 17.03.2022); and*
- iv) *Subhas Yadav & Ors. – Vs – State of West Bengal & Ors. (2023 SCC OnLine Cal 313)*

22. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the decisions relied on by the respective parties.



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23. There is no dispute with the facts in the present case. The petitioners are under remand for offences committed under the NDPS Act. There is no quarrel with the remand of the petitioners, as it has been followed in accordance with the provisions of the NDPS Act and the Criminal Procedure Code. The extension petitions were filed by the Special Public Prosecutor seeking extension of further time for investigation, in compliance with Section 36A (4) of the NDPS Act. It is not in dispute that the respective applications seeking extension along with report of the Special Public Prosecutor were filed by the 169th day and 174th day in the respective petitions, which is within the period of 180 days, i.e., before the right that would stand accrued to the petitioners under Section 167 (2).

24. It is also not in dispute that the Special Court considered the extension petitions first before considering the petition for grant of statutory bail. The approach adopted by the Special Court cannot be found fault with. Further, it should also not be lost sight of that the petitions seeking extension of time were filed well in advance along with the report of the Special Public Prosecutor. However, the same were kept pending by the Special Court by which time the



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period of 180 days came to an end, which, according to the petitioners, created an infeasible right on the petitioners to seek for statutory bail.

25. In the above backdrop of the facts, the only issue that arises for consideration in the present petition is –

“Whether, pending the consideration of the petition seeking extension of time, infeasible right for statutory bail accrues to the accused on completion of the statutorily prescribed period, viz., 180 days.”

26. There is no quarrel with the fact that Section 167 (2) of Cr.P.C. provides for statutory bail to an accused upon completion of 60/90/180 days period, as the case may be. In the case on hand, the petitioners are under detention for offences under the NDPS Act, which provides for a period of remand upto 180 days, which could be extended by another 180 days, in all totalling to 360 days. The petitions by the prosecution have come to be filed upon completion of 169 days and 174 days respectively seeking extension of time for completing the investigation. However, the petitions were not taken up



by the Special Court immediately and they were taken up only after completion of 180 days by which time, the petitioners too filed petitions seeking statutory bail.

27. Section 36A (4) of the NDPS Act provides the prosecution to seek for extension of time where it is not able to complete the investigation within the period of 180 days which could be sought for on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of 180 days. Therefore, the two limbs of the said provision needs to be satisfied for the Court to grant extension of time.

28. In the case on hand, there is no quarrel that the report of the Special Public Prosecutor was filed along with the petition seeking extension of time. Not only the report, but also the need for extension of time for investigation has also been spelt out in the report, as could be elicited from the orders impugned herein. Therefore, there is due compliance with regard to the first limb as to submission of a report with regard to the investigation conducted. The second



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limb pertains to the specific reasons for the detention of the accused beyond the period of 180 days. From a perusal of the orders impugned herein, which has clearly captured the report of the Special Public Prosecutor, it is evident that the report speaks that the forensic lab report is yet to be obtained and that the other persons, who are involved in the offence and the main source of the drug trafficking are still at large and they need to be apprehended and, therefore, releasing the petitioners out on bail would be detrimental to the investigation. The second limb also is satisfied, as reasons have been given in the report while seeking extension of time.

29. In the aforesaid scenario, the Special Court has taken the application for extension of time for investigation in Crl. RC No.1093/2024 separately and granted extension of time and, thereafter had taken the petition for statutory bail and dismissed it as extension of time had been granted, while in Crl. RC No.1104/2024, both the petitions, one seeking extension of time and the other seeking statutory bail were taken up together and time was extended while the statutory bail petition was dismissed.



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30. In this regard it is the stand of the petitioners that once the period of 180 days gets completed, in the absence of any order granting extension of time on the crucial date, indefeasible right accrues to the petitioners to seek for statutory bail, which has to be invariably granted by virtue of Section 167 (2) Cr.P.C. and in the present case, on the completion of 180 days, there being no orders extending the time for investigation, the indefeasible right of the petitioners to statutory bail stood accrued and the petitioners are entitled for grant of statutory bail.

31. Though such a contention on the face of it looks attractive, but it should not be lost sight of that even on the 169th and 174th day, the petitions seeking extension of time have already been filed by the prosecution along with the report of the Special Public Prosecutor. Had the Special Court taken up the same and passed orders forthwith, no right would have accrued to the petitioners to seek for statutory bail. However, the delayed response from the Court is the off-shoot of the present petitions.



