

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.03.2018

Pronounced on : 02.04.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

**Crl.R.C.No.257 of 2018
and
Crl.M.P.No.2876 of 2018**

Gopinath

.. Petitioner

Vs.

State represented by
Inspector of Police,
Central Crime Branch,
Salem City.

.. Respondent

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., against the orders dated 11.01.2018 in C.M.P.No.7224 of 2017 and also order dated 02.02.2018 in C.M.P.No.667 of 2018, on the file of the learned Judicial Magistrate No.II, Salem.

For Petitioner : Mr.S.Kalyanaraman

For Respondent : Mr.G.Ramar
Government Advocate (Criminal Side)

ORDER

The petitioner herein is the 1st accused in Cr.No.22 of 2017 for the offence under Section 420 of IPC on the file of the respondent

police. It is seen from the records that the respondent police has registered a case in Cr.No.22 of 2017 on 24.10.2017 for the offence under Section 420 IPC against the petitioner herein on the basis of the complaint one Ramachandran. The petitioner was arrested by the respondent police on 28.10.2017 and he was remanded to Judicial custody by the learned Judicial Magistrate No.II, Salem.

2.The petitioner moved a bail application in CrI.M.P.No.7224 of 2017 before the learned Judicial Magistrate No.II, Salem and he was enlarged on bail by an order dated 06.12.2017 on condition that he should deposit a sum of Rs.50,00,000/- and to furnish two sureties for a like sum of Rs.50,000/-. As the petitioner has not complied the condition stipulated above, the bail granted to the petitioner was cancelled subsequently.

3.Later, the petitioner filed an application in CrI.M.P.No.239 of 2018 under Section 167(2) of Cr.P.C. claiming bail on the ground that he is liable to be released on bail as the Court had no power to extend the remand after 60 days from the date of arrest, since the respondent police failed to file charge sheet. The said petition was dismissed by the Learned Magistrate by order dated 11.08.2018 on the ground that

the petitioner has not complied with the earlier conditions imposed in CrI.M.P.No.7224 of 2017 and by holding so, the Learned Judge had held that the petitioner is not entitled to get the relief under Section 167(2) Cr.P.C.

4.It is further seen that the petitioner has filed an application under Section 167(2) Cr.P.C. on 02.02.2018 on the date of extension his judicial custody, contending that the Learned Judicial Magistrate has no Jurisdiction to extend remand beyond the period of 60 days, as the respondent has not filed the charge sheet in the above Crime.

5.The said petition was found to be dismissed on 02.02.2018 holding that the petitioner has not complied with the earlier bail conditions. The above said order is challenged in this revision.

6.As far as the bail application under Section 167 (2) of Cr.P.C. is concern it relates to the extension of remand period.

7.At the outset it is needless to say for this Court that the Preposition of Criminal Law is certain and precise as to Scope of an application under sub-section (2) of Section 167 of Cr.P.C.

8. For better appreciation Section 167 of Cr.P.C. is extracted hereunder:

“167. Procedure when investigation cannot be completed in twenty four hours.

(1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen

days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that

(a) the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days ; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released

under the provisions of Chapter XXXIII for the purposes of that Chapter ;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.”

9. Thus the above provision put forward that a person accused of a Criminal Offence is under custody and the investigating agency fails to file a final report within 60 days or 90 days as the case may be, such accused is entitled to file an application on the ground of non filing of Charge sheet. Hence it is the duty of the investigation agency to file the corresponding report either within a period of 90 days or 60 days respectively as regards the case may be.

10. On default of the prosecution to file the charge-sheet within 90 days, accused is entitled to be released on bail forthwith. In other words if no charge-sheet is being submitted within statutory period of 90 days the accused is entitled to be released on bail, under Section

167(2) of the Code of Criminal Procedure.

11. In actual the above legal preposition came to be settled by the Hon'ble Apex Court in the matter of Uday Mohanlal Acharya's case culling out six guidelines, which are 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 on the whole.

2. Under the proviso to the aforesaid sub-section (2) of Section 167, the Magistrate may authorise detention of the accused otherwise than in 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 and furnishes 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 of it forthwith, 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 the bail as directed by the Magistrate, then on a conjoint reading of

Explanation I and the proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in para (a) will not be unauthorised, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished. [pic]

6. The expression "if not already availed of" used by this Court in Sanjay Dutt case 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 para (a) of the 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."

12. The above legal proposition after a Reference made to a larger Bench, once more came to be endorsed by Hon'ble Supreme

Court vide its decision reported in 2014 (9) SCC 457 in the matter of Union of India –Vs- Nirala Yadav, reiterating the third guideline as stated above that

“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.”

13.Yet again the above Law was reiterated by the Hon'ble Apex Court in the matter of Rakesh Kumar Paul Vs State of Assam Vide rendering a finding as following that:

“3. In all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then [Section 167\(2\)\(a\)\(ii\)](#) will apply and the accused will be entitled to grant of 'default bail' after 60 days in case charge-sheet is not filed.”

14.Thus it is obvious from the above decisions that in case of

failure of the investigating agency to comply with the mandatory requirements, it would give an indivisible right to the accused to get benefit contemplated therein.

