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Crl.R.C.No.2088 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.2088 of 2024

Suresh Babu

... Petitioner/Accused

Vs.

State Rep. by
The Inspector of Police,
NIB CID,
Chennai.
(Crime No.23 of 2024)

... Respondent

Prayer: Criminal Revision Petition filed under Sections 397 and 401 of Code of Criminal Procedure, praying to call for the records and set aside the order passed in Crl.M.P.No.12656 of 2024 dated 15.11.2024 by the learned Principal Special Judge for NDPS Act Cases, Chennai in Crime No.23 of 2024 on the file of Inspector of Police, NIB CID, Chennai, grant bail to the petitioner.

For Petitioner : Mr.M.Illiyas
for Mr.O.Chembulingam
For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl. Side)

ORDER

The above revision challenges the order passed by the Special Court under EC & NDPS Act in Crl.M.P.No.12656 of 2024, dated 15.11.2024 under Section 36(A)(4) of the NDPS Act, granting extension of time for investigation by the respondent.



2. The petitioner was arrested on 19.05.2024 and the 180th day fell on 16.11.2024. The petitioner had filed bail application on the 181st day under Section 187(3) of BNSS. In the meanwhile, the respondent had filed the petition for extension of the statutory period for completing the investigation on 08.11.2024. The learned Principal Special Judge had allowed the application filed by the respondent on 15.11.2024. Hence, the petition filed by the petitioner for statutory bail was not numbered.

3. The learned counsel for the petitioner would submit that the report filed by the learned Special Public Prosecutor does not satisfy the twin requirements stipulated by the Hon'ble Supreme Court; that the report must disclose the appreciable progress in the investigation and must contain specific compelling reasons to justify further detention pending investigation.

4. The learned Government Advocate (Crl. Side) would state that the respondent is yet to ascertain the source of the contraband Ganja found in possession of the petitioner and that there are several crucial documents, which requires detailed analysis and interrogation of various persons and that the chemical analysis report is awaited and hence, the time was correctly extended for completing investigation.



5. The relevant portion of the report submitted by the learned Special Public Prosecutor is as follows:

“It is submitted that in the above case the source of the contraband Ganja is under investigated. It is further submitted that the source of the contraband and money transfer (Bank Statements) have to be enquired in detail. The source of the contraband and crucial documents pertaining to the investigation in the above case which required detailed analysis and interrogation of various persons has to be made.”

6. The learned Special Public Prosecutor has not stated about the appreciable progress in the investigation in the said report. The learned Special Public Prosecutor had also not stated as to why further detention is required, on account of the investigation. The Hon'ble Supreme Court in ***Hitendra Vishnu Thakur v. State of Maharashtra***, reported in (1994) 4 SCC 602, had held in paragraph No.23 as follows:

“23.....A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before Submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find



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that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "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" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor."

7. Following this judgment, the Hon'ble Supreme Court in ***Sanjay Kumar Kedia v. Intelligence Officer, NCB***, reported in **(2009) 17 SCC 631**, on facts, held that since the Public Prosecutor neither indicated the progress of investigation nor had stated the compelling reasons, which require an extension of custody beyond 180 days, the order passed by the Magistrate extending the remand cannot be sustained and held as follows:



“18. A bare perusal of this application shows that it has been filed by the investigating officer of respondent No.1 and does not indicate even remotely any application of mind on the part of the public prosecutor. It further does not indicate the progress of the investigation, nor the compelling reasons which required an extension of custody beyond 180 days. This application was allowed by the Special Judge on 2nd August, 2007 i.e. on the day on which it was filed which also reveals that no notice had been issued to the accused and he was not even present in Court on that day.”

8. The Calcutta High Court in *Subhas Yadav v. State of West Bengal*, reported in **(2023) SCC OnLine Cal 313**, at paragraph Nos.31.5 and 31.6 had held as follows:

“31.5. Prayer for extension of period of detention must be on the basis of a report of Public Prosecutor which must record progress of investigation and spell out specific reasons to justify further detention beyond 180 days pending investigation;

31.6. Special Court on the basis of the report of Public Prosecutor and materials in support of such plea must be satisfied of the twin requirements, i.e., (a) there is appreciable progress in the investigation and (b) there are specific/compelling reasons to justify further detention pending investigation. Each case has to be decided on its own merits. For example, failure to complete investigation solely on the score of nonsubmission of FSL report of the samples drawn from the contraband is an institutional shortcoming. This by itself may not justify further detention pending completion of investigation. But if the aforesaid fact situation is coupled with compelling circumstances like complexities in investigation in an organized crime racket or inter-state/trans-border trafficking, criminal antecedents of the accused giving rise to possibility of recidivism, abscondence of co-accused, etc., constituting ‘specific reasons’ justifying further detention, the Court may be inclined to



extend the period of detention and deny liberty;”

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9. The report, which is extracted above does not spell out the progress in the investigation or the compelling reasons for further detention. The trial Court must bear in mind that the report of the Public Prosecutor cannot be construed as one seeking extension of time for filing a final report. It is needless to say that there is no time limit to file the final report. What is actually sought for by the Public Prosecutor is further detention on account of investigation. Therefore, in the absence of compelling reasons for further detention, the application for extension of time cannot be allowed. In the facts, since the twin requirements have not been satisfied in the report of the learned Special Public Prosecutor, the impugned order extending the period of investigation on the basis of such report is liable to be set aside.

10. It is seen from the records that the bail application filed by the petitioner on the expiry of the statutory period has not been numbered by the trial Court. Therefore, this Court is of the view that since the petitioner had exercised his right and had sought for bail, the right revives consequent upon this Court allowing the above revision and dismissing the prayer for extension of remand.



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11. Therefore, the Criminal Revision Case stands allowed and the petitioner herein is ordered to be released on bail on the following conditions:

(i) The petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties, each for a like sum to the satisfaction of the learned Principal Special Judge, Special Court under EC & NDPS Act, Chennai.

(ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhaar card or Bank pass Book or mobile numbers to ensure their identity; and

(iii) The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m. until further orders and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

10.12.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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Note: Issue order copy by 12.12.2024.

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SUNDER MOHAN, J.

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To

- 1.The Inspector of Police,
NIB CID,
Chennai.
- 2.The Principal Special Judge
Special Court under EC & NDPS Act,
Chennai – 600 104.
- 3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

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