

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

CRIMINAL PETITION No.6709 of 2024

ORDER:

This Criminal Petition, under Sections 437 and 439 of Cr.P.C. (New Sections 480 and 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023), is filed by the petitioner/A.1 seeking regular bail in Crime No.4 of 2024 of Pedabayalu Police Station, Alluri Sitharama Raju District, registered for the offences punishable under Sections 20(b)(ii)(C) and 25 read with 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act').

2. Heard arguments of Sri Arrabolu Sai Naveen, the learned counsel for petitioner and the learned Assistant Public Prosecutor for respondent-State.

3. Perused the record.

4. On 12.01.2024 A.1, A.3 and A.4 were found travelling in a private jeep bearing No.AP 05 BS 2322 at Patha Rudakota Junction, Alluri Sitharama Raju District, Andhra Pradesh and from their custody 200 kgs. of Ganja was recovered. They were remanded to judicial custody. What was seized was commercial quantity and the arrested persons are alleged to have committed

offences punishable under Sections 20(b)(ii)(C) and 25 read with 8(c) of the NDPS Act. The maximum period of remand of 90 days provided under Section 167(2) Cr.P.C. stands modified by virtue of Section 36-A(4) of the NDPS Act and the maximum period of remand provided is 180 days. It is undisputed that such 180 days stood completed on 11.07.2024. It is also undisputed that investigation was not completed and charge sheet was not laid by 11.07.2024. In the usual course, if the arrested accused had applied for statutory bail/default bail, the same should have been considered by the learned Special Judge. However, in the present case a few things have happened and will be noticed here afterwards.

5. Section 36-A Sub-Section (4) of the NDPS Act has a proviso whereunder 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 180 days, the learned Special Court may consider the same and extend the said period upto one year. In the case at hand, such an application was filed in CrI.M.P.No.655 of 2024. The said application was filed on 28.06.2024 and was registered on 02.07.2024. Thus, such application was made before completion

of 180 days on 11.07.2024. The said application was heard by the learned Special Judge on 18.07.2024 and was disposed of by an order dated 08.08.2024 whereunder the learned Special Judge allowed the prayer of the Public Prosecutor and extended the period upto one year. It is undisputed that even after the order of such extension the accused could seek bail on merits.

6. What is to be noticed is that A.1-Sri Pangi Prasanjit Das filed CrI.M.P.No.1674 of 2024 and the co-accused/A.3 and A.4 filed CrI.M.P.No.1840 of 2024 and both the applications were filed under Section 167(2) Cr.P.C. seeking default bail. It may be noticed that CrI.M.P.No.1674 of 2024 of A.1 was filed on 11.07.2024 which means that it was filed on completion of 180 days of remand. The said CrI.M.P.No.1674 of 2024 was registered on 12.07.2024 and was heard on 21.08.2024 and was disposed of by order dated 22.08.2024. By the said order the learned Special Judge dismissed the petition of A.1 as well as the petition of A.3 and A.4 holding that there was already an order in CrI.M.P.No.655 of 2024 passed on 08.08.2024 extending the period for one year and therefore granting default bail was not possible.

7. In the context of the above facts, A.1 has presented this regular bail petition under Sections 480 and 483 of BNSS/Sections 437 and 439 of Cr.P.C. it has to be noticed that the present petition is not an appeal, not a revision and not a quash petition challenging either of the orders of the learned Special Judge with reference to extension of period upto one year or the dismissal of prayers for default bail. Thus, the present application seeks bail on merits. However, as part of the merits of the matter certain grounds are urged and certain points are argued questioning the legality of the earlier referred orders of the learned Special Judge and therefore, those aspects are recorded as above.

8. On behalf of the petitioner/A.1, the learned counsel cited ***Justin T.J. v. State of Kerala***¹.

9. Learned Assistant Public Prosecutor would submit that 200 kgs. of Ganja is a huge quantity and is a commercial quantity. The presumption raised under Section 37 of the NDPS Act requires the accused seeking bail to show how he can be presumed not to have committed such offence. Out of

¹ 2023 SCC Online Ker 4734

investigative needs the prayer was made before the learned Special Judge, the time for investigation was extended for a period of one year and accordingly accused were legally remanded to judicial custody and in the light of such view taken by the learned Special Judge, this Court may not release the accused on bail.

