



Crl.R.C.(MD)No.777 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.08.2024

Pronounced on : 03.09.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.777 of 2024

G.Sivaprakash

... Petitioner

Vs.

State represented by,
Inspector of Police,
NIB CID
Thoothukudi District.
(Crime No.02 of 2024)

... Respondent

Prayer : This Criminal Revision Petition filed under Sections 438 r/w 442 B.N.S.S., to call for the records pertaining to the impugned order in Cr.M.P.No.1529 of 2024 dated 18.06.2024 passed by the learned Principal Special Court for EC and NDPS Act Cases, Madurai and to set aside the same as illegal and grant statutory bail to the petitioner.

For Petitioner : Mr.G.Karuppasamy Pandiyan

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Government Pleader



Crl.R.C.(MD)No.777 of 2024

WEB COPY

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.1529 of 2024 dated 18.06.2024 on the file of the Principal Special Court for EC and NDPS Act Cases, Madurai, dismissing the petition filed for statutory bail under Section 167(2) of the Code of Criminal Procedure.

2. The petitioner is the second accused in Crime No.2 of 2024 for the alleged offences under Sections 8(c) r/w 20(b)(ii)(C), 25 and 29(1) of NDPS Act on the file of the respondent police.

3. The case of the prosecution is that on 11.12.2023 at about 15.00 hours, the Inspector of Police, Soorankudi Police Station received a secret information and intercepted a Innova car bearing Registration No.TN-50-D-2896 near Kadal Karai area of Muthaiyapuram and found 12 bags containing 529 kgs of ganja and that the Innova car along with contraband and four cell phones came to be seized and after recording the confession statement, the petitioner and other accused were arrested.



Crl.R.C.(MD)No.777 of 2024

WEB COPY

4. The case of the petitioner is that the respondent police has not followed the mandatory requirements contemplated under Sections 42, 50, 52(A) and 57 of NDPS Act, that the respondent police has not completed the investigation and charge sheet is not yet filed and that since the petitioner was remanded on 12.12.2023 and since he is in judicial custody for the past 181 days, he is entitled to get statutory bail as contemplated under Section 167(2) Cr.P.C.

5. It is evident from the records that the first accused has also filed a similar petition in Crl.M.P.No.1528 of 2024 under Section 167(2) Cr.P.C. claiming statutory bail. Meanwhile, the respondent police has also filed a petition in Crl.M.P.No.1390 of 2024 seeking extension of time under Section 36A(4) of NDPS Act. The learned Special Judge, after conducting enquiry in all the petitions, has passed a common order dated 18.06.2024 dismissing the petitions for statutory bail and allowed the time extension petition and thereby extended period by three months for completing the investigation from the date of that order. Aggrieved by the dismissal of the petition for statutory bail, the second accused has preferred the present revision.



Crl.R.C.(MD)No.777 of 2024

WEB COPY

6. The learned counsel appearing for the petitioner would submit that since the respondent police has failed to file any final report even after the expiry of 180 days from the date of remand, the petitioner is entitled to get statutory bail under Section 167(2) Cr.P.C., that the trial Court failed to follow the settled legal position as regards the grant of statutory bail in a case of NDPS Act, that the order allowing extension of time at the request of the investigation officer *per se* is illegal as there was no report from the Public Prosecutor indicating the progress of the investigation, that the reason given by the trial Court for dismissing the statutory bail petition that the prosecution has already filed a petition for extension of time, cannot legally be sustained, that the trial Court has failed to note that there was no final report nor order of extension of time as on 10.06.2024 when the petition for statutory bail was filed, that the trial Court has disposed of the statutory bail petition after the lapse of 8 days contrary to the legal position that such petition should be disposed of immediately with least delay and that simultaneous disposal of the bail petition and the petition seeking extension of time filed by the investigation officer much belatedly is unknown to criminal law and the impugned order directly runs contrary to the personal liberty of the person envisaged in Article 21 of the



