

HIGH COURT OF MADRAS**Date of Decision: 15th February 2024**

Crl.R.C.No.164 of 2024

POTHURAJU SHESHU ...PETITIONER**VERSUS****THE INSPECTOR OF POLICE, PEW WASHERMENPET, CHENNAI
(Cr.No.125/2023) ...RESPONDENT****Legislation:**

Sections 8(c) r/w 20(B)(ii)(C) and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)

Section 397 and 401 of the Code of Criminal Procedure (Cr.P.C.)

Section 167(2) Cr.P.C.

Section 36-A(4) of NDPS Act

Subject: Challenge against the order of the Principal Special Judge for NDPS Act, Chennai, dismissing the petitioner's statutory bail application under Section 167(2) Cr.P.C. in a case involving possession of commercial quantity of Ganja.

Headnotes:

Statutory Bail Under Section 167(2) Cr.P.C. – Petitioner arrested on 02.05.2023 in a NDPS case – Charge sheet not filed within 180 days – Petitioner's right to statutory bail under Section 167(2) Cr.P.C. invoked – Earlier extension sought by prosecution under Section 36-A(4) of NDPS Act

– Court held that right to statutory bail accrued as neither charge sheet filed nor extension order granted at the time of bail application. [Paras 2, 4, 9]

Fundamental Right to Personal Liberty – Emphasis on the fundamental right to life and personal liberty under Article 21 of the Constitution – Court observed that delay in court decisions or erroneous rejection cannot deny the accused's right to default bail. [Para 6(i-iii), 9]

Notice to Accused for Extension of Investigation Time – Necessity for court to give notice to accused before granting extension to prosecution under Section 36-A(4) of NDPS Act – Court's failure to notify accused results in accrual of right to statutory bail. [Para 6(iv-v)]

Principles of Granting Default Bail – Apex Court's guidelines in “M.Ravindran Versus Intelligence Officer” and “Judgebir Singh @ Jasbir Singh Samra @ Jasbir & Ors.” followed – Accused's right to default bail remains unless extinguished by filing of charge sheet or extension order before bail application. [Paras 6(vi-x), 7]

Court's Error in Delayed Consideration – High Court criticized lower court's delay in considering extension petition and statutory bail application – Held that accused cannot be denied right to default bail due to court's belated actions. [Paras 10, 11]

Bail Conditions – Petitioner granted statutory bail with conditions including executing a bond of Rs.10,000, not tampering with evidence, monthly appearance before police, not absconding, and possibility of action under Section 229-A IPC for absconding. [Para 11]

Decision: Impugned order dated 12.01.2024 in CrI.M.P.No.8497 of 2023 set aside – Petitioner granted statutory bail.

Referred Cases:

- M.Ravindran Versus Intelligence Officer, Directorate of Revenue Intelligence (2021) 2 SCC 485
- Ajith Versus State Rep. by The Inspector of Police, E-9, Thazhambur Police Station, Chennai-600130 in CrI.R.C.No.924 of 2023

- Judgebir Singh @ Jasbir Singh Samra @ Jasbir & Ors., Versus National Investigating Agency in Criminal Appeal No.1011 of 2023

Representing Advocates:

Mr. T.S. Sasikumar for Petitioner

Mr. C.E. Pratap, Government Advocate (Crl. Side) for Respondent

ORDER

The petitioner/A2 has filed a statutory bail in CrI.M.P.No.8497 of 2023 in Crime No.125 of 2023 before the learned Principal Special Judge, Principal Special Court Under EC & NDPS Act, Chennai. The learned Judge *vide* order, dated 12.01.2024 dismissed the same, against which, the present Criminal Revision Case.

2.The learned counsel for the petitioner submitted that the respondent Police registered a case against the petitioner and other accused for the offence under Sections 8(c) r/w. 20(B)(ii)(C) and 29(1) of The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') in Crime No.125 of 2023. The accused was arrested on 02.05.2023. Since the investigation not completed and charge sheet not filed, the petitioner on 186th day filed statutory bail under Section 167(2) Cr.P.C., on 04.11.2023. Earlier to it, the respondent Police filed a petition under Section 36-A(4) of NDPS Act on 177th day i.e., on 26.10.2023 seeking extension of statutory period of investigation for further 180 days. The learned counsel further submitted that in view of the decision of Hon'ble Apex Court in the case of "***M.Ravindran Versus Intelligence Officer, Directorate of Revenue Intelligence*** reported in ***(2021) 2 Supreme Court Cases 485***" and this Court in "***Ajith Versus State Rep. by The Inspector of Police, E-9, Thazhambur Police Station, Chennai-600130 in CrI.R.C.No.924 of 2023, dated 22.06.2023***" followed the "***Judgebir Singh @ Jasbir Singh Samra @ Jasbir & Ors., Versus National Investigating Agency in Criminal Appeal No.1011 of 2023***" the impugned order passed by the Court below is not legally sustainable.

