



Crl.O.P.Nos.18817 & 18925 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :29.08.2024

Pronounced on :04.09.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.Nos.18817 & 18925 of 2024

F.Faizal Ahamed

.. Petitioner/A2
in both cases

/versus/

Union Rep.by
The Intelligence Officer,
NCB, Chennai,
R.R.No.25 of 2022,
In NCB F.No.48/1/07/2022-NCB/MDS

.. Respondent/
Complainant
in both cases

Crl.O.P.No.18817 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.5121 of 2022, dated 18.10.2022, on the file of the Principal Special Judge under EC & NDPS Act, Chennai,

Crl.O.P.No.18925 of 2024: Criminal Original Petition has been filed



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under Section 482 of Cr.P.C., to set aside the order passed in Crl.M.P.No.6227 of 2022, dated 23.12.2022, on the file of the Principal Special Judge under EC & NDPS Act, Chennai.

For Petitioner :Mr.M.G.Martinmanivannan(both cases)
For Respondent :Mr.N.P.Kumar,(both cases)
Spl.PP(NCB Cases)

COMMON ORDER

The petitioner herein is the 2nd accused in C.C.No:343 of 2023, pending on the file of the Special Court for offences under The Narcotic Drugs and Psychotropic Substances Act (NDPS Act) of 1985 (herein after referred to “NDPS” Act), Chennai.

2. On 23/04/2022, on prior information, the Intelligence Officer of NCB, searched a passenger by name P.Nedunchezian at Anna International Airport, Chennai and 184 grams of Methamphetamine carried in his travel bag with intention to transport to Srilanka was seized. On his information, his associates Faizal Ahamed – A2 (the petitioner herein) and Selvam @ Kumar (A3) were arrested on 23/04/2022. On further interrogation, A-2 disclosed the scheme of conspiracy entered between the accused persons to transport Methamphetamine, a psychotropic substance and the source from which he got the seized



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substance. Based on the information given by Faizal Ahamed (A-2), the supplier and the international associates were ascertained. Later, Gnanasegaran @ Gnanam (A-4) and Samaiyan (A-5) were arrested on 24/09/2022. Subsequently, the supplier by name Shahul Meera (A-6) was arrested and from his possession 2.168 Kg of white colour crystalline powder believed to be Ephedrine (a control substance) was seized.

3. Since the investigation could not be completed within 180 days, the Intelligence Officer, NCB filed application under Section 36 A of the NDPS Act for extension of time to file the final report. The said application Crl.M.P.No.5121/2022 was allowed by the Special Court on 18/10/2022. Later, on 23/12/2022, bail petition was filed by the petitioner under Section 167(2) of Cr.P.C to grant default bail. That petition in Crl.M.P.No.6227/2022 was dismissed vide order dated 23/12/2022.

4.The order granting extension of time is challenged in Crl.O.O.No.18817/2024. The order dismissing the bail petition is challenged in Crl.O.P.No.18925/2024.



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5. The learned counsel for the petitioner submitted that, the petitioner is confined in Central Prison at Puzal. The copy of the application filed under Section 36-A(4) of the NDPS Act, served to the petitioner in the presence of the Jail Superintendent on 15/10/2022. The application was heard on 18/10/2022 by the Court and on the same day, without affording any opportunity to the petitioner to object the application, order for extension of time passed. 15th and 16th being Saturday and Sunday, the petitioner had no opportunity to consult his counsel and make preparation for objecting the application.

6. Secondly, the application for extension of time does not disclose any specific reason for extension of time. As per Section 36 A(4) of the NDPS Act, a report of the Special Public Prosecutor indicating the progress of the investigation has also the specific and compelling reason for seeking the detention of the accused beyond the period of 180 days is mandatory. Whereas, in this case without such report from Special Public Prosecutor, the trial Court has mechanically in a routine fashion extended the time for investigation.



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7. Thirdly, the application for extension of time not filed before expiry of 180 days from the date of arrest. It was filed after the expiry of 180 days. Hence, application under Section 36A(4) of NDPS Act is not at all maintainable. Therefore, for all purpose, it has to be construed that the prosecution failed to file the final report within 180 days, hence, the accused is entitled for default bail under 167(2) Cr.P.C. which is an infallible and indefeasible right of a person.