Crl.R.C.(MD)No.777 of 2024

WEB COPY

7. The learned Additional Public Prosecutor appearing for the respondent would submit that the respondent police has filed the extension petition with proper and sufficient reasons, that since investigation was pending, they were not able to file charge sheet within 09.06.2024 i.e., on 180th day and hence, extension petition was filed on 27.05.2024 i.e., on 167th day, that notice was served on the accused and after entering into appearance, the accused side sought time for filing counter, that the first accused and the petitioner have filed their counters only on 07.06.2024 and 11.06.2024 respectively, that the trial Court has taken two bail petitions and extension petition jointly for enquiry and passed the common order dated 18.06.2024 and as such, the procedure adopted by the learned trial Judge cannot be found fault with, that the learned trial Judge, by observing that though the extension petition was filed on 167th day itself, the accused had taken time for filing counter and filed the counter only on 11.06.2024 one day after filing of the statutory bail petition, has rightly dismissed the bail petitions and that therefore the revision is devoid of merit and the same is liable to be dismissed.



Crl.R.C.(MD)No.777 of 2024

WEB COPY

8. Considering the case putforth by both the parties and on perusal of the records, the facts not in dispute are that the petitioner was arrested on 11.12.2023 and was remanded to judicial custody on 12.12.2023, that the respondent police has filed the petition in Crl.M.P.No.1390 of 2024 seeking extension of time for completing the investigation on 27.05.2024 (167th day from the date of remand), that the petitioner has filed his counter to the extension petition on 11.06.2024, that the petitioner has filed the statutory bail petition on 10.06.2024 and that the learned trial Judge has passed the impugned common order on 18.06.2024.

9. The learned counsel appearing for the petitioner would mainly contend that since the petitioner has filed the statutory bail petition only on 181st day and since the respondent police has not filed charge sheet nor obtained any order for extension of time, the trial Court has absolutely no power or jurisdiction to dismiss the statutory bail petition on the ground that extension petition was pending at that time.

10. The learned counsel appearing for the petitioner would rely on the decision of Kerala High Court in the case of ***Riyas @ Puli Riyas Vs.***



Crl.R.C.(MD)No.777 of 2024

State of Kerala and others in Crl.M.C.No.4414 of 2024 dated 28.06.2024, wherein, an application for extension of detention of the

petitioner was filed on 06.04.2024 and it was pending consideration on the 181st day as no orders were issued and that in the meantime, the petitioner had filed an application for statutory bail and both applications were considered together and orders were issued on 04.05.2024 extending the time for completing investigation by a further period of two months from 14.04.2024, thereby extending the detention as well. The learned Judge of Kerala High Court, by referring to an earlier decision of Kerala High Court, has held that the order granting extension of time having been issued after the 181st day, the petitioner's indefeasible right for statutory bail became crystalised and he ought to have been released on bail and his detention ought not to have been extended and set aside the dismissal order and directed to release the petitioner on statutory bail.

11. The learned counsel appearing for the petitioner would also rely on the decision of this Court in *Venkatachalapathi Vs. State, rep. by Inspector of Police, PEW Gummidipoondi Unit, Tiruvallur* in *Crl.R.C.No.441 of 2024 dated 26.03.2024*, wherein, the petitioner filed a



Crl.R.C.(MD)No.777 of 2024

statutory bail petition on 23.01.2024, that the respondent police filed a petition under Section 36A(4) of NDPS Act on 177th day i.e., on 11.01.2024 and that the Court allowed the extension petition and dismissed the bail petition on 23.02.2024 and when the said order was challenged, a learned Judge of this Court, by referring to the decisions of the Hon'ble Supreme Court and the High Court, has held as follows:-

“9.It is clear that on date of petition for default bail by the petitioner, neither charge sheet filed nor order for extension of time to complete the investigation granted/ordered. In the meanwhile, the indefeasible right to default bail under Section 167(2) Cr.P.C., an integral part of right to personal liberty under Article 21 of Constitution of India accrued to the accused, cannot be denied.

10.In view of the callous manner of the Court below in belatedly considering and passing orders, the accused cannot be denied his accrued right of default bail.

11.In view of the foregoing discussions, the impugned order dated 23.02.2024 passed in Crl.M.P.No. 787 of 2024 by the learned Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai, is set aside and Statutory Bail is granted to the petitioner ...”



