



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Friday, the Twelfth day of June Two Thousand Fifteen
PRESENT

The Hon`ble Mr Justice K.KALYANASUNDARAM

CRL OP(MD) No.9694 of 2015

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1 BALAMURUGAN

2 MARIRAJ @ SERVAI

... PETITIONERS/ACCUSED NO.3 & 4

Vs

STATE REP BY

THE INSPECTOR OF POLICE

DHANESHKODI POLICE STATION,

RAMANATHAPURAM DISTRICT,

IN CRIME NO.68 OF 2014.

... RESPONDENT/COMPLAINANT

For Petitioner : M/S.B.SENTHILKUMAR Advocate

For Respondent : MR.K.V.RAJARAJAN Govt. Advocate (Crl. Side)

PETITION FOR BAIL Under Sec. 439 Cr.P.C.

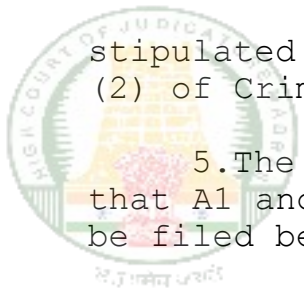
ORDER : The Court Made the following order :-

The petitioners, who are arrayed as A3 and A4 and they were arrested and remanded to judicial custody on 30.11.2014 for the alleged offences punishable under Sections 8(c) r/w 20(b)(ii)(C) and 25 of NDPS Act, 1985, in Crime No.68 of 2014 on the file of the respondent police and hence, seek bail.

2.The case of the prosecution is that the accused were found in possession of 192 kgs of Ganja.

3.The learned counsel for the petitioners submitted that the petitioners are innocent persons and they have not committed any offence as alleged by the prosecution. He further submitted that the petitioners were arrested on 30.11.2014 and they have been in judicial custody for more than 195 days and as per section 36(A)(4) of NDPS Act, the petitioners are entitled for statutory bail. It is further submitted that as per the section, the respondent ought to have file the charge sheet within a period 180 days, but in this case, the charge sheet is yet to be filed. Hence, the petitioners are entitled for bail.

4.The learned counsel for the petitioners has relied upon the judgments reported in 1986 Cri.L.J 2081 [Powell Nwawa Ogechi vs. The State of (Delhi Administration), 2001 SCC (Cri) 760 [Uday Mohanlal Acharya vs. State of Maharastra] and 1988 CRI.L.J.NOC 698 GUJ.), [Meghji Uthabhai Vankar and others vs. State of Gujarat], for the proposition that if the charge sheet is not filed within the



stipulated time, the accused are entitled for bail under section 167 (2) of Criminal Procedure Code.

5.The learned Government Advocate (criminal side) submitted that A1 and A2 are still absconding and the charge sheet is ready to be filed before the concerned court.

6.The Hon'ble Apex Court in 2001 SCC (Cri) 760 [Uday Mohanlal Acharya vs. State of Maharashtra, has held as follows:-

"...1.Under sub-section (2) of Section 167, a Magistrate before whom an accused is produced while the police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days in the whole.

2.Under the proviso to aforesaid sub-section (2) of Section 167, the Magistrate may authorise detention of the accused otherwise than the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and 60 days where the investigation relates to any other offence.

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 furnish the bail, as directed by the Magistrate.

4.When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the Investigating Agency in completion of the investigation within the specified period, the Magistrate/Court must dispose it of forth with, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the Investigating Agency. Such prompt action on the part of the Magistrate/Court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the Investigating Agency in completing the investigation within the period stipulated.

5.If the accused is unable to furnish bail, as directed by the Magistrate, then the conjoint reading of Explanation I and proviso to sub-section 2 of Section



167, the continued custody of the accused even beyond the specified period in paragraph (a) will not be unauthorised, and therefore, if during that period the investigation is complete and charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished.

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6. The expression 'if not already availed of' used by this Court in Sanjay Dutt's case (supra) must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in paragraph (a) of proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail, on being directed, then it has to be held that the accused has availed of his indefeasible right even though the Court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same.