8. To buttress his submissions, the learned counsel for the petitioner, rely upon the following Judgments of the Hon'ble Supreme Court.

(1) Jigar @ Jimmy Pravinchandra Adatiya –vs- State of Gujarat: 2022 SCC OnLine SC 1290.

(2) Sanjay Kumar Kedia @ Sanjay Kedia –vs- Intelligence Officer, NCB and another in Crl.A.No.2008 & 2009 of 2008.

(3) Mohammed Zoha –vs- the State in Crl.R.C.No.671 of 2023.

9. The Learned Counsel, submitted that, the logical and legal consequence of the grant of extension of time is to deprive the accused to claim the indefeasible right availing the default bail. While so, the procedure laid cannot be a empty formality. The failure to procure the



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presence of the accused either physically or virtually before the court and the failure to inform him that the application made by the Public Prosecutor for extension of time is being considered, is a gross illegality violating Article 21 of Constitution of India.

10. Per contra, the Learned Special Public Prosecutor for NCB, contended that it is incorrect to say that the application for extension of time was filed after expiry of 180 days from the date of arrest of the petitioner. The accused was arrested on 23/04/2022. The application for extension of time was filed on 12/10/2022. The petitioner/accused was served with the copy of the application in the presence of Jail Superintendent on 15/10/2022. The application was first heard on 17/10/2022. The decision for extending time to complete the investigation by 6 months was delivered on 18/10/2022 in the presence of the accused/petitioner. After, the order of extension of time, final report filed on 21/03/2023 and taken on file as C.C.No.343/2023.

11. Heard the submissions made by the Learned Counsel for the Petitioner and the Learned Special Public Prosecutor for NCB.



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12. According to the petitioner, the order of the learned Trial Court granting extension of time is in violation of the mandatory procedure and granted after the expiry of the 180 days period. However, from the record this court finds that, the arrest of the petitioner was on 23/04/2022. The 180 days remand period gets expired on 22/10/2022, whereas the application for extension of time filed on 12/10/2022, 10 days before the expiry of the period. The application been heard on 17/10/2022 and on 18/10/2022 order passed in the presence of the accused who were produced from the prison. The order of the trial court which is impugned in this petition indicates that, there was no objection from the petitioner for extending the time.

13. As far as the allegation that the Spl.PP had failed to file a report to substantiate the plea for extension of time, from the perusal of the order, this Court finds that the Learned Judge has specifically recorded that, one of the suspect by name Sivakumar of Padianallur, Red Hills area who supplied the drug yet to be traced and other drug traffickers associated with the drug seized, yet to be traced. Therefore time required for completion of investigation. Thus, it is obviously clear that the Learned Judge had not mechanically passed the order, but had



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applied her mind and only on being satisfied with the reasoning submitted by the Investigating officer through Special Public Prosecutor, had passed the order extending time to file final report by 6 months.

14. Therefore, this Court holds that there is no infraction of the procedure mandated under Section 36-A(4) of the NDPS Act while extending the time to file final report. The petition for extension of time filed well before expiry of 180 days. Petitioner been served with the copy of the application in advance and the court has ensured that the accused is given an opportunity to object. Since, no objection received from the petitioner and being satisfied with the reason stated for extension of time order passed on 18/10/2022 in the presence of the petitioner.

15. Likewise, the application for default bail under section 167(2) of the Code, been filed on 06/12/2022 after granting extension of time. The bail application dismissed on 23/12/2022 recording reason that the petitioner is not entitled for default bail since the time for filing final report is extended. The reasoning for dismissal of the default bail is sound and just. In the absence of right to claim bail on the ground of default, the



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application for bail is bound to fail.

16. For the reasons stated, these Criminal Original Petitions viz., Crl.O.P.No.18817/2024 and Crl.O.P.No.18925/2024 stands dismissed.

04.09.2024

Index:yes/no
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,
R.R.No.25 of 2022, In NCB F.No.48/1/07/2022-NCB/MDS
- 3.The Special Public Prosecutor(NCB Cases), High Court,Madras.



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delivery Common Order made in
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