

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.09.2017

DELIVERED ON : 07.03.2018

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Crl.M.P.No.10632 of 2017
in
Crl.R.C.Sr.No.36472 of 2017

1.Muhammed Sahibullah @ Muhammed Samiyallah

2.Sadhik @ Dongili

... Petitioners/Accused 8 & 13

Vs.

State rep. by
The Assistant Commissioner of Police,
Ambattur Circle,
Ambattur, Chennai 600 053.
(Crime No.746 of 2014)

.... Respondent/Complainant

Prayer in Crl.M.P.No.10632 of 2017: Petition filed under Section 5 of the Limitation Act to condone the delay of 925 days in filing the revision petition in Crl.R.C.SR.No.36472 of 2017 against the order dated 10.11.2014 in Crl.M.P.No.4262 of 2014 passed by the Principal Sessions Judge, Thriuvallur.

Prayer in Crl.R.C.No.SR.36472 of 2017: Petition filed under Section 397 r/w 401 of Cr.P.C to call for the records in Crl.M.P.No.4262 of 2014 dated 10.11.2014 passed by the Principal Sessions Judge, Thiruvallur District (now pending in C.C.No.1 of 2016 on the file of the Sub Court for exclusive trial of Bomb Blast cases, Ponnammallee, Chennai) and set aside the same and allow this criminal revision.

For Petitioners : Mr.Radhakrishnan,
for Mr.P.Pugalenthir
For Respondent : Mr.C.Iyyapparaj,
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed by these two petitioners seeking to condone the delay of 925 days in preferring the main revision case against the order passed in Crl.M.P.No.4262 of 2014, on the file of the Principal District and Sessions Court, Tiruvallur, by order dated 10.11.2014, in Crime No.746 of 2014. The first petitioner had been arrested on 07.08.2014 and remanded to judicial custody on 08.08.2014 and the second petitioner was arrested on 08.08.2014 and remanded to judicial custody on 09.08.2014. The alleged offences against

the accused persons were under Sections 341, 307, 302, 153(A) and 120(B) of IPC and under Section 16(1)(a), 17, 18 and 20 of Unlawful Activities (Prevention) Act, 1967 [hereinafter referred to as 'the Act'].

2. It seems that, since these two petitioners had been arrested and remanded to judicial custody on 08.08.2014 and 09.08.2014 respectively, they moved an application before the Sub Court on 10.11.2014 for statutory bail under Section 167(2) of the Code of Criminal Procedure. According to the petitioners, they moved the said petition for statutory bail on the ground that since the statutory period of 90 days of their judicial remand had come to an end on 07.11.2014 and 08.11.2014 they would be entitled to get statutory bail and accordingly, the said petition was moved on 10.11.2014 in CrI.M.P.No.4262 of 2014, before the Principal Sessions court, Tiruvallur.

3. The said application for statutory bail moved by these two petitioners along with other accused persons was heard and dismissed by the learned judge, by his order dated

10.11.2014, on the ground that the learned Public Prosecutor has already filed a petition on 16.10.2014, under Section 43(D) of the Act seeking extension of time for investigation and the same had been allowed by the court extending time for investigation by a further period of three months(90 days), in a whole 180 days. Therefore, under the said circumstances, the petition filed by these two petitioners under Section 167(2) of Cr.P.C., could not be entertained and accordingly, it was dismissed.

4. Though the said order was passed by the Sessions Court on 10.11.2014 itself, if at all, the petitioners were aggrieved over the said order, they could have filed a revision before this court, within a period of 90 days. However, the petitioners had not chosen to file any revision. Belatedly, that too after allowing the delay of 925 days, they have come forward to file the present revision case before this court in CrI.R.C.Sr.No.36472 of 2017 along with the present Criminal Miscellaneous Petition No.10632 of 2017 seeking to condone the delay of 925 days in preferring the revision case.

5. Mr.Radhakrishnan, learned counsel appearing for the petitioners submitted that, these two petitioners are very poor and they had been in judicial custody from the date of their arrest/remand and therefore, they could not move immediately before this Court by filing this revision case in time. Therefore, such a huge delay occurred in preferring the revision case. Unless the delay is condoned, it would cause irreparable loss and damage and immense suffering to them and therefore, on that ground, the learned counsel seeks to condone the delay.

6. Apart from the reason for delay as put forward by the learned counsel for the petitioners, he has also made submissions on merits of the case in the main revision itself, for the consideration of this court.

7. Learned counsel for the petitioners submitted that, though Sub-section 2 of Section 167 of the Code provides for the maximum period of 90 days, within which, the charge sheet shall be filed by the investigating agency, otherwise, under the said provision, the accused shall have the right to seek for a statutory

bail, the said time can be extended in so far as the case against these petitioners and other accused persons, as the alleged offences were not only under the provisions of Indian Penal Code but also under Section 16(1)(a), 17, 18 and 20 of the Act.

