

Krishnakumari vs The Union Of India on 3 March, 2025

Author: P.Velmurugan

Bench: P.Velmurugan

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 04.02.

Orders Pronounced on : 03.03.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.141 of 2025

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1.Krishnakumari
2.Kasilingam

Vs.

The Union of India
rep.by The Intelligence Officer,
NCB, Chennai Zone Unit,
Chennai -77,
RR No.37 of 2024.

Criminal Revision Case filed under Sections 438 read with Cr.P.C. 2023, praying to set aside the order dated 09.12.2024 as devoid of Crl.M.P.No.13778 of 2024 on the file of the Principal Special Court under NDPS Act, Chennai in R.R.No.37 of 2024 (on the file of the respondent).

For Petitioners : Mr.M.Soundar Vijayarajan
For Respondent : Mr.N.P.Kumar
Special Public Cases

ORDER

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/03/2025 04:47:03 pm) This Criminal Revision Petition is filed to set aside the order dated 09.12.2024 made in Crl.M.P.No.13778 of 2024 on the file of the Principal Special Court under EC & NDPS Act, Chennai in R.R.No.37 of 2024 on the file of the respondent, as devoid of merits

2. The petitioners were arrayed as A4 and A6 in R.R.No.37 of 2024 on the file of the respondent-Police herein for the offences under Sections 8(c) read with 22(c), 27(A), 28 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 [hereinafter referred to as 'NDPS Act' for

brevity]. The first petitioner-A4 was arrested and remanded to judicial custody on 17.06.2024 and the second petitioner-A6 was formally arrested on 25.06.2024 and produced before the Court on 26.06.2024 on P.T.Warrant and subsequently, remanded to judicial custody on 26.06.2024.

3. The case of the prosecution is that on 11.06.2024 at Service Road, near Revathi Stores, Redhills, Chennai, the respondent-Police seized 1.470 kgs of Amphetamine from the accused persons viz., Madhushan-A1 and Ajanthan-A2, who are Srilankan nationals. Based on the confession of A1 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/03/2025 04:47:03 pm) and A2, the confession statement of Anton Sanujan-A3 was recorded and thereafter, A1 to A3 were arrested and remanded to judicial custody on 12.06.2024. It is further stated that based on the confession statement given by A1 to A3, the first petitioner-A4 and A5 were served with summons on 14.06.2024 under Section 67 of NDPS Act, with a direction to appear before the NCB office, Ayyapakkam, Chennai in connection with seizure of 1.470 kgs of Amphetamine, which came to be seized on 11.06.2024 and also follow up seizure of drug source money amounting of Rs.1,29,04,800/- and other foreign currencies which came to be seized on 14.06.2024 at Hawala agent shop No.193/138, Angappa Naicken Street, Mannady, Chennai. The accused A4 and A5 appeared and gave their voluntary statement and they were arrested on 17.06.2024 and remanded to judicial custody. Based on the confession statement of the first petitioner-A4, her husband the second petitioner-A6, who was already undergoing incarceration from December 2021 for involvement in another case and who was lodged in Central Prison, Puzhal was formally arrested on 25.06.2024 in the presence of the Jail Authority and remanded to judicial custody on 26.06.2024. Later, based on the information received from A5, the confession statement of Nisardeen-A7 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/03/2025 04:47:03 pm) was recorded and he was also arrested and remanded to judicial custody on 18.07.2024.

4. The further case of the prosecution is that since the investigation could not be completed within 180 days from the date of remand of the accused persons, the investigating agency filed a petition seeking extension of time and the same was allowed vide order dated 09.12.2024 in Crl.M.P.No.13778 of 2024. Aggrieved by the said order, the petitioners – A4 and A6 have filed the present revision petition.

5. Learned counsel for the petitioners submitted that the first petitioner-A4 was arrested and remanded to judicial custody on 17.06.2024 and the second petitioner-A6 was formally arrested on 25.06.2024 and remanded to judicial custody on 26.06.2024. He further submitted that as per Section 36A(4) of NDPS Act, any offence involving commercial quantity, the investigation has to be completed within 180 days, in case, if it is not possible to complete the investigation within the statutory period, the Special Court may extend the said period up to one year on the report of the <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/03/2025 04:47:03 pm) Public Prosecutor indicating the progress of the investigation.

6. Learned counsel further submitted that in the present case, despite lapse of 180 days, the respondent-Police did not file final report, instead, they have filed a petition in Crl.MP.No.13778 of 2024 seeking further extension of statutory period of investigation for a period of three months. The learned Special Judge failed to consider that according to Section 36A(4) of NDPS Act the extension

is not an automatic and the Court can order for further period of extension based on the report of the public prosecutor, indicating the progress of the investigation and specific reason for detention of the accused beyond the period of 180 days. However, in the petition for extension, the respondent-Police herein merely narrated the sequence of events from 11.06.2024 and 18.07.2024, but they did not disclose about the progress of the investigation and also they did not state as to why further detention is required for the purpose of completing the investigation. He further submitted that only to prevent the revision petitioners from coming out of bail under the mandatory provisions under Section 167(2) Cr.P.C./187 BNSS, the respondent-Police have filed the <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/03/2025 04:47:03 pm) petition and sought for extension of time. The Hon'ble Supreme Court and this Court, have repeatedly held that right guaranteed under Section 167(2) of Cr.P.C.,/187 BNSS is indefeasible, however, the learned Special Judge, failed to follow the directions and mechanically passed the order granting time for a further period of three months to complete the investigation.