3.The learned Additional Public Prosecutor appearing for the respondent Police filed counter and submitted that on 02.05.2023, at about 13.20 hrs based on the secret information, the Inspector of Police attached to the respondent Police Station along with his team went to the scene of occurrence and after being identified by the informant and after observing all the legal, mandatory provisions under NDPS Act, the petitioner and other accused were searched and found in illegal possession of 50 kgs of Ganja [25kgs each] which is of commercial quantity. Thereafter, the FIR in Crime No.125 of 2023 for offence under Section 8(c) r/w. 20(B)(ii)(C) and 29(1) of the NDPS Act registered on 02.05.2023 at about 20.00 hrs, the petitioner/A2 and other accused were arrested, their confession statement recorded and remanded to judicial custody.

4.He further submitted that the petition was filed by the prosecution under Section 36-A(4) of the NDPS Act in CrI.M.P.No.8121 of 2023 on 26.10.2023 i.e., on 177th day for further extension of time to complete investigation and to file charge sheet. Thereafter, the petitioner filed petition before the Principal Special Court for EC and NDPS Act Cases, Chennai on 04.11.2023 in CrI.M.P.No.8497 of 2023 for grant of statutory bail to him. After completion of investigation, charge sheet was filed on 19.12.2023 and the same was taken on file as C.C.No.1010 of 2023 and the next date of hearing is 15.02.2024. Notice was served to the petitioner on 08.11.2023 and thereafter, the impugned order passed on 12.01.2024 and the petitioner filed a statutory bail petition on 186th day i.e., on 04.11.2023. In view of the extension petition filed earlier, the petitioner is not entitled for any statutory bail. Hence, prays for dismissal of the Criminal Revision Case.

5.This Court considered the rival submissions and perused the materials available on record.

6.The Hon'ble Apex Court in the case of "***M.Ravindran Versus Intelligence Officer, Directorate of Revenue Intelligence*** reported in **(2021) 2 Supreme Court Cases 485**" had held in detail about the Fundamental Right to Life and Personal Liberty under Section 167(2) Cr.P.C., commonly referred as default bail and rights of the Prosecutor under Section 167(2) Cr.P.C., r/w Section 36-A(4) of NDPS Act referring to various judgments of the Apex Court considering *pari materia* Section 20(4)(bb) of The Terrorist and Disruptive

Activities (Prevention) Act, 1987, Section 43D (2)(b) of The Unlawful Activities (Prevention) Act, 1967 and 49(2)(b) of The Prevention of Terrorism Act, 2002.

(i)The Hon'ble Apex Court further held that unless the Court grants extension in time based on the report of the Public Prosecutor, there is no reason by the Special Court to deny to the accused his indefeasible right to default bail if the accused seeks and is prepared to furnish the bail bonds as directed by the Court.

(ii)It had also held that the default bail cannot be denied on account of delay in deciding his application or erroneous rejection of the same.

(iii)Further held that irrespective of the reasons for delay in deciding the bail application, the accused is deemed to have exercised his indefeasible right upon filing of the bail application, though his actual release from custody is inevitably subject to compliance with the order granting bail.

(iv)Further held that no extension shall be granted by the court without notice to an accused to have his say regarding the prayer for grant of extension.

(v)The application for default bail by the accused 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. 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.

(vi)It had referred to the settled principles that issuance of notice to the State on the application for default bail filed under the Proviso to Section 167(2) Cr.P.C., is to the limited extent that the Public Prosecutor can satisfy the Court that the prosecution has already obtained an order of extension of time from the Court; or that the challan has been filed in the designated Court before the expiry of the prescribed period; or that the prescribed period has actually not expired. Such issuance of notice would avoid the possibility of the accused obtaining default bail by deliberate or inadvertent suppression of certain facts and also guard against multiplicity of proceedings.

