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Crl.R.C.No.2227 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.R.C.No.2227 of 2024

Babu

... Petitioner/Accused - 1

Vs.

State Rep. by
The Inspector of Police,
T-1, Ambattur Police Station,
Chennai.
(Crime No.236 of 2024)

... Respondent/Complainant

Prayer: Criminal Revision Petition filed under Section 448 r/w 442 of Bharatiya Nagarik Suraksha Sanhita, 2023, praying to set aside the order dated 19.09.2024 made in Crl.M.P.No.9641 of 2024, on the file of the Principal Special Court under EC and NDPS Act, at Chennai and enlarge on bail in connection with the case in Crime No.236 of 2024 on the file of the respondent police.

For Petitioner : Mr.S.Kasirajan

For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl. Side)



ORDER

WEB COPY The revision challenges the order passed by the learned Principal Special Judge, Special Court under EC and NDPS Act, Chennai-600 104, on the application filed by the respondent seeking an extension of time for completing the investigation.

2. The petitioner/A1 was arrested on 10.03.2024 and on the 173rd day, i.e., 30.08.2024, the respondent filed the petition along with the report of the Public Prosecutor under Section 36(A)(4) of the NDPS Act. The petitioner/A1 opposed the said petition by filing a counter. The learned Principal Special Judge, accepting the report of the Special Public Prosecutor, had granted 45 days time to complete the investigation.

3. Mr.S.Kasirajan, the learned counsel for the petitioner/A1, would submit that the report of the learned Public Prosecutor does not satisfy the twin requirements necessary to seek an extension, namely the details of the investigation conducted so far and as to why the petitioner's detention is required for the purpose of investigation; and that the petitioner had availed of his right to mandatory bail by filing a petition, which was not considered on merits and returned; and therefore, he sought for setting aside the order



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dated 19.09.2024 passed by the learned Principal Special Judge, Principal Special Court under EC and NDPS Act, at Chennai in Crl.M.P.No.9641 of 2024.

4. Mr.S.Udaya Kumar, the learned Government Advocate (Crl.Side) for the respondent, *per contra*, submitted that the report of the Public Prosecutor had stated that the details of the investigation and as to why the further time is required for investigation.

5. This Court, by the order dated 10.12.2024, in Crl.R.C.No.2088 of 2024, held that the report of the learned Public Prosecutor must satisfy twin requirements. The relevant paragraphs read as follows:

*“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



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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 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*



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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** (emphasis supplied). 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** (emphasis supplied);

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** (emphasis supplied). 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;"

and observed that the Judgment of the Constitutional Bench of the Hon'ble Supreme Court has to be scrupulously followed by the trial Court, while considering the report of the Public Prosecutor.

6. In this case, the report of the Public Prosecutor reads as follows:

"3.It is submitted that in the above case Redhills Raguraj is still absconding inspite of serious efforts to apprehend him and the investigation could not be completed since the source of the contraband and money transfer (Bank Statements) have to be enquired in detail. It is further submitted that the source of the contraband Methamphetamine and crucial documents pertaining to the investigation in the above case which required detailed analysis and interrogation of various persons to be made.

5. Therefore it is submitted that since the crucial documents pertaining to the investigation in the above case which required detailed analysis and interrogation of various persons and further follow up searches are required to be conducted time is required for completing the investigation."



7. The above report therefore does not specify as to why further detention is required for completing the investigation. As repeatedly held by this Court, there is no time limit for the respondent to complete the investigation. What is required to be stated in the report is as to why the further detention is required, which is absent in this case. Hence, the impugned order dated 19.09.2024 passed by the learned Principal Special Judge, Principal Special Court, under the EC and NDPS Act, at Chennai, on this report deserves to be set aside and hence, set aside.

8. Further, it is seen from the record that in the counter filed by the petitioner to the petition under Section 36(A)(4) of the NDPS Act, the petitioner/A1 had stated that he had filed the statutory bail application on 10.09.2024. It is also seen from the impugned order that the learned counsels for A1 and A2 had also submitted that they had the right of statutory mandatory bail. In these circumstances, it cannot be said that the petitioner/A1 had not availed of his right to statutory bail. In such circumstances, this Court is of the view that the impugned order is liable to be set aside and hence set aside. The petitioner/A1 is ordered to be released on bail on the following conditions:



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(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.

9. Accordingly, the impugned order dated 19.09.2024, in Crl.M.P.No.9641 of 2024, passed by the learned Principal Special Judge, Principal Special Court, under the EC and NDPS Act, Chennai, is set aside. The Criminal Revision Case stands allowed.

19.12.2024

Neutral Citation: Yes/No

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Note : Issue Order copy by 20.12.2024



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To

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



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SUNDER MOHAN, J.

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