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Crl OP No.452 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.452 of 2024

and

Crl.M.P.No.292 of 2024

Mohammed Zoha

... Petitioner

Vs.

1.State Represented by
The Inspector of Police,
Pallikaranai Police Station,
Chennai District,
In Crime No.872 of 2022

2.The Superintendent of Police,
Central Prison-II,
Puzhal.

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records culminating in Crl.M.P.No.5884 of 2023 in C.C.No.253 of 2023 on the file of Principal Special Court under EC and NDPS Act, Chennai order dated 12.10.2023, set aside the same.

For Petitioner

: Mr.S.karthikeyan
for Mr.Ali Hassan Khan

For Respondent

: Mr.A.Damodaran,
Additional Public Prosecutor

**ORDER**

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The Criminal Original Petition has been filed challenging the order passed by the Court below in Crl.M.P.No.5884 of 2023 dated 12.10.2023, dismissing the application filed by the petitioner under Section 91 of Criminal Procedure Code (Cr.P.C.), for directing the respondents to produce certain documents that were mentioned in the application.

2. Heard Mr.S.Karthikeyan, learned counsel for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor for the respondents.

3. The petitioner is facing trial before the Court below for offences under Section 8(c) r/w 22(c) of NDPS Act, 1985. The prosecution had examined three witnesses. The petitioner at that stage filed an application under Section 91 of Cr.P.C. seeking for a direction for production of certain documents, which according to the petitioner is required while cross examining the Police Officials and Investigation Officer. This application came to be dismissed by the Court below by an



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order dated 12.10.2023 on the ground that those documents can be sought for only if the case reaches the defense stage. Aggrieved by the same, the present petition has been filed before this Court.

4. The Court below was under the impression that if the accused person wants to rely upon any document in order to substantiate his defense, he has to wait till the case reaches the defense stage and thereafter, invoke Section 91 of Cr.P.C. The Court below was under the further impression that no such application can be filed under Section 91 of Cr.P.C. during the course of trial. Therefore, the Court below has virtually directed the petitioner to wait till the case reaches the stage of defense and thereafter, to file such an application under Section 91 of Cr.P.C.

5. The petitioner wanted to summon the following documents:

*“A. The General Diary maintained at their
office maintained chronologically for the dates
27.08.2022 to 30.08.2022.*



B. The copy of the Daily Diary of the Inspector of Police Mr.Kumar N S and his Pocket Note Book for the dates 27.08.2022 to 30.08.2022.

C. The copy of the Daily Dairy of the Sub-Inspector of Police Mr.Kathiravan N and his Pocket Note Book for the dates 27.08.2022 to 30.08.2022.

D. The copy of the Daily Diary of the Head Constable of Police Mr.Murugan and his Pocket Note Book for the dates 27.08.2022 to 30.08.2022.

E. The copy of the Daily Diary of the Constable of Police Mr.Gopalakrishnan and his Pocket Note Book for the dates 27.08.2022 to 30.08.2022.

2. The Superintendent of Police, Central Prison-II, Puzhal (Respondent-2) to cause the production of the following documents, namely,

E. The Copy of the Photograph in the admission records of Central Prison-II, Puzhal in respect of petitioner; Mohamed Zoha while he was



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remanded to judicial custody on 29.08.2022.”

6. The summoning of documents under Section 91 of Cr.P.C. can be done at any stage and there is no fixed formula that such a request can be made only after the completion of the examination of witnesses on the side of the prosecution. Normally, the defense of the accused is never revealed and it comes to the surface while cross examining the prosecution witnesses. There is a present trend where such applications are filed even before framing of charges or even before the commencement of the examination of witnesses on the side of the prosecution. While dealing with this trend, this Court has held that the invocation of Section 91 of Cr.P.C. at such an initial stage of framing of charge would not arise, since the defense of the accused at that stage is not relevant. However, this position will slightly change once the examination of the prosecution witnesses commences. It is possible to put certain questions in the cross examination to the prosecution witnesses and elicit answers and in order to dis-credit those witnesses with respect to those answers, it will always be open to the accused person to file an application under Section 91 of Cr.P.C. for production of certain



documents in order to put questions to those witnesses showing those documents to dis-credit the witnesses.

6. It is also open to an accused person to seek for summoning official documents and to rely upon the same while examining the Police Officials/Investigating Officer. These are some of the instance where the accused person need not wait till the completion of the examination of the prosecution witnesses and he can file such an application during the relevant stage by assigning proper reasons.

7. In the instant case, already three prosecution witnesses have been examined and the stage is now ripe for examination of the Official witnesses viz., the Police personnel and the investigating Officer. At this stage, the accused person wants to rely upon some Official documents from which the petitioner wants to put questions to the Official witnesses. The Court below has not taken in to account the nature of documents that are sought to be summoned by the petitioner. The documents that are sought for by the petitioner are required for the petitioner to effectively cross examine the Official witnesses. In view of the same, the Court



below was not right in saying that the petitioner has to wait till the completion of the examination of all the prosecution witnesses and only thereafter, he can summon those documents. If this reasoning given by the Court below is taken to its logical end, the petitioner will once again file such an application after the completion of the examination of the prosecution witnesses and seek for recalling those witnesses for further cross examination based on those documents. This will only further drag on the trial.

8. In the light of the above discussion, this Court holds that in so far as the summoning of documents are concerned, the Court has to necessarily apply its mind on the nature of documents that are sought for and the stage at which those documents are sought for and the nature of the witnesses, who are going to be confronted with those documents. The Trial Court can never have a fixed formula with respect to entertaining an application under Section 91 of Cr.P.C. These observations shall be kept in mind by the Court below.

9. The upshot of the above discussion is that the order passed



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by the Court below in Crl.M.P.No.5884 of 2023 dated 12.10.2023 is hereby set aside. There shall be direction to the Court below to further direct the concerned Police Official and the Prison Official to produce the documents sought for by the petitioner. The Trial shall be proceeded further and those documents sought for shall be dealt with subject to its relevancy, admissibility and proof.

10. In the result, this Criminal Original Petition is allowed with the above directions. Connected miscellaneous petition is closed.

11.01.2024**Note:** Issue order copy on 18.01.2024.

Index : Yes
Internet : Yes
Speaking Order : Yes
rka/veda

N.ANAND VENKATESH, J.,



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To

1. The Principal Special Court under EC and NDPS Act,
Chennai.
2. The Inspector of Police,
Pallikaranai Police Station,
Chennai District,
In Crime No.872 of 2022
3. The Superintendent of Police,
Central Prison-II,
Puzhal.
4. The Public Prosecutor,
High Court of Madras,
Madras.

Crl.O.P.No.452 of 2024Dated: 11.01.2024