(vii)It is clearly held that Public Prosecutors cannot be permitted to misuse the limited notice issued to them by the Court on bail applications filed under Section 167(2) Cr.P.C., 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. The Apex Court cautioned the lower Court that if the Court deliberately does not decide the bail application but adjourns the case by granting time to the prosecution, it would be in violation of the legislative mandate.

(viii) Further deprecated the practice of the concerned Magistrate to take up the applications for extension of time with retrospective effect and considering the default bail under Section 167(2) Cr.P.C., is not proper. Further, it had reiterated the principle that the right of the accused to statutory bail, which was exercised at the time his bail application was filed, remained unaffected by the subsequent application for extension of time to complete investigation.

(ix) Further held that the concerned Magistrate was obligated to deal with the application for default bail on the day it was filed. Default bail, being an indefeasible right of the accused under the first proviso to Section 167(2), kicks in and must be granted. Thus, *"If the accused applies for bail under Section 167(2), Cr.P.C read with Section 36-A (4), 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 for the limited purpose as stated above. Thus, 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."*

(x) Further, it had held that 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.

7. In the case of "***Judgebir Singh @ Jasbir Singh Samra @ Jasbir & Ors., Versus National Investigating Agency in Criminal Appeal No.1011 of 2023***" the Hon'ble Apex Court in paragraph Nos.76 to 78 had held as follows:

"AN EYE-OPENER LITIGATION FOR THE NIA/STATE

POLICE

76. As is evident from the chronology of dates and events referred to in the earlier part of our judgment, the final report under Section 173(2) of the CrPC was filed in the Court of SDJM, Ajnala on 15.11.2019. 15.11.2019 was the 161st day from the date of arrest of two of the appellants before us, namely, Jasbir Singh and Varinder Singh. They were the first to be arrested on 08.06.2019. The Punjab Police applied to the Court of the Additional Sessions Judge, Amritsar, for extension of time to complete the investigation invoking the proviso to Section 43D(2)(b) of the UAPA on 04.09.2019. When this application for extension of time was filed only two days were left for 90 days to expire. This is suggestive of the fact that the 91st day would have fallen on 07.09.2019. What is important to highlight is that the Additional Sessions Judge, Amritsar, looked into the extension application dated 04.09.2019 filed by the Punjab Police and ultimately, extended the time limit vide its order dated 17.09.2019 i.e., on the 101st day. By the time, the Additional Sessions Judge, Amritsar, passed an order extending the time, the period of 90 days had already expired. Indisputably, there was no chargesheet before the Court on the 91st day i.e., on 07.09.2019. The reason why we say that this is a grey area is because what would have happened if the appellants Jasbir Singh and Varinder Singh had preferred an application seeking statutory/default bail under Section 167(2) of the CrPC on the 91st day i.e., on 07.09.2019. The application seeking extension of time was very much pending. The Additional Sessions Judge could not have even allowed such application promptly i.e., on or before the 90th day without giving notice to the accused persons. The law is now well settled in view of the decision of this Court in the case of Jigar alias Jimmy Pravinchandra Aditya v. State of Gujarat reported in 2022 SCC OnLine SC 1290 that an opportunity of hearing has to be given to the accused persons before the time is extended up to 180 days to complete the investigation. The only error or lapse on the part of the appellants Jasbir and Varinder Singh was that they failed to prefer an appropriate application seeking statutory/default bail on the 91st day. If such application would have been filed, the court would have had no option but to release them on statutory/default bail. The Court could not have said that since the extension application was pending, it shall pass an appropriate order only after the extension application was decided.

That again would have been something contrary to the well settled position of law. This litigation is an eye opener for the NIA as well as the State investigating agency that if they want to seek extension, they must be careful that such extension is not prayed for at the last moment.

77. *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 chargesheet or a report seeking extension of time by the prosecution before the court. However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, or a report seeking extension of time is preferred before the Magistrate or any other competent court, the right to default bail would be extinguished. The court 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 CrPC.*

78. *Our observations in paras 76 and 77 respectively as above are keeping in mind the decision of this Court rendered by a three-Judge Bench in the case of Sayed Mohd. Ahmad Kazmi v. State (Government of NCT of Delhi) and Others reported in (2012) 12 SCC 1, wherein in paras 25, 26 and 27 respectively, this Court observed as under:*

