



Crl.R.C.(MD).Nos.730 & 731 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2023

Delivered on : 19.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD)Nos.730 and 731 of 2023

Crl.RC(MD)No.730 of 2023

1.Praveen

2.Sathishkumar

3.Saravanakumar

... Petitioners 1 to 3/Respondents 1to 3

State rep by

The Inspector of Police,

Prohibition Enforcement Wing,

Dindigul Taluk Police Station.

In Crime No.625 of 2022.

... Respondent/Petitioner

PRAYER: Criminal Revision Petition has been filed under Section 397 & 401 of Cr.P.C., to call for the records pertaining to the Crl.M.P.No.941 of 2023 on the file of the Principal Special Court for EC and NDPS Act Cases, Madurai, dated 11.05.2023 and set aside the same and allow this Criminal Revision Petition.



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For Petitioner : Mr.G.Kannan

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

Crl.RC(MD)No.731 of 2023

1.Praveen

2.Sathishkumar

3.Saravanakumar ... Petitioners/Petitioners

State rep by

The Inspector of Police,
Prohibition Enforcement Wing,
Dindigul Taluk Police Station.

In Crime No.625 of 2022. ... Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 & 401 of Cr.P.C., to call for the records pertaining to the Crl.M.P.No.992 of 2023 on the file of the Principal Special Court for EC and NDPS Act Cases, Madurai, dated 11.05.2023 and set aside the same and release the petitioners on bail by allowing this Criminal Revision Petition.

For Petitioner : Mr.G.Kannan

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor



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COMMON ORDER

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These Criminal Revision Cases are filed to quash the proceedings in Crl.M.P.Nos.941 and 992 of 2023, on the file of the Principal Special Court for EC and NDPS Act Cases, Madurai, dated 11.05.2023.

2. The accused in Crime No.625 of 2022, on the file of the respondent police, filed these petitions, challenging the impugned order passed in Crl.M.P.Nos.941 and 992 of 2023 by the learned Principal Special Judge, Principal Special Court for EC and NDPS Act Cases, Madurai.

3. Initially, Crl.M.P.No.941 of 2023 was filed by the respondent seeking extension of time for filing final report and Crl.M.P.No.992 of 2023 was filed by the petitioners/accused 1 to 3 seeking bail.

4. The learned trial judge after considering all the materials and evidence put forth before him allowed Crl.M.P.No.941 of 2023 by extending the period of investigation and dismissed Crl.M.P.No.992 of 2023 filed by the petitioners/accused No.1 to 3.



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5. The petitioners and the other persons were arrayed as accused in Crime No. 625 of 2022 on the file of the respondent police for the alleged offences under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of NDPS Act.

6. According to the prosecution, the petitioners and the other accused persons are said to be involved in the huge illegal trafficking of ganja i.e., 220 kgs within the jurisdiction of respondent police. On 17.10.2022, at 3 hours, the respondent police upon receipt of the secret information, after complying the procedure stated in NDPS Act, proceeded towards the occurrence place and conducted raid. In the raid, they found that the petitioners and the other accused were in possession of 440 kg of ganja in two Cars bearing Reg.No.TN-07-BF-7616 and TN-22-DF-3510 and arrested the petitioners/accused No.1 to 3. Thereafter, a case was registered in Crime No.625 of 2022 for the offence stated above against the accused. On the basis of the confession statement of the petitioners/accused No.1 to 3, remaining accused 4 to 13 were arrayed as accused. In this case, more than 440 kg ganja was recovered from the accused. Hence, the Investigation Agency, in order to find involvement of the remaining accused, filed a petition in Crl.M.P.No.941 of 2023 before the Special Court for EC and NDPS Act Cases, Madurai, to extent the period of investigation by



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submitting a report through the learned Public Prosecutor and also producing the CD file. As per Section 36A (4) of Cr.P.C., the trial Court upon satisfaction of reasons is duty bound to grant extension of time in order to complete the investigation. At the same time, the petitioners/accused No.1 to 3 have also filed Crl.M.P.No.992 of 2023 seeking bail. The learned trial Judge, after considering the circumstances stated in the report and perusal of the records, granted two months further time for filing complaint and dismissed the bail petition by passing the common impugned order dated 11.05.2023. Challenging the same, the petitioners/accused 1 to 3 filed these revisions on the grounds stated in the memorandum of Revisions.

7.1. The learned counsel for the petitioners reiterated the grounds and made the following submissions under Section 36A (4) of Cr.P.C:-

The learned trial Judge ought to have considered the reasons for extension of time to complete the investigation. Thereafter, he should have given the finding that the Investigation Officer has all reasons for seeking time by passing reasoned order. In this case, the learned trial Judge did not pass reasoned order and hence, the petitioners right to get statutory bail is deprived.



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7.2. The learned counsel for the petitioners further submitted that granting of extension of time is not an automatic one and only upon the satisfaction of reasons by passing reasoned order, the extension to be ordered. The said requirement is mandatory. It affects the fundamental rights of the petitioners to get statutory bail. Therefore, he seeks for dismissal of the extension petition filed by the prosecution and to grant statutory bail.

8.1. The learned Additional Public Prosecutor appearing for the State submitted that the learned trial Judge, after considering the report filed by the Investigation Agency, the gravity of the offence, the involvement of many number of persons and other reasons stated in the petitions and in the interest of investigation, correctly allowed the extension petition and dismissed the bail petition.