Crl.R.C.(MD)No.777 of 2024

WEB COPY

12. With great respect to the learned Judges above referred, the Hon'ble Supreme Court has reiterated the settled legal position that a right to statutory bail stands extinguished once the report of the Public Prosecutor seeking extension is filed and that where the accused has already applied for default bail, the Prosecutor cannot defeat the enforcement of his indefeasible right by subsequently filing a final report, additional complaint or report seeking extension of time. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in the case of ***Rambeer Shokeen Vs. State (NCT of Delhi)*** reported in **(2018) 4 SCC 405**,

"22. After having analysed the facts and events as unfolded from 28th February, 2017 until 8th March, 2017, it is indisputable that on 28th February, 2017, the Additional Public Prosecutor had filed report for extension of time to file charge-sheet against the appellant until 15th March, 2017. The same was filed within time, before the expiry of 90 days from the date of initial arrest of the appellant in connection with the subject FIR. Realising this position, the appellant did not pursue his first application for statutory bail dated 28th February, 2017. Instead, he was advised to file a fresh statutory bail application on 2nd March, 2017. Admittedly, on 2nd March, 2017, the report



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Crl.R.C.(MD)No.777 of 2024

submitted by the Additional Public Prosecutor dated 28th February, 2017 was still undecided. Therefore, no right can be said to have accrued to the appellant for grant of bail on the ground of default. In law, only upon rejection of the prayer for extension of time sought by the Additional Public Prosecutor, right in favour of the appellant for grant of statutory bail could have ignited. The mere fact that 90 days period from the date of initial arrest of the appellant in connection with the subject FIR had lapsed on 2nd March, 2017, could not ineluctably entail in grant of statutory bail to the appellant. More so, when no decision was taken by the Court on the report/application submitted by the Additional Public Prosecutor until 8th March, 2017, on which date the supplementary charge-sheet against the appellant was filed in Court. Considering the effect of filing of the supplementary charge-sheet against the appellant, coupled with the fact that his judicial custody was extended by the Court of competent jurisdiction until the pendency of consideration of the report/application for extension of time to file the charge-sheet, in law, it is unfathomable as to how the appellant could claim to have any accrued right to be released on bail on the ground of default or for that matter, such a right having become infeasible."



Crl.R.C.(MD)No.777 of 2024

WEB COPY

13. A Full Bench of the Hon'ble Supreme Court in the case of ***M.Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence*** reported in ***AIR 2020 SC 5245***, while considering the points as to whether the indefeasible right accruing to the accused under Section 167(2) Cr.P.C gets extinguished by subsequent filing of an additional complaint by the investigating agency, after referring to the various decisions on the subject, has concluded as follows:

“18. Therefore, in conclusion:

18.1 Once the accused files an application for bail under the Proviso to Section 167(2) he is deemed to have ‘availed of’ or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under Section 167(2)Cr.P.C read with Section 36 A, NDPS Act upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public prosecutor, as mentioned supra. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigative agency.



Crl.R.C.(MD)No.777 of 2024

WEB COPY

18.2 The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the charge sheet or a report seeking extension of time by the prosecution before the Court; or filing of the charge sheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.

18.3 However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a charge sheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the Cr.P.C.”

14. Following the above decisions of the Hon'ble Supreme Court, A Hon'ble Division Bench of this Court in ***Kannan and S.Revathi Vs. State rep by The Inspector of Police, Avaniyapuram Police Station, Madurai City*** in ***H.C.P(MD)Nos.211 and 213 of 2022 dated 11.02.2022*** has