15.Per contra, the Learned Government Advocate (Criminal side) would submit that the petitioner herein is accused No.1 in the above crime and he is the Managing Director of Amaze Marketing Consultancy and he has cheated the general public to the tune of nearly about Rs.1,46,00,000/- and therefore he should not be enlarged on bail. It is further contented that the petitioner earlier was granted bail, but has not complied with the conditions imposed on him and therefore he is not entitled to get the relief under section 167(2) of Cr.P.C. Hence he prays to dismiss the revision petition.

16.Now coming to the case on hand, the next question arise before this Court as to whether an earlier cancellation of Bail for non adherence of condition would serve as a bar to subsequent application made under sub-section (2) of Section 167 of Cr.P.C.

17.The records reveal that though bail was granted on merits to the revision petitioner under Section 437 of Cr.P.C. earlier, the same

came to be subsequently cancelled for non-compliance of conditions. Whereas it appears that subsequent application is filed under Section 167(2) Cr.P.C. No doubt the Learned Judicial Magistrate is empowered to extend the order of remand under Section 167(2) of Cr.P.C. provided complying with the statutory requirement of filing of final report within the stipulated time.

18.Hence the same can't be equated with the order passed under Section 437 of Cr.P.C. Therefore, it is no doubt the non-compliance of the earlier conditions by the petitioner would never disentitle him to get the right accrued under Section 167(2) of Cr.P.C. It is equally important to state that merely because that the charge sheet is filed at later point of time, it does not defeat the right of accused which has ensued by operation of law under Section 167(2) of the Code of Criminal Procedure.

19.The petitioner has exercised his indefeasible right under Section 167(2) Criminal Procedure Code on expiry of the statutory period, hence this Court finds that he is legally entitled to be released on bail under the provisions of Section 167(2) Criminal Procedure Code.

20. Therefore, this Court has to hesitation to allow this revision by setting aside the orders in C.M.P.No.667 of 2018 dated 02.02.2018 on the file of the Judicial Magistrate No.II, Salem in the case registered in Crime No.22 of 2017 by the respondent on the file of the learned Judicial Magistrate No.II, Salem.

21. However, in the interest of justice, this Criminal Revision is allowed to secure the presence of the accused, the Learned Judicial Magistrate No.II, Salem, is directed to impose reasonable condition as deem fit upon the petitioner to furnish substantial sureties which shall not be onerous. Consequently, connected miscellaneous petition is closed.

02.04.2018

Note: Issue copy on 04.04.2018.

vs

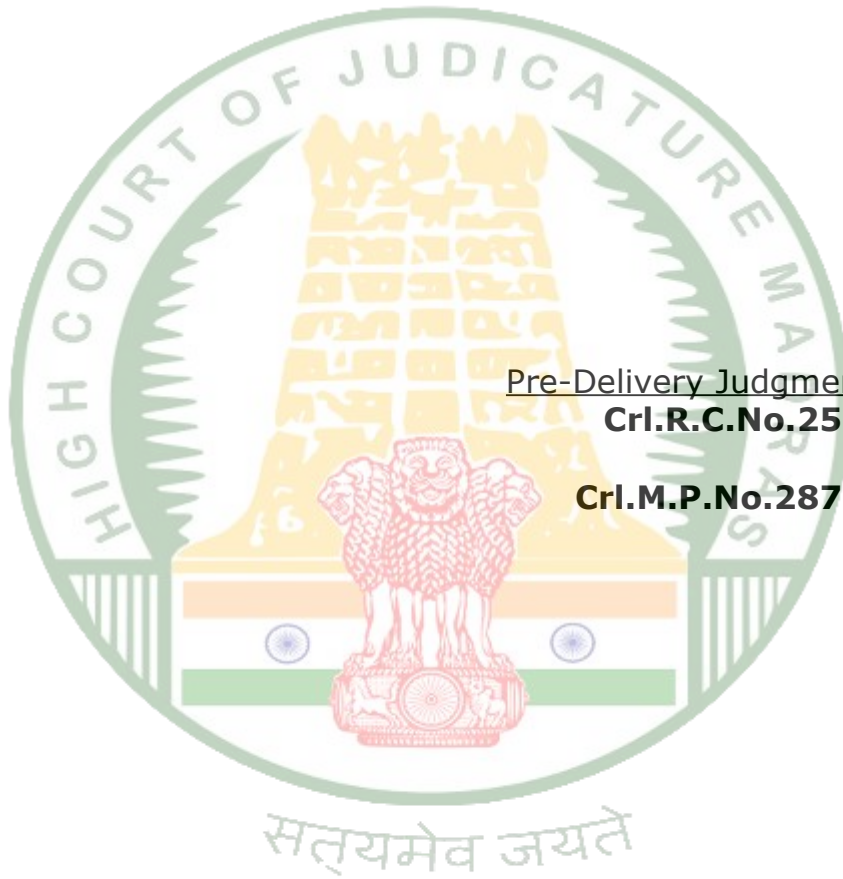
Index: Yes/No
Speaking order/Non-speaking order

To

The Judicial Magistrate No.II,
Salem.

M.V.MURALIDARAN.J,

VS



Pre-Delivery Judgment made in
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