8.2. The learned Additional Public Prosecutor appearing for the State further submitted that police collected number of incriminating materials and arrested the remaining accused. Now, the investigation is going on in the right way. He produced number of documents. After the period of extension by the learned trial Judge, the respondent police arrested number of accused. Therefore,



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he prayed for dismissal of the revisions.

9.This Court considered the reply submission and the precedents relied by the learned counsel for the petitioners and the learned Additional public prosecutor.

10. Admittedly, the petitioners were arrested on 17.10.2022. The learned Additional public prosecutor filed a petition to seek extension of time for completing the investigation as per Section 36A (4) of Cr.P.C., which reads as follows:-

“ 4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for



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the detention of the accused beyond the said period of one hundred and eighty days.”

11. From the appreciation of the above facts of the case, it is clear that the prosecutor submitted the report with the cause for further extension of time and also produced sufficient materials to invoke the said special power to extend the time. In this aspect, the learned counsel for the petitioners relied upon the Hon'ble Supreme Court judgment in **Jigar @ Jimmy Pravinchandra Adatiya V. State of Gujarat** reported in **2022 LiveLaw(SC)794**.

12. The said judgments of the learned counsel for the petitioners is not applicable to the present case. In this case, as rightly placed by the Investigation Agency, the involvement of contraband in this case is 440 kg and it was illegally transported in two vehicles. Therefore, the Investigation Agency in order to prove the involvement of the accused in the chain of illegal trafficking contraband, continuously conducted investigation from the date of arrest of the accused. During the course of investigation, they have collected number of materials and arrayed more than 13 accused. Therefore, in order to array further accused on the basis of the disclosure statement, number of materials were collected by the Investigation Agency. The Investigation Officer, filed a report



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and seeks extension of time through the learned Additional public prosecutor as required under Section 36A (4) of Cr.P.C. The learned trial Judge considering the entire progress of the investigation, *bona fidely* has come to the conclusion that extension of time is necessary for further investigation.

13. Considering the above circumstances, when the learned trial Judge allowed the application on perusal of documents and circumstances stated by the learned public prosecutor, this court has no power to interfere in the order passed by the learned trial judge. The learned trial judge passed the reasoned order stating that upon perusal of the records submitted by the learned public prosecutor, even though reasoning was in brief manner and same is in compliance with the absolute requirements of Section 36A 4 of NDPS Act. Therefore, this Court finds no merits in the contention of the learned counsel for the petitioner.

14. Further, the judgment relied by the learned counsel for the petitioner is not applicable to the present fact wherein the said cases, the learned trial judge has dismissed the petition filed by the prosecution to extend the period of completion of investigation. Further, the Hon'ble Constitution Bench of the



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Supreme Court in the case of **Sanjay Dutt v. State through CBI, Bombay (II)**,

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(1994) 5 SCC 410 page 442 has held as follows:

48. We have no doubt that the common stance before us of the nature of indefeasible right of the accused to be released on bail by virtue of Section 20(4)(bb) is based on a correct reading of the principle indicated in that decision. The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167 CrPC ceases to apply. The Division Bench also indicated that if there be such an application of the accused for release on bail and also a prayer for extension of time to complete the investigation according to the proviso in Section 20(4)(bb), both of them



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should be considered together. It is obvious that no bail can be given even in such a case unless the prayer for extension of the period is rejected. In short, the grant of bail in such a situation is also subject to refusal of the prayer for extension of time, if such a prayer is made. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order. (See Naranjan Singh Nathawan v. State of Punjab [(1952) 1 SCC 118 : 1952 SCR 395 : AIR 1952 SC 106 : 1952 Cri LJ 656] ; Ram Narayan Singh v. State of Delhi [1953 SCR 652 : AIR 1953 SC 277 : 1953 Cri LJ 1113] and A.K. Gopalan v. Government of India [(1966) 2 SCR 427 : AIR 1966 SC 816 : 1966 Cri LJ 602] .)

15. In this case, accused was put on notice and heard during the hearing of the time extension petition filed in Cr.M.P.No.941 of 2023. In the time extension petition, it is stated that huge quantity of Ganja about 440 Kgs in two cars was



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seized and A1 to A3 alone arrested. During the course of investigation, involvement of 13 accused is found out. The arrest of remaining accused is still on going. More particularly, owner of the vehicle and the material call details are yet to be obtained. The said reason is accepted by the learned trial Judge in granting the time extension and granted further time of three months only. By considering the incarceration of the petitioner, the learned trial Judge has not granted 6 months time as claimed by the prosecution. Therefore, this Court finds no perversity in the order of the trial Court and finds no reason to interfere with the same.

16. Further, in this case, during the hearing of the argument, the learned Additional Public Prosecutor submitted about the progress of the investigation conducted after the order of extension. In the report it is clear that the investigating agency has collected volume of reports and arrested number of the accused. Considering the above subsequent development, this Court feels that the prosecution petition filed to seek extension of time is *bonafide* one and also the learned trial Judge's reasoning is well merited one. In view of the above discussion, this Court is not inclined to interfere the order passed by the learned trial Judge.



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17. Accordingly, the impugned order passed by the Principal Special Court for EC and NDPS Act Cases, Madurai, in Crl.M.P.Nos.941 and 992 of 2023, dated 11.05.2023, is hereby confirmed and the Criminal Revision Petitions are dismissed.

19.01.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

- 1.The Principal Special Court for EC and NDPS Act Cases,
Madurai.
- 2.The Inspector of Police,
Prohibition Enforcement Wing,
Dindigul Taluk Police Station.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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