8. Learned counsel would further submit that, in view of the said alleged offences under the Act attributed against these petitioners, the proviso under Section 43(D)2(b) of the Act can be pressed into service. Accordingly, if the investigating agency is not able to complete the investigation within a period of 90 days, the prosecution through the public prosecutor by filing a report indicating the progress of the investigation and the specific reason for detention of the accused beyond the period of 90 days, can seek for extension of further period of 90 days, i.e., upto 180 days.

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9. In this context, the learned counsel would further submit that, in so far as this case is concerned and especially in respect of these two petitioners are concerned, till these petitioners filed application on 10.11.2014, the 90 days period

which expired on 07.11.2014 and 08.11.2014 had not been extended with the knowledge of these petitioners and therefore, the learned Sessions Judge ought to have allowed the petition filed by these petitioners seeking statutory bail on 10.11.2014. The learned counsel would further submit that, if that being the position, the reason given by the learned Judge in the impugned rejection order of statutory bail, that on 16.10.2014 itself petition to seek extension of 90 days time had been filed by the Public Prosecutor and that petition also had been ordered by the Court, is not supported by any materials and therefore, on that ground, the petitioners' application ought not to have been rejected and hence, the learned counsel for the petitioners submitted that, the petitioners have got presentable case in the main revision case and therefore, the delay has to be condoned.

10. In fact, the learned counsel for the petitioners has relied upon the judgement of the Honourable Supreme Court in Sanjay Kumar's case reported in **2009(17) SCC 631** in the matter of **Sanjay Kumar Kedia vs. Intelligence Officer, Narcotics Control, Bureau and Another**. The learned counsel

for the petitioner also relied upon the judgement of a Division Bench of this court made in Criminal Appeal No.227 of 2017 dated 08.08.2017 in the matter of **Thangaraj @ Thamizhirasan vs. State rep. by Deputy Superintendent of Police, Hyderabad** reported in **2017 (2) L.W (CrI.) 406**.

11. By relying upon these two decisions, the learned counsel for the petitioners would urge that, if the law laid down in these cases are applied to the facts of the present case, certainly, the petitioners would succeed in their main revision case and therefore, this Court can condone the delay and take up the main revision case and set aside the order of rejection of statutory bail, passed by the Sessions Court by allowing the revision.

12. On the other hand, Mr.C.Iyyapparaj, learned Additional Public Prosecutor has filed a counter affidavit on behalf of the respondent police. In the said counter, it is stated by the respondent that, absolutely, there was no reason in the petition to condone the delay of 925 days in preferring the revision. The

counter would further state that, after investigation, the main charge sheet was filed on 12.01.2015 in S.C.No.1 of 2015, before the Principal District and Sessions Judge, Tiruvallur. Thereafter, the case was transferred to Special Court, Chennai under National Investigation Agency Act, 2008 [in short NIA Act], vide C.C.No.1 of 2016, dated 20.10.2016 and the case was ripe for trial.

13. Relying upon the said averments made by the respondent police in the counter affidavit, the learned Additional Public Prosecutor has submitted that, the petitioners alone are not the accused persons in the case i.e., in Crime No.746 of 2014, there were number of accused persons and in respect of all those persons, whoever arrested and remanded, the remand expired, on the 90th day, well before such expiry of remand, petition seeking extension of remand was filed by the learned Public Prosecutor, before the Sessions Court, and the said court also after having considered the reasonings given by the Public Prosecutor on behalf of the investigating agency, had extended the remand period, for further period of 90 days.

14. Learned Public Prosecutor would also submit that, within the extended period of further 90 days i.e., well before the expiry of 180th day, charge sheet has been filed on 12.01.2015 itself, which has been taken on file by the Sessions Court and subsequently, the case has been transferred to the Special Court under the NIA Act as referred to above.

15. Therefore, the learned Additional Public Prosecutor would submit that, the reasons stated or the grounds urged by the petitioners seeking indulgence of this court against the order which is impugned herein passed by the learned Judge, rejecting the plea of the petitioners for grant of statutory bail under Section 167(2) of the Code, cannot be entertained as there is no justifiable reason on the side of the petitioners to seek for statutory bail. Hence, the learned Additional Public Prosecutor seeks for dismissal of this petition.

16. I have considered the said submissions made by both sides and also perused the materials placed before this Court.

17. Though it is a petition to condone the delay of 925 days in preferring the Criminal Revision case against the order of rejection passed by the Sessions Court, rejecting the statutory bail under Section 167(2) of the Criminal Procedure Code, since some issues were addressed by the learned counsel for the petitioners on the merits of the main revision case, those arguments also are to be met and adverted to.