7. In 1986 Cri.L.J 2081 [Powell Nwawa Ogechi vs. The State (Delhi Administration)], the Hon'ble Division Bench of Delhi High Court held as follows:-

"Having given our careful consideration to the facts of the present case, the arguments of the learned Counsel for the parties, the relevant statutes and case law on the subject, we are of the view that under the provision of Section 167(2) of the Code an accused person against whom charge-sheet is not presented before the Court within the period of 90 or 60 days, as the case may be, is entitled to be offered bail as a matter of right. For this there is no requirement of law for him to apply. The bail has to be offered to him and he can only be detained in further custody if he fails to furnish bail. The only provision under which an accused person can be detained thereafter is Section 309 of the Code but for the exercise of that power the pre-requisite is that there must be a charge-sheet pending before the Court. This right of the accused person, Therefore, under Section 167(2) of the Code is absolute and indefeasible unless he fails to furnish the bail. We are also in full agreement with the observations made in Noor Mohammad's case (supra) that Section 167(2) of the Code does not cease to apply even if the charge-sheet is submitted after 90 or 60 days and the accused is entitled to ask for the right which had already accrued to him. We are also of the view that Section 10 of the General Clauses Act is not applicable in such a situation and it cannot be invoked to defeat the accrued right of an accused person to be freed. We are further of the view that



the Magistrates should monitor the remand proceedings during investigation in such a manner so that a full account of the remand. is handy and bail is offered to such accused person at the end of 90 or 60 days, as the case may be. We are giving these reasons in support of our order dt. 30th July, 1986.

8. In 1988 Cri.L.J. NOC 68 (GUJ) [Meghji Jethabhai Vankar and others vs. State of Guraraj] the Hon'ble Gujarat High Court held as follows:-

"The provisions of Section 167 of Code Pertain to the personal liberty of the under-trial prisoners. In the case of limitation under S.167(2) of the Code, the limitation period as to be construed strictly which means that the 90 days or 60 days limitation has to be regarded as exactly the 90th day or 60th day as the case may be and not a day beyond. the prosecution should be vigilant to see that that charge-sheet is filed as early as possible. It should not take chance and wait till the last day. If it does wait and the last day happens to be a closed holiday, the limitation would expire on that day and the accused would be entitled to bail as a matter of right. In computing the limitation under S.167(2) of the Code, the method of computation under the General Clauses Act or under the Limitation Act cannot be brought in.

9. Now the question that emerges for consideration is whether the prosecution can take advantage of section 10 of General Clauses Act to contend that non-filing of the charge sheet within 180 days would save limitation?

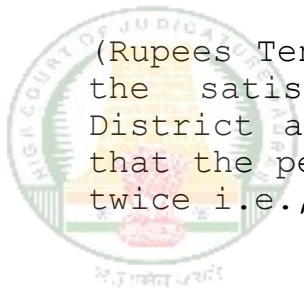
10. The dictum of the Hon'ble Apex Court is that the accused is having indefeasible right of releasing on bail, after the expiry of the statutory period. So, the respondent should have been vigilant to see that the charge sheet is filed as earlier as possible and it should not take a chance to wait till such day. Further, the Hon'ble Division Bench of Delhi High Court has held that section 10 of General Clauses Act, is not applicable, in a case, if the respondent has not filed charge sheet within the stipulated period.

11. In the case on hand, the prosecution has laid not charge sheet till date. Therefore, in the light of the propositions laid down in the above decisions, the contention of the learned Government Advocate (Criminal side) cannot be countenanced.

12. Considering the above facts and circumstances of the case and also keeping in mind the principles laid down by the Hon'ble Apex Court and the High Courts of Delhi and Gujarat, this court is inclined to enlarge the petitioners on bail with certain conditions.

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13. Accordingly, the petitioners are ordered to be released on bail, on their executing a personal bond for a sum of Rs.10,000/-



(Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Presiding Officer/Additional District and Sessions Judge, Pudukkottai and on further condition that the petitioners shall report before the respondent police daily twice i.e., at 10.00 a.m and 05.00 p.m until further orders.

sd/-

12/06/2015

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE PRESIDING OFFICER/ADDITIONAL DISTRICT AND SESSIONS JUDGE,
PUDUKKOTTAI
- 2 THE INSPECTOR OF POLICE DHANESHKODI POLICE STATION,
RAMANATHAPURAM DISTRICT.
- 3 THE OFFICER-IN-CHARGE, DISTRICT PRISON, RAMANATHAPURAM,
RAMANATHAPURAM DISTRICT
- 4 THE ADDL.PUBLIC PROSECUTOR MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. CC to M/S.B.SENTHILKUMAR Advocate SR.No.30206
ORDER
IN
CRL OP(MD) No.9694 of 2015
Date :12/06/2015

NA/PPS/12/06/2015/P5/6C