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32. However, the issue raised in the present petition is no longer *res integra* as the Division Bench of this Court in *Kannan case (supra)*, relying upon the decision of the Apex Court in ***Rambeer Shokeen – Vs – State (NCT of Delhi) (2018 (4) SCC 405)*** has considered similar issue, wherein it has been held as under :-

“10. In our opinion, this question is no longer res integra. In Rambeer Shokeen – Vs – State (NCT of Delhi), reported in MANU/SC/0056/2018 : (2018 (4) SCC 405), the Hon’ble Supreme Court considered this very question and held as follows :-

“After having analysed the facts and events as unfolded from 28th February, 2017 until 8th March, 2017, it is indisputable that on 28th February, 2017, the Additional Public Prosecutor had filed report for extension of time to file charge-sheet against the Appellant until 15th March, 2017. The same was filed within time, before the expiry of 90 days from the date of initial arrest of the Appellant in connection with the subject FIR. Realising this position, the Appellant did not pursue his first application for statutory bail dated 28th February, 2017. Instead, he was advised to file a fresh statutory bail application on 2nd March, 2017. Admittedly, on 2nd March, 2017 the report submitted by the Additional Public Prosecutor dated 28th February, 2017 was still undecided. Therefore, no right can be said to have accrued to the Appellant for grant of bail on the ground of default. In law, only.



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upon rejection of the prayer for extension of time sought by the Additional Public Prosecutor, right in favour of the Appellant for grant of statutory bail could have ignited. The mere fact that 90 days period from the date of initial arrest of the Appellant in connection with the subject FIR had lapsed on 2nd March, 2017, could not ineluctably entail in grant of statutory bail to the Appellant. Moreso, when no decision was taken by the Court on the report/application submitted by the Additional Public Prosecutor until 8th March, 2017, on which date the supplementary charge-sheet against the Appellant was filed in Court. Considering the effect of filing of the supplementary charge-sheet against the Appellant, coupled with the fact that his judicial custody was extended by the Court of competent jurisdiction until the pendency of consideration of the report/application for extension of time to file the charge-sheet, in law, it is unfathomable as to how the Appellant could claim to have any accrued right to be released on bail on the ground of default or for that matter, such a right having become infeasible."

11. The Supreme Court further pointed out that the consideration of an application for grant of statutory bail in a situation as in the present case (pending an application for extension of time filed by the prosecution) was dependent on rejection of the prayer of the prosecution for extension of time. The Supreme Court went on to observe as follows :-



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“..... When such prayer is made, it is the duty of the Court to consider the report/application for extension of period for filing of the charge-sheet in the first instance; only if it was to be rejected could the prayer for grant of statutory bail be taken forward. In no case, the hearing on statutory bail application precede the consideration of prayer for extension of the period for filing of the charge-sheet made by the Additional Public Prosecutor.”

(Emphasis Supplied)

33. It should not be lost sight of that the petitions for extension of time were filed well in advance and it is only the Court which had not taken up the matter and, therefore, the parties should not be made to suffer for the court not taking up the petition. In fact, when the extension of time petitions were taken up, by then the petitions for default bail were also filed, which were taken up together in Crl. RC No.1104/2024, whereas in Crl. RC No.1093/2024, the extension petition was considered first and, thereafter, based on the said order, the petition for default bail was considered.



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34. Though it is submitted on behalf of the petitioner in Crl. RC No.1104/2024 that taking up both the petitions together and disposing of by way of common order is erroneous, however, the said contention does not deserve merit for the simple reason that even in the decision in **Ravindran – Vs – Intelligence Officer, Directorate of Revenue Intelligence (2021 (2) SCC 485)**, on similar contentions, the Apex Court has held as under :-

“20.1 The observations made in Hitendra Vishnu Thakur (supra) and Sanjay Dutt (supra) to the effect that the application for default bail and any application for extension of time made by the Public Prosecutor must be considered together are, in our opinion, only applicable in situations where the Public Prosecutor files a report seeking extension of time prior to the filing of the application for default bail by the Accused. In such a situation, notwithstanding the fact that the period for completion of investigation has expired, both applications would have to be considered together. However, where the Accused has already applied for default bail, the Prosecutor cannot defeat the enforcement of his indefeasible right by subsequently filing a final report, additional complaint or report seeking extension of time.