7. Learned counsel for the petitioners further submitted that the respondent-Police ought to have filed the petition for extension well in advance, i.e., at least fourteen days before the expiry of the statutory period and then the same can be entertained by the trial Court. The Public Prosecutor's report also must specify as to why the petition for extension could not be filed fourteen days before the statutory period. However, in the case on hand, the respondent-Police filed the petition for extension at the fag end of statutory period and the prosecution also not given any valid reason for delay in filing the petition for extension. The learned Judge failed to consider all those facts and allowed the petition and extended the period. Since the application for extension did not satisfy the requirements in law, the order passed by the learned Special Judge has to be set side. <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/03/2025 04:47:03 pm)

8. In support of his contention the learned counsel for the petitioners relied upon the judgment of this Court dated 27.11.2024 in CrI.R.C.Nos.1847 of 2024 etc., batch.

9. Learned Special Public Prosecutor appearing for the respondent- Police submitted that the offences committed by the petitioners are grievous in nature and that the accused are Srilankan nationals. The quantum of contraband, which was seized by respondent-Police is commercial in nature i.e., 1.470 kgs and have also seized a sum of Rs.1,29,04,800/- and other foreign currency on 14.06.2024 at Hawala agent shop at No.193/138, Angappa Naicken Street, Mannady, Chennai. Based on the confession statement of other accused, the first petitioner-A4 was summoned and based on the statement of first petitioner-A4, the prosecution found that the second petitioner-A6 was also involved in the alleged commission of offence and he was arrested and remanded to judicial custody.

10. Learned Special Public Prosecutor further submitted that in the present case most of the accused are Srilankan nationals and their net works <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/03/2025 04:47:03 pm) have to be traced out by the investigating agency and source of the contraband and incriminating documents have to be collected to complete the investigation and A6, who was already involved in other case and undergoing incarceration, was formally arrested in the present case, which requires detailed analysis and interrogation of various persons. He further

submitted that since investigation has to be spread to another Country and investigation has to be conducted in detail, they could not file the charge- sheet within 180 days, but they filed the petition seeking extension of time within five days prior to the expiry of the statutory period i.e., on 175 th day. He further submitted that the investigating agency has to collect CDR report with regard to A4, A5 and A7 from CFSL, Hyderabad. The learned Special Judge after considering the serious nature of the offence, involvement of foreign nationals and also involvement of A6 in other case, found that investigation in the above case required detailed analysis and extended the time for a period of three months. Therefore, the revision petitioners are not entitled to the relief as sought for in this revision petition.

11. Heard both sides and perused the materials available on record.

12. Admittedly, the first petitioner-A4 and the second petitioner-A6 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/03/2025 04:47:03 pm) have been arrested and remanded to judicial custody on 17.06.2024 and 26.06.2024, respectively for the offences under 8(c) read with 22(c), 27(A), 28 and 29 of NDPS Act. As per Section 36A(4) of NDPS Act since the seized contraband is a commercial quantity, the investigation has to be completed and charge sheet has to be filed within a period of 180 days from the date of remand. Had the investigating agency failed to file the charge- sheet within the statutory period, they are entitled to file the petition for extension. In the present case, the respondent-Police have not filed the charge sheet within the statutory period and they have filed the petition for extension in CrI.M.P.No.13778 of 2024 by invoking Section 36A(4) of NDPS Act, which came to be allowed.

13. On a perusal of the entire records, particularly, petition filed by the respondent seeking extension, it is seen that the respondent-Police have given valid reason for non-filing of the charge sheet within the statutory period and also given reasons for filing extension of time under Section 36A(4) of NDPS Act.

14. For better appreciation, it is appropriate to extract Section 36A(4) of NDPS Act which read as follows:

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/03/2025 04:47:03 pm) "36A.
Offences triable by Special Courts :

.....

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27 A 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":

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."

15. The main ground taken by the learned counsel for the petitioner is that no specific report indicating the progress of the investigation was submitted by the Prosecutor before the Court, but they have simply narrated the events of the investigation, which was not sufficient to extend the time for further investigation. Admittedly, in the present case, the respondent- Police have moved the special Court five days prior to expiry of the statutory period. On a perusal of the materials, this Court finds that commission of the offence has not been committed within the Country and since most of the accused persons are native of Sri Lanka, investigation has to be extended to <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/03/2025 04:47:03 pm) Sri Lanka. Further, the seized contraband is of a commercial quantity and also huge Indian currency and foreign currency was also seized by the investigating agency and also CFSL report from Hyderabad is yet to be received. The Court below after taking into consideration of the aforesaid aspects has granted extension for a period of three months. There is no quarrel with the proposition laid down in the decision referred to by the learned counsel for the petitioners, however, in the present case, the prosecutor has clearly indicated the progress of the investigation and also clearly explained as to why extension of time is required for further investigation, therefore, this Court finds that the decision referred by the learned counsel for the petitioners is not applicable to the present case on hand.

16. Considering the facts and circumstances, this Court does not find any reason to interfere with the order of the Special Court. Accordingly, this Criminal Revision Petition is dismissed.

17. The respondent-Police is directed to complete the investigation and file charge sheet as expeditiously as possible, preferably, within the extended period of three months by the Special Court. <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/03/2025 04:47:03 pm) 03.03.2025 Index : Yes/No Neutral Citation Case : Yes/No Speaking Order : Yes/No ms To

1. The Principal Special Court Under EC & NDPS Act, Chennai.
2. The Intelligence Officer, NCB, Chennai Zone Unit, Chennai -77.
3. The Superintendent of Prison, Central Prison for Womne -3, Puzhal, Chennai.
4. The Superintendent of Prison, Central Prison, Puzhal, Chennai.
5. The Public Prosecutor, High Court, Madras.

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/03/2025 04:47:03 pm) P.VELMURUGAN, J ms 03.03.2025 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 03/03/2025 04:47:03 pm)