10. Coming to the merits of the matter and to rebut the presumption raised under Section 37 of the NDPS Act, various grounds are urged. It is argued that on seizure of the contraband the officer shall prepare an inventory of the contraband with all the details and make an application to any Magistrate for the purpose of certifying the correctness of the inventory so prepared and further draw representative samples from the contraband in the presence of such Magistrate as provided in Section 52A of the NDPS Act, but in the case at hand, there was gross violation of the said provision. A perusal of the remand report would show that the seizing officer at the spot of seizure itself drew the samples. The remand report does not even indicate that after the seizure and after the samples were drawn whether there was effective packing and sealing of the contraband or not. Thus, the

learned counsel for petitioner is right in pointing out this gross procedural violation on part of the State.

11. Considering the fact that the petitioner has been in judicial custody for 296 days by now and considering the procedural violations as effective rebuttal to the presumption raised against the petitioner, this Court considers that the petitioner has made out a case for regular bail.

12. Coming to the other contention of the learned counsel for petitioner, it is argued that the application of the Public Prosecutor for extension of time for investigation was enquired into in violation of the procedure and the personal presence of the petitioner was the legal mandate and there is violation on part of the learned Special Judge in this regard. In support of it, the learned counsel cited the above-referred ruling of the Hon'ble Kerala High Court which engrafted various rulings of the Hon'ble Supreme Court of India. On perusal of order dated 08.08.2024 of the learned Special Judge in CrI.M.P.No.655 of 2024 one would notice at paragraph No.3 that a notice was served on the accused and at paragraph No.5 one would see that the learned Special Judge heard the arguments of learned Special Public Prosecutor and the learned counsel for the accused. Thus, it was not a case

where no hearing was granted. However, the point to be considered is whether such an application could be disposed of without securing the physical presence of the accused or the presence of the accused through video conferencing. The order of the learned Special Judge did not show that the physical or virtual presence of accused was secured on the date of hearing/18.07.2024. Be it noted, by 18.07.2024 190 days period was already over by a week days. In ***Jigar alias Jimmy Pravinchandra Adatiya v. State of Gujarat***², the Hon'ble Supreme Court of India held that mere notice to accused is insufficient and it was mandatory to have the physical or virtual presence of the accused while the Court considers the application for extension of the period of investigation. There is another aspect to be noticed. On 18.07.2024 when the learned Special Judge took up the hearing of Crl.M.P.No.655 of 2024 as to whether period for investigation should be extended for one year or not there was already a validly filed default bail petition of this petitioner in Crl.M.P.No.1674 of 2024 registered on 12.07.2024. Thus, while both the petitions were pending and were available for consideration it stands to logic to say that they shall be taken

² 2022 SCC Online SC 1290

up for hearing one after another. It also stands to logic that the decision for extension or refusal has to be considered first. In the event the investigation period is extended the petition for default bail loses its legal efficacy. In the event period for investigation was not extended, the petition for default bail holds its legal strength. Instead of doing that, the learned Special Judge heard these applications at different times and passed the orders at different times. According to the learned counsel for petitioner, even that is not in tune with the law laid down by the Hon'ble Supreme Court of India in ***M.Ravindran v. Directorate of Revenue Intelligence***³. These aspects were considered by their Lordships and it was held that those two petitions are required to be considered together. It is unfortunate that neither the State nor the counsel for accused brought to the notice of the learned Special Judge about the pendency of the other petition. Had it been brought to the notice of the learned Special Judge this Court is sure that learned Special Judge could have taken up both the petitions one after another. Be that as it may. In the view that is taken by this Court the petitioner is entitled to bail in merits. No

³ (2021) 2 SCC 485

further discussion is required to be made on these aspects. Hence, the prayer is granted.

13. In the result, this Criminal Petition is allowed. Petitioner/A.1 shall be enlarged on bail on executing a personal bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties for a like sum each to the satisfaction of the learned Metropolitan Sessions Judge-cum-I Additional District and Sessions Judge-Special Judge for trial of offences under NDPS Act, Visakhapatnam Petitioner shall mark his attendance before the Investigating Officer on 1st and 15th of every month between 10.00 AM and 1.00 PM till filing of the charge sheet. Petitioner shall make himself available for investigation by a police officer as and when required. He shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case to dissuade them from disclosing such facts to the Court or to any police officer. He shall not indulge in similar acts of crime. The petitioner shall regularly appear before the competent Court and participate in pre-trial and trial process without fail.

Dr. V.R.K.KRUPA SAGAR, J

Date: 05.11.2024

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