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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.25252 of 2023

1.Periyasamy

2.Seenivasan @ Seeni @
Gudu Seenivasan ... Petitioners/Accused

Vs.

The State rep.by
The Inspector of Police
Namakkal Police Station
Namakkal District. ... Respondent/Complainant

(Crime No.1234 of 2020)

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 7.7.2022 in CMP No.592 of 2022, on the file of the Special Judge for EC Act Case, Salem, Salem District in Crime No.1234 of 2020, on the file of the Inspector of Police, Namakkal.

For Petitioners : Mr.B.Vasudevan

For Respondent : Mr.A.Gopinath,
Government Advocate (Crl.Side)

O R D E R

The petitioners, who were arrayed as A3 and A6 in the FIR and arrayed as A4 and A5 in the final report, have filed this petition challenging the order

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passed by the Court below in CMP No.592 of 2022 dated 7.7.2022, dismissing the application filed under Section 167(2) Cr.PC., seeking for statutory bail.

2.Heard Mr.B.Vasudevan, learned counsel for the petitioners and Mr.A.Gopinath, learned Government Advocate (Crl.Side) for the respondent police.

3.The respondent registered an FIR in Crime No.1234 of 2020, based on the seizure of huge quantity of ganja from A1 and A2. Based on the confession of these accused persons, the name of the other accused persons were also added through an alteration report. The petitioners, who were arrayed as A3 and A6 in the FIR were arrested and remanded to judicial custody on 28.12.2021.

4.The FIR was registered on 25.8.2020 and the 180th day falls on 26.6.2022. The respondent filed final report on 06.4.2022, before the Court below. The Court below returned the final report on 18.4.2022 on account of some deficiency. Thus, the final report was not before the Court on the date of expiry of the 180th day i.e., on 26.6.2022.

5.The petitioners filed an application seeking for statutory bail under Section 167(2) of Cr.PC on 24.6.2022 (178thday). This petition was numbered on

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29.6.2022 (183rd day). When this application was numbered, admittedly there was no final report available before the Court below. Therefore, the petitioners were entitled to be considered for grant of statutory bail.

6.The Court below dismissed the application by order dated 07.7.2022, mainly on the ground that huge quantity of contraband was seized and it is a very serious offence and therefore, the petitioners cannot be granted statutory bail.

7.It is now too well settled that the right under Section 167(2) of Cr.PC, is an indefeasible right which cannot be taken away by citing the gravity of the offence. Once the statutory period comes to an end, the concerned Court will not have the jurisdiction to continue with the custody of the accused person. That is the reason why the accused person is entitled to be let out on statutory bail. The only consideration before the Court at that point of time is as to whether the accused person is prepared to furnish bail. If this condition is satisfied, the Court has to necessarily enlarge the accused persons on statutory bail.

8.The Court below was swayed by the seriousness of the offence and the quantity of contraband that is involved. That is an issue which can have no bearing when dealing with an application under Section 167(2) of Cr.PC, seeking

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for statutory bail. Ultimately, in this case, the final report was submitted before the Court below only on 6.8.2022. By then, the petitioners had already applied for statutory bail and this petition ought to have been considered by the Court below.

9.The learned Government Advocate (Crl.Side) brought to the notice of this Court the order passed in M.Soundararajan .v. The Deputy Superintendent of Police in SLP.Crl.No.11611 of 2023, dated 14.12.2023. This order was relied upon by the learned Government Advocate (Crl.Side) since it is alleged that the petitioners have a bad antecedent and they are involved in four previous cases. That was a case where the statutory bail was sought for on the ground that an incomplete charge sheet was filed and that the same cannot come in the way of seeking for statutory bail. While dealing with the same, the Apex Court took into consideration the antecedents of the accused therein and also the reason as to why the charge sheet was branded as incomplete. The Apex Court found that there was only typographical corrections which cannot make the charge sheet an incomplete one.

10.The above order will not apply to the facts of the present case since in the instant case, there was no final report available before the Court below on the date when the statutory period expired.

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11.In the light of the above discussion, the order passed by the Court below in CMP No.592 of 2022, dated 07.7.2022, is hereby set aside and the petitioners shall be enlarged on bail subject to the following conditions:

(i) the petitioners (each) shall execute a bond for a sum of Rs.10,000/- [Rupees Ten Thousand only] with two sureties for the like sum to the satisfaction of the Special Judge for EC Act Cases, Salem, Salem District.

(ii) the petitioners shall report before the Special Judge for EC Act Cases, Salem, Salem District daily at 10.30 am, apart from the hearing dates, until further orders.

(iii) if the petitioners fail to adhere to the above condition or once again involve in such similar offence, it is always left open to the respondent police to seek for cancellation of bail.

(iv) on breach of any of the aforesaid conditions, learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]***.

(v) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

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N. ANAND VENKATESH, J.

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In the result, this criminal original petition is allowed in the above terms.

13.02.2024

KP
Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
Note: Issue order copy on **15.02.2024**

To

1.The Inspector of Police
Namakkal Police Station
Namakkal District.

2. Special Judge for EC Act Case,
Salem, Salem District.

3.The Public Prosecutor,
High Court, Madras.

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