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Crl.R.C.No.967 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.07.2025

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.967 of 2025

Esmelcia Micas @ Leony

..... Petitioner

Vs

The State Rep. By
The Inspector of Police,
K-3, Aminijikarai, Chennai.
Crime No.45 of 2024.

..... Respondent

Prayer: Criminal Revision is filed under Section 438 r/w 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records and set aside the order passed in Crl.M.P.No.7604 of 2024 dated 24.07.2024 on the file of the Principal Special Judge Under EC and NDPS Act, Chennai.

For petitioner : Mr.C.M.Ramakrishnan

For Respondent : Mr.A.Gopinath

Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case has been filed seeking to set aside the order passed in Crl.M.P.No.7604 of 2024 dated 24.07.2024 on the file of the Principal Special Judge Under EC and NDPS Act, Chennai, thereby allowing the petition seeking extension of time for completing the



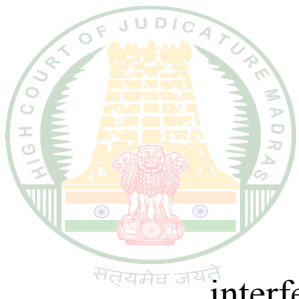
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investigation.

2. The petitioner was arrested on 21.01.2024 for the alleged offence U/s.8(c) r/w 22(c) and 24 of NDPS Act and U/s.224 and 353 of I.P.C for possession of 1008 grams of cocaine. On the 177th day viz. 15.07.2024, the respondent filed a petition along with the report of the public prosecutor U/s.36A(4) of the NDPS Act seeking extension of time. The petitioner opposed the said petition and also filed a bail petition on the 181st day. The trial Court granted 60 days time to complete the investigation and dismissed the petitioner's application for bail.

3. The learned counsel for the petitioner would submit that the report of the public prosecutor does not satisfy the twin requirements necessary to seek an extension viz. the details of investigation conducted so far and as to why the petitioner's detention is required for the purpose of investigation, and hence the order impugned in Crl.R.C.No.967 of 2025 is liable to be set aside and consequently the petitioner is entitled to default bail.

4. Mr.A.Gopinath, the learned Government Advocate (Crl. Side), per contra submitted that the report of the public prosecutor has satisfied the twin requirements and therefore, there is no reason to



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interfere with the impugned orders.

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 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 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-



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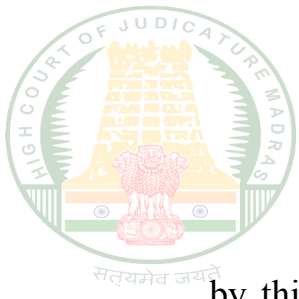
accused, etc., constituting 'specific reasons' justifying further detention, the Court may be inclined to extend the period of detention and deny liberty;"

Therefore, if the report of the Public Prosecutor does not satisfy the twin requirements, the further detention pending completion of the investigation would not be justified.

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

"It is submitted that in the above case the source of the contraband Cocaine has to be found out and the most of the accused being foreign nationals and they had link with other states the investigations are spread to other states and also submitted that the investigation could not be completed since the source of the contraband and money transfer (Bank Statements) have to be enquired in detail. Further 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 to be made and 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



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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 the compelling reason that requires the further detention of the accused, which is absent in this case. Hence, the impugned order dated 24.07.2024 passed by the learned Principal Special Judge, Principal Special Court, under the EC and NDPS Act, at Chennai, on this report which does not satisfy the twin requirements deserves to be set aside and hence, set aside.

8. Since the impugned order in Crl.R.C.No.967 of 2025 is set aside. The petitioner would be entitled to bail and the petitioner 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



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(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 24.07.2024, in CrI.M.P.Nos.7604 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.

09.07.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
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To

1. The Principal Special Judge Under EC and NDPS Act, Chennai.

2. The Superintendent,
Central Prison, Puzhal-II,
Chennai.

3. The Inspector of Police,
K-3, Aminijikarai, Chennai.



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4.The Public Prosecutor,
High Court, Madras.



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