Crl.R.C.(MD)No.777 of 2024

observed as follows:-

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“15. We are unable to read the judgment in M.Ravindran's case in the manner suggested by Mr.K.K.Ramakrishnan. A wholesome and comprehensive reading of paragraphs 20.1 and 20.2 of the judgment in M.Ravindran's case, would show that the Hon'ble Supreme Court has only reiterated the law as stated in Rambeer Shokeen's case and it had not diluted it in any manner. The Hon'ble Supreme Court has very clearly held that the observations made in Hitendra Vishnu Thakur vs. State of Maharashtra reported in (1994) 4 SCC 602 and Sanjay Dutt vs. State reported in (1994) 5 SCC 410, could be applied in cases where an application has been made by the prosecution seeking extension of time before filing of the application for default bail by the accused. They have also made it very clear that the prosecution cannot deny default bail to the accused by filing an application seeking extension of time, after an application seeking default bail had been filed by the accused persons. This is made clear in paragraph 20.3 of the judgment in M.Ravindran's case, where the Hon'ble Supreme Court had observed as follows:-

"However, Public Prosecutors cannot be permitted to misuse the limited notice issued to them by the Court on bail applications filed under



Crl.R.C.(MD)No.777 of 2024

Section 167(2) by dragging on proceedings and filing subsequent applications/ reports for the purpose of 'buying extra time' and facilitating filling up of lacunae in the investigation by the investigating agency."

15. The legal position reiterated in the above decisions are squarely applicable to the case on hand.

16. As already pointed out, when the petitioner has filed his statutory bail petition, the petition filed by the prosecution for extension of time was pending and in the absence of any orders passed in the extension petition, the petitioner cannot claim statutory bail as of right.

17. The learned counsel appearing for the petitioner, as already pointed out, would comment on the way in which the learned trial Judge has disposed of both the bail petitions as well as the extension petition jointly.

18. A Full Bench of Calcutta High Court in the case of ***Subhas***



Crl.R.C.(MD)No.777 of 2024

Yadav and others Vs. State of West Bengal and others reported in 2023

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SCC Online Cal 313, after elaborate discussion has answered which are as follows:-

“31. In light of the aforesaid discussion, the issues are answered as follows:—

1. Right of an accused to statutory bail upon expiry of the period of detention prescribed under section 36A(4) of NDPS Act is an inchoate one till he avails of his right by seeking statutory bail either by way of an application or even orally. Hence, he cannot be released automatically on statutory bail on the mere expiry of 180 days even if the prosecutor has failed to submit report seeking extension of detention in terms of the proviso to section 36A(4) of the Act before expiry of the said period;

2. Order extending the period of detention under proviso to section 36A(4) of NDPS Act on a report of the Public Prosecutor submitted after expiry of 180 days but prior to the accused availing of his right does not envisage retrospective operation but the total period of detention under the aforesaid provision cannot exceed one year in the whole;

3. As per Para 25.3 of M. Ravindran (supra) the right to statutory bail stands extinguished once the report



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Crl.R.C.(MD)No.777 of 2024

of the Public Prosecutor seeking extension is filed. Hence, remand of the accused till the prayer of the prosecutor is disposed of is traceable to section 167(2) Cr. P.C. read with section 36A(4) of the NDPS Act. In the event, the application for extension is dismissed or an order extending detention is set aside by a superior court right to statutory bail revives in favour of the accused;

4. Upon expiry of 180 days of detention, Special Court as a cautionary measure ought to inform the accused (particularly if he is from an underprivileged section of society and is unrepresented by a counsel) of his right to statutory bail. However, failure to intimate the accused of his right by itself would not entitle him to statutory bail unless he avails of such relief;

.....

7. Prayer for extension of period of detention must be decided at the earliest without undue delay preferably within 7 days from making such application. Reasons for adjournment must be specifically stated; ...”

19. A learned Judge of this Court in the case of ***Varun and another Vs. State rep. by the Inspector of Police, Sulur Police Station*** in



Crl.R.C.(MD)No.777 of 2024

WEB COPY

Crl.O.P.No.901 of 2024 dated 01.02.2024, by expressing his complete agreement with the conclusion arrived at by the Full Bench of Calcutta High Court, has directed the Special Courts to follow the above said guidelines in letter and spirit and the relevant passage is extracted hereunder:-

“24. This Court is in complete agreement with the above conclusions arrived at by the Calcutta High Court. The Special Courts across Tamil Nadu, shall keep the above guidelines in mind and it shall be followed in letter and spirit. The Special Courts must get rid of the practice of dealing with the extension petition and the statutory bail petition together. The scope of both these petitions are very different and it must be keep in mind by the Special Courts. A copy of this order shall be circulated to all the Principal District Judges, across Tamil Nadu.”