“25. Having carefully considered the submissions made on behalf of the respective parties, the relevant provisions of law and the decision cited, we are unable to accept the submissions advanced on behalf of the State by the learned Additional Solicitor General Mr Raval. There is no denying the fact that on 17-7-2012, when CR No. 86 of 2012 was allowed by the Additional Sessions Judge and the custody of the appellant was held to be illegal and an application under [Section 167\(2\)](#) CrPC was made on behalf of the appellant for grant of statutory bail which was listed for hearing. Instead of hearing the application, the Chief Metropolitan Magistrate adjourned the same till the next day when the Public Prosecutor filed an application for extension of the period of custody and investigation and on 20-7- 2012 extended the time of investigation and the custody of the appellant for a further

period of 90 days with retrospective effect from 2-6-2012. Not only is the retrospectivity of the order of the Chief Metropolitan Magistrate untenable, it could not also defeat the statutory right which had accrued to the appellant on the expiry of 90 days from the date when the appellant was taken into custody. Such right, as has been commented upon by this Court in Sanjay Dutt [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] and the other cases cited by the learned Additional Solicitor General, could only be distinguished (sic extinguished) once the chargesheet had been filed in the case and no application has been made prior thereto for grant of statutory bail. It is well-established that if an accused does not exercise his right to grant of statutory bail before the charge-sheet is filed, he loses his right to such benefit once such charge-sheet is filed and can, thereafter, only apply for regular bail.

26. The circumstances in this case, however, are different in that the appellant had exercised his right to statutory bail on the very same day on which his custody was held to be illegal and such an application was left undecided by the Chief Metropolitan Magistrate till after the application filed by the prosecution for extension of time to complete investigation was taken up and orders were passed thereupon.

27. We are unable to appreciate the procedure adopted by the Chief Metropolitan Magistrate, which has been endorsed by the High Court and we are of the view that the appellant acquired the right for grant of statutory bail on 17-7-2012, when his custody was held to be illegal by the Additional Sessions Judge since his application for statutory bail was pending at the time when the application for extension of time for continuing the investigation was filed by the prosecution. In our view, the right of the appellant to grant of statutory bail remained unaffected by the subsequent application and both the Chief Metropolitan Magistrate and the High

Court erred in holding otherwise.”

(Emphasis supplied)

8. This Court in the case of “**Ajith Versus State Rep. by The Inspector of Police, E-9, Thazhambur Police Station, Chennai-600130** in

Crl.R.C.No.924 of 2023, dated 22.06.2023” following the Hon'ble Apex Court decisions had granted statutory bail finding that the Court below considered the bail application as well as extension petition belatedly but simultaneously. This order (***Ajith case***) came to be passed on 22.06.2023, the Court below failed to make correction course, continuous to belatedly take into consideration in passing order in extension petition and statutory bail application. Despite extension petition filed by the investigating agency before expiry of the statutory period, no order passed, kept pending for quite some time. In the meanwhile, indefeasible right for statutory bail accrues to the accused. The Court below dismissing the statutory bail on the ground that extension petition has been filed and both orders passed on the same day is not proper. Filing of charge sheet before the statutory period is sufficient and any claim for default bail as statutory right is not permissible. On the other hand, the dictum of the Hon'ble Apex Court is clear that once extension petition filed, notice to be given to the accused and thereafter, considering Section 36-A(4) of NDPS Act and the twin conditions that (i)indicating the progress of the investigation (ii)specific reason for the detention of the accused beyond the said period of one hundred and eighty days, orders to be passed. Then, only it can be construed that the extension period for filing charge sheet has been granted, otherwise filing of extension petition alone by the prosecution would not amount to compliance of the condition in the absence of the order by the Magistrate/Special Judge stipulated under Section 36-A(4) of NDPS Act. For better appreciation, Section 36-A(4) of NDPS Act is extracted below:

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

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 12.01.2024 passed in CrI.M.P.No.8497 of 2023 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 and the petitioner is ordered to be released on bail on executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) along with two sureties each for a like sum, before the Principal Special Judge, Principal Special Court under EC & NDPS Act, Chennai on the following conditions:

(a) the sureties shall affix their photographs and left thumb impression in the surety bond and the Court concerned may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(b) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(c) the petitioner to appear before the respondent police on the first working day of every month at 10.30 a.m., until further orders;

(d) the petitioner shall not abscond either during investigation or trial;

(e) on breach of any of the aforesaid conditions, the learned Magistrate/ Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon-ble Supreme Court in ***P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]***; and;

(f) if the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

12. With the above directions, this Criminal Revision Case is allowed.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.