

(2010) 10 MAD CK 0166

In the Madras High Court

Case No : Criminal R.C. (MD) . No. 691 of 2010

Kaleel Rahman

APPELLANT

Vs

Inspector of Police, Q Branch, CID

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Arms Act, 1959 — Section 25(1)(B)

Criminal Procedure Code, 1973 (CrPC) — Section 167(2)

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 19, 24, 27, 36(A)(4), 8

Unlawful Activities (Prevention) Act, 1967 — Section 13(1)(2)

Citation : (2010) 10 MAD CK 0166

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : R. Rajan, for N. Mohideen Basha, for the Appellant; S. Muthu Venkatesan, Government Advocate, for the Respondent

Judgement

S. Tamilvanan, J.—Heard the learned Counsel appearing for the Petitioner/ Accused No. 3 as well as the learned Government Advocate (criminal side) appearing for the Respondent/complainant.

2. Challenging the order dated 27.08.2010 made in CrI.M.P. No. 1014 of 2010 on the file of the Additional Sessions Judge, Special Court for EC and NDPS Act Cases, Pudukkottai, this Criminal Revision has been preferred.

3. It is seen that the case was registered under Sections 8(c) r/w 21(b) of the NDPS Act 1985 and 25(1)(B)(a) Arms Act 1959 and 13(1)(2) Unlawful Activities (Prevention) Act 1967 in Crime No. 1 of 2008 on the file of the Respondent police.

4. Mr. R. Rajan learned Counsel appearing for the Petitioner submitted that the Petitioner herein was arrayed as A3. Even as per the prosecution case, 250 grams of two Heroin packets were recovered, only from the co-accused A1 and A2 on 26.01.2010 and no contraband was recovered from the Petitioner/Accused No. 3 and only a sum of Rs. 50,000/-cash was recovered from him. Though the

Petitioner was arrested on 26.01.2010, the Respondent police has not filed the final report (Charge Sheet) till date.

5. The learned Government Advocate (criminal side) appearing for the Respondent submitted that the alleged contraband seized from the co-accused/ A1 and A2 is a commercial quantity and therefore the Petitioner is not entitled to get statutory bail u/s 167(2) of Code of Criminal Procedure It is not in dispute as per the Act, that the seized contraband is a commercial quantity and the Petitioner is entitled to statutory bail, if the final report is not filed within 180 days. As per Section 36(A)(4) when the seized contraband is a commercial quantity, if the final report is not filed within 180 days from the date of arrest of the accused, he is entitled to get statutory bail. However, the time limit could be extended upto one year on the report filed by the Public Prosecutor. The relevant proviso to Section 36(A)(4) of NDPS Act reads as follows:

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.

Therefore, as per the proviso to Section 36(A)(4) of Narcotic Drugs and Psychotropic Substances Act, 1985, the period of statutory bail could be extended up to one year, by the Special Court, based on the report filed by the Public Prosecutor.

6. The learned Counsel appearing for the Petitioner also drew the attention of this Court relying on a decision rendered by the Hon"ble Supreme Court in Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotic Control Bureau and Another, . The relevant paragraph is reads as follows:

9. The maximum period of 90 days fixed u/s 167(2) of the Code has been increased to 180 days for several categories of offences under the Act but the proviso authorizes a yet further period of detention which may in total go upto one year, provided the stringent conditions provided therein are satisfied and are complied with. The conditions provided are:

- 1 a report of the public prosecutor,
- 2 which indicates the progress of the investigation, and
- 3 specifies the compelling reasons for seeking the detention of the accused beyond the period of 180 days, and
- 4 after notice to the accused.

In the instant case, no such report was filed by the Public Prosecutor: Only the Respondent investigating officer filed the report, that was submitted by the Special Public Prosecutor by affixing his signature with the word "submitted". The learned Government Advocate (criminal side) submitted that the report has

to be construed as the report filed by the Public Prosecutor, since the same was counter signed by the Public Prosecutor. In the decision reported in Sanjay Kumar Kedia @ Sanjay Kedia Vs. Intelligence Officer, Narcotic Control Bureau and Another, , the Hon''ble Apex Court further held with regard to the compliance of Section 36(A)(4) which reads as follows:

(4) In respect of persons accused of an offence punishable u/s 19 or Section 24 or Section 27A or for offences involving commercial quantity the references in Sub-section (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

7. In the light of the decision rendered by the Hon''ble Supreme Court, it is clear that for extending the remand for more than 180 days in case of commercial quantity of Narcotic Drugs:

(1) a report of the Public Prosecutor shall be filed.

(2) it shall indicate the progress of investigation and

(3) the report shall specify the compelling reasons for the detention of accused beyond the said period of 180 days.

8. In the instant case, merely because the learned Special Government Pleader has signed with the word "submitted", in the light of the decision of Hon''ble Apex Court, it cannot be construed as a report of the Special Public Prosecutor. u/s 167(2) of Cr.P.C the maximum period of 90 days is fixed for filing final report (charge sheet), otherwise the accused who was arrested and detained in prison is entitled to statutory bail. Considering the seriousness of the offence, relating to NDPS Act, in the case of commercial quantity, the aforesaid period is extended up to 180 days. If further extension is needed it could be possible only on compliance of the mandatory provision u/s 36(A)(4) of the Act. The report prepared by the Inspector of Police, Q Branch, CID,. was submitted by the Special Public Prosecutor, which cannot be construed as report filed by the Public Prosecutor, as contemplated u/s 36(A)(4) of the NDPS Act. Further the report should indicate the progress of investigation which is also missing in the report. In the instant case the progress of investigation is also not specifically stated with the compelling reasons, for seeking detention of accused beyond a period of 180 days. In the aforesaid report filed by the Respondent, the compelling reasons for seeking the detention of accused beyond a period of 180 days is not available, through there was notice to the accused. As the mandatory provision u/s 36(A)(4) of NDPS Act are not complied with, I am of the view that the objection raised by the Respondent after 180 days without filing final report would not be justifiable. Even as per the prosecution case no contraband was seized from the Petitioner/A3. On the aforesaid facts and circumstances of the case, I am of the view that the Petitioner is entitled to statutory bail.

9. Considering the facts and circumstances of the case, I find it just and

reasonable to grant bail to the Petitioner on reasonable conditions. Accordingly, the Petitioner is directed to be released on bail on his executing a personal bond for a sum of Rs. 50,000/-(Rupees fifty thousand only) with two sureties each, for a like sum to the satisfaction of the learned Additional District and Sessions Judge, Special Court for EC and NDPS Act cases, Pudukkottai and on further condition that the Petitioner shall appear before the concerned Court, daily at 10.30 a.m on all working days for a period of four weeks.

10. Accordingly, this criminal revision is disposed of.