20. With great respect to the learned Judge, the Hon'ble Apex Court has settled the legal position that when the petition for extension of time filed by the Prosecutor is pending, if the accused files a petition for default bail after the expiry of the period for completion of investigation, both the petitions have to be taken together and disposed of. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in



Crl.R.C.(MD)No.777 of 2024

M.Ravindran's case referred supra,

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“20.1.The observations made in Hitendra Vishnu Thakur and Sanjay Dutt to the effect that the application for default bail and any application for extension of time made by the Public Prosecutor must be considered together are, in our opinion, only applicable in situations where the Public Prosecutor files a report seeking extension of time prior to the filing of the application for default bail by the accused. In such a situation, notwithstanding the fact that the period for completion of investigation has expired, both applications would have to be considered together. However, where the accused has already applied for default bail, the Prosecutor cannot defeat the enforcement of his indefeasible right by subsequently filing a final report, additional complaint or report seeking extension of time.”

21. The Hon'ble Division Bench of this Court in the case of **Kannan and S.Revathi** referred above, taking note of the facts that application for extension of time was filed on 28.01.2022 and that 180 days period expired only on 08.02.2022, has observed,

“17. ... Therefore, the cause of action for filing an application under Section 167(2) of the Cr.P.C read with



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Crl.R.C.(MD)No.777 of 2024

Section 36A(4) of the NDPS Act would arise only on the expiry of the 180 days period namely, 08.02.2022. Therefore, on the day when the application for default bail was filed into the Court, the application filed by the prosecution seeking extension of time in Crl.M.P.No.164 of 2022 was pending on the file of the Special Court. Therefore, the judgment in Rambeer Shokeen's case would directly apply and both the applications must be heard together. May be, the learned Special Judge erred in returning the application for default bail on the ground that the application for extension of time is pending, but that may not afford a ground to the petitioners to seek immediate release of the accused persons invoking the constitutional power of this Court under Article 226 of the Constitution of India by way of these Habeas Corpus Petitions.”

22. In the case on hand also, since the extension petition was pending when the statutory bail petition was filed, the learned trial Judge has taken both the petitions together and disposed of by common order. Considering the legal position above referred, the way in which both the bail petition and extension petition came to be considered together and disposed of by common order cannot be found fault with.



Crl.R.C.(MD)No.777 of 2024

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23. No doubt, as rightly contended by the learned counsel appearing for the petitioner, though the extension petition was filed as early as on 26.05.2024, the same was kept pending till the expiry of 180 days and even after filing of the statutory bail petition, the same was kept pending till 18.06.2024. As rightly observed by the Full Bench of Calcutta High Court, the Court is duty bound to consider the extension petition and pass orders within a reasonable time, as held by the Calcutta High Court within 7 days from the date of filing of the extension petition. But at the same time, just because the extension petition was kept pending till the expiry of 180 days, that by itself will not confer any right on the petitioner to get the statutory bail. As reiterated by the Hon'ble Supreme Court, when a petition for extension of time was pending on the date of expiry of 180 days, even though charge sheet has not been filed and no order for extension of time was obtained, the petitioner's right to statutory bail gets extinguished till the rejection of the extension petition.

24. Considering the above and viewing from any angle, this Court has no hesitation to hold that since extension petition was pending on 181st day when statutory bail petition came to be filed, the petitioner is not



Crl.R.C.(MD)No.777 of 2024

WEB COPY

entitled to get statutory bail automatically and that the impugned order dismissing the statutory bail petition, cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

25. In the result, this Criminal Revision Petition is dismissed.

03.09.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Principal Special Court for EC and NDPS Act Cases,
Madurai.
- 2.The Inspector of Police,
NIB CID
Thoothukudi District.



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Crl.R.C.(MD)No.777 of 2024

K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
Crl.R.C.(MD)No.777 of 2024

Dated : 03.09.2024