

In the court of the Principal Special Court for EC & NDPS Act Cases, Madurai.

Present: Thiru V. Padmanabhan, M.A., M.L. D.H.
Additional District Judge/Presiding Officer.

Dated this the 23rd of June 2020, Tuesday

Special *CrI.M.P.Nos. 146, 149, 150 & 158 of 2020*

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CrMP No. 146/2020:-

Ravi,(35/2019)
S/o.Anbalagan.

.. Petitioner/Accused No. 7

CrMP No. 149/2020:-

1) Nagaraj,(31/2019)
S/o. Subbaiah.

2) Selvi,(41/2020)
W/o.Selvam.

.. Petitioners/Accused No. 3, 4

CrMP No. 150/2020:-

1) Bose,(61/2020)
S/o.Mookandi Thevar.

2) Manimaran,(28/2020)
S/o.Bose.

.. Petitioners/Accused No. 1, 2

CrMP No. 158/2020:-

Murugan,(39/2020)
S/o.Chelladurai.

.. Petitioner/Accused No. 5

- /Versus/-

State the Inspector of Police
Dindigul Taluk Police Station.
Cr.No.727/2019.

.. Respondent /Complainant

These bail petitions u/s. 167(2)Cr.P.C. are filed through online/email on 19.06.2020 taken on file before me finally on this day in the presence of Thiru. P.M.Kumaran, for the petitioner/Accused no.7 and Thiru.A.Singathevan, Advocate for the petitioners/accused no. 3,4 and Thiru.D.Muthuraman and Thiru.P.S.Senthilkumar, Advocates for the petitioners/accused no.1,2 and

Thiru.Na.Manimaran, Advocate for the petitioner/accused no.5 respectively and Thiru.P.Seetharaman, Special Public Prosecutor for the State and upon perusing the records in both these petitions this court delivered the following common order:-

COMMON ORDER

Heard both sides through conference call.

2) The learned counsel appearing for the petitioners/accused would submit that the petitioners have been in judicial custody from 07.12.2019 and charged for the alleged offence under section 8 (c) r/w 20 (b) (ii) (C), 29(1) & 25 of NDPS Act; that the petitioners did not involve in this incident as alleged on prosecution side; that the respondent did not complete the investigation till date; that the petitioners are entitled to the benefit under section 167 (2) Cr.P.C. and that the petitioners may be granted bail.

3) On other hand, in the objections and also during the argument hearing the learned Special Public Prosecutor contended that the final report was filed before this court on 22.06.2020 and that petitioners are not entitled to statutory bail.

4) Admittedly, the petitioners have been in judicial custody from 17.10.2019 and this petition is filed on 196th day. It is also not in dispute that the final report was not filed before expiry of 180 days. Further, before expiry of said 180 days no application under S.36(4) of NDPS Act was filed on prosecution to extend the period for investigation and for detention of the accused beyond said 180 days.

5) In Achpal @ Ramswaroop & Another versus State of Rajasthan case (Crl. appeal no 1218 of 2018) on discussing catena of decisions, our Hon'ble Apex Court specifically held that on the expiry of the period stipulated,

an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period stipulated and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.

6) In this case, the investigation officer did not file charge sheet within 180 days. As such he did not file any application to extend the time for investigation and to file final report beyond 180 days. Admittedly, charge sheet filed right now that too two days after when notice was received by the prosecution in this bail application. This bail application was filed through online on 19.06.2020 and charge sheet was filed before this court on 22.06.2020. The accused persons not only moved this bail application for first time. Admittedly, in earlier occasion on 05.06.2020, 06.06.2020 and 17.06.2020 itself they moved application for statutory bail and the same were returned by this court as to whether limitation period extended by Hon'ble Apex Court in suo-moto writ petition no.3/2020 is applicable to provision of S.167(2) CrPC. Now it has been settled by Hon'ble Apex Court in Criminal Appeal No.452/2020 that the period of limitation mentioned in suo-moto writ petition is not extended to provision of S.167(2) CrPC. Further, Hon'ble Apex Court in this regard held thus "

"This Court also held that right for default bail is indefeasible right which cannot be allowed to be frustrated by the prosecution. Following was laid down in paragraphs 37, 38 and 39:-

"37. This Court had occasion to review the entire case law on the subject in Union of India V. Nirala Yadav, (2014) 9 SCC 457. In that decision, reference was made to Uday Mohanlal Acharya V. State of Maharashtra, (2001) 5 SCC 453 and the conclusions arrived at in that decision. We are concerned with Conclusion (3) which reads as follows:

"13(3) On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate."

38. This Court also dealt with the decision rendered in Sanjay Dutt, (1994) 5 SCC 410 and noted that the principle laid down by the Constitution bench is to the effect that if the charge sheet is not filed and the right for "default bail" has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The accused can avail his liberty by filing an application stating that the statutory period for filing the charge sheet or challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the accused is prepared to furnish the bail bond.

39. This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right."

7) The learned Special Public Prosecutor specifically argued that yesterday the charge sheet was filed when the bail application was moved and the petitioners are not entitled to benefits of S.167(2) CrPC. Further, he argued that 19.06.2020 only prosecution knows about the Hon'ble Apex Court order and there is no possibility to file final report before that date. This argument has no force at all. In fact, this court has been receiving final reports filed on

prosecution side from the beginning of this month and as such sizeable number of final reports including the cases in which commercial quantity was involved also filed and the same were taken on file in this month. In such circumstances, the argument put forth on prosecution that there is no possibility to file final report is not acceptable. In Achpal @ Ramswaroop & Another versus State of Rajasthan case the Hon'ble Supreme Court held that on completion of statutory period prescribed under 167(2) CrPC, when no final report is filed the accused cannot be denied the protection established by law. Further, it was held that it is an indefeasible right of the accused. Here, the final report is filed only 199th day that too after filing of this bail application. That be the case, it cannot be sustained that charge sheet was filed within time. In this circumstances this court comes to the conclusion that the petitioners are entitled to mandatory bail under section 167(2) of Cr.P.C.

8) Hence, all the petitioners are enlarged on bail on their executing own bond for Rs.10,000/- before the Superintendent, Central Prison, Madurai and Superintendent, Central Prison for women, Madurai for accused no4. namely Selvi. Further, they should appear before this court within 15 days from lifting of lock down, along with two sureties and execute a bond for the like sum each to the satisfaction of this Court and further condition to appear and sign before the respondent Police Station at 10.00 A.M. continuously without any deviation one month daily from lifting of lock down period. Thereafter eight weeks on every Tuesday.

In the result these petitions are **Allowed**.

(Sd.) V. Padmanabhan,
Additional District Judge/Presiding Officer,
Prl. Spl Court for EC & NDPS Act Cases,
Madurai.

Copy to:

- 1) The Superintendent of Central Prison, Madurai.
- 2) The Superintendent of Central Prison for women, Madurai.
- 3) The Inspector of Police,
Theppakulam Police Station.
- 4) The counsel of the petitioners.