20.2. It must also be added and it is well settled that issuance of notice to the State on the application for default bail filed under the Proviso to Section 167(2) is only so that the Public Prosecutor can satisfy the Court that the prosecution has already obtained an



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order of extension of time from the Court; or that the challan has been filed in the designated Court before the expiry of the prescribed period; or that the prescribed period has actually not expired. The prosecution can accordingly urge the Court to refuse granting bail on the alleged ground of default. Such issuance of notice would avoid the possibility of the Accused obtaining default bail by deliberate or inadvertent suppression of certain facts and also guard against multiplicity of proceedings.”

(Emphasis Supplied)

35. The aforesaid decision is squarely applicable to the case on hand as the petitions for extension of time were filed well in advance before the right accrued to the petitioners to seek for statutory bail. Once the petitions for extension of time were filed, no right would stand accrued to the petitioner for grant of statutory bail till such time the petition for extension of time is decided, as has been held in *Rambeer Shokeen case (case)* and applying the said ratio to the present case, the petitions for extension of time having been filed on the 169th and 174th day respectively, no right stood accrued to the petitioners even on completion of 180 days, as the said right would accrue only after the extension petitions were decided and deciding the extension petitions in favour



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of the prosecution, the petitions for default bail were dismissed, which cannot be found fault with. Further, the act of the prosecution in filing extension petitions even before the expiry of the period of 180 days clearly show that the petitions were filed not to defeat the rights of the petitioners, but on genuine purpose for completing the investigation, as the complexities in investigation in organized crime racket like inter-state/transborder trafficking, more especially in matters related to narcotics, which is a growing menace in the society, necessarily, the investigation consumes more time than what had been prescribed in the NDPS Act and only for the said purpose, extension is provided for. Therefore, extension of time has to be considered before statutory bail could be considered.

36. The maxim, *Actus Curiae Neminem Gravabit* – An act of the Court shall prejudice no one, cannot be ignored. In the present case, as pointed out above, the petitions for extension of time was filed well in advance on the 169th and 174th day respectively and such being the case, had the same been considered before the completion of 180 days, the claim of the petitioners that right accrued to them for statutory bail would not have arisen. The act of the Court should not prejudice the prosecution, as the allowing of the petitions before hand, i.e., prior



to 180 days, definitely no prejudice would have been caused to the petitioners, as no right would have accrued on them. Therefore, the delay in consideration of the extension petitions by the Special Court cannot be put against the prosecution and, rightly, the Special Court had decided the issue, which does not suffer the vice of perversity or illegality. **Accordingly, the issue that has been framed for consideration is answered in favour of the prosecution and against the petitioners/accused.**

37. Though contentions have been advanced by the learned counsel with regard to the absence of the petitioners at the time of hearing the extension petitions, it is to be pointed out that the petitioners were represented by counsel. In fact, notice had been issued to the accused by the Special Court and in the bail petition, the 1st petitioner was represented and in the light of such representation for the petitioners, the claim that there is violation of Section 167 (2) oCr.P.C. is wholly misconceived and this Court holds that there is no violation of principles of natural justice, as opportunity had been granted to the petitioners to put forth their objections, which they have done through their counsel.



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38. Further, it is to be pointed out that the report of the Special Public Prosecutor need not be provided to the accused, but it is placed before the Special Court and appreciating the same, the Special Court has recorded reasons in its order for granting extension of time. When the Special Court had gone through the report and given its reasons for granting extension of time, the accused cannot complain that the report is bereft of particulars as mandated u/s 36A (4) of the NDPS Act, as the compliance of the aforesaid provision has been considered by the Special Court before passing the said order. Therefore, the said contention does not merit acceptance.

39. Insofar as the other decisions relied on by the learned counsel for the petitioners, there is no necessity for this Court to dwell into the said decisions, as the issue stands answered in the decision relied supra and, therefore, this Court is not venturing to discuss all the decisions.



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40. For the reasons aforesaid, this Court finds no merit in the criminal revisions and, accordingly, both the criminal revision petitions are dismissed confirming the orders impugned herein.

10.07.2024

Index : Yes / No

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To

1. The Special Judge
Special Court for EC & NDPS Act
Chennai.
2. The Inspector of Police
T-11, Somangalam P.S.
Chennai.
3. The Inspector of Police
T-10, Manimangalam Police Station
Chennai.



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CRL. R.C. Nos. 1093 & 1104/2024

M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
CRL. R.C. NOS. 1093 & 1104 OF 2024**

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CRL. R.C. Nos. 1093 & 1104/2024

10.07.2024