18. Though under Section 167(2) proviso of the Code, the period of 15 days, 90 days and 60 days had been given for various offences as a maximum remand period, and the said Section 167 shall also be made applicable in cases where offences are made out under the Act, Section 43(D) of the said Act has given the extended period of remand. In order to appreciate the same, the relevant portion of Section 43(D) of the said Act is extracted hereunder:

"43-D: MODIFIED APPLICATION OF CERTAIN PROVISIONS OF THE CODE:

(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be

deemed to be a cognizable offence within the meaning of clause (c) of Section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act Subject to the modification that in Sub-section(2),--

(a) the references to "fifteen days" "ninety days" and sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:-

Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with 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 ninety days, extend the said period upto one hundred and eighty days;

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating that the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.

(3)....."

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19. Therefore, it becomes clear that the 90 days period can be extended upto 180 days, under first proviso to sub clause (b) of Section 43(D) (2) of the Act.

20. Here in the case in hand, the Public Prosecutor has moved an application in CrI.M.P.No.3994 of 2014, before the Sessions Court seeking extension of remand period from 90 days to 180 days and the relevant portion of the similar petition filed by the Public Prosecutor is extracted hereunder:

"The investigation agency is unable to complete the investigation within the period of 90 days as stipulated under Section 43 D(2)(a) of U.L.P.Act. Since the breakthrough of this case reveals an involvement of so many accused. Recently on 12.10.2014 one more accused saghe Ameer @ Vaikarai sagul @ Kuttikulam was arrested. Based on his information so many facts to be detected by the investigating agency. So it is not possible to complete the investigation within the said period of 90 days. Moreover, their remand extension expires on 20.10.2014."

21. Though the aforesaid contention is available in the petition filed by the Public Prosecutor seeking extension of remand from 90 days to 180 days in respect of two other accused in the same case, and the said petition alone has been filed by the petitioners in the typed set of papers, the said submissions/contentions made in the said petition can be taken into account as similar petitions seems to have been filed by the

Public Prosecutor seeking extension of time. However, the reasoning given by the learned Sessions Judge in the impugned order dated 10.11.2014 reads as follows:

"The learned Public Prosecutor has filed a petition on 16.10.2014 under Section 43(D) of the UAP Act seeking extension of time for investigation and the same has been allowed by this Court, extending time of investigation by a further period of three months. Under the above circumstances, the petition filed under Section 167(2) of Cr.P.C. cannot be entertained. Hence, the petition is dismissed."

22. With this factual matrix whether the petitioners are entitled to seek statutory bail under Section 167(2) of the Code, can be gone into.

23. Learned counsel for the petitioners since has mainly relied upon the judgement of the Honourable Apex Court in Sanjay Kumar Kedia's case cited supra, this court has considered the said judgement of the Honourable Apex Court where, the earlier judgement of the Honourable Supreme Court in **Hitendra Vishnu Thakur vs, State of Maharashtra** reported in **1994(4) SCC 602** was considered. Further, in a recent decision in **Rambeer Shokeen vs. State of NCT of Delhi** in

Crl.A.No.2181-2182 of 2017 dated 31.01.2018 [**2018 SCC on line 57**] the Judgement of the Honourable Apex Court in Hitendra Vishnu Thakur's case cited supra has been considered. The Honourable Apex Court in Rambeer Shokeen's case cited supra, taking the precedent of **Sanjay Dutt vs. State through CBI [1994(5)SCC 410]** case has observed as follows:

"23. The legal position has been expounded by the Constitution Bench of the Supreme Court in the case of *Sanjay Dutt* (supra), in particular, in paragraph 48 as under:

"48. We have no doubt that the common stance before us of the nature of indefeasible right of the accused to be released on bail by virtue of Section 20(4)(bb) is based on a correct reading of the principle indicated in that decision. **The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan.** The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished

the moment challan is filed because Section 167 CrPC ceases to apply. **The Division Bench also indicated that if there be such an application of the accused for release on bail and also a prayer for extension of time to complete the investigation according to the proviso in Section 20(4)(bb), both of them should be considered together. It is obvious that no bail can be given even in such a case unless the prayer for extension of the period is rejected. In short, the grant of bail in such a situation is also Subject to refusal of the prayer for extension of time, if such a prayer is made.** If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. **It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order.** (See *Naranjan Singh Nathawan v. State of Punjab* [1952 SCR 395 : AIR 1952 SC 106 : 1952 Cri LJ 656]; *Ram Narayan Singh v. State of Delhi* [1953 SCR 652 : AIR 1953 SC 277 : 1953 Cri LJ 1113] and *A.K. Gopalan v. Government of India* [(1966) 2 SCR 427 : AIR 1966 SC 816 : 1966 Cri LJ 602].)"

(emphasis supplied)

24. Further, the conclusion articulated in paragraph 53, makes it clear that the decision in *Hitendra Vishnu Thakur* (supra) must be understood accordingly. It observed thus:

"53. As a result of the above discussion, our answers to the three questions of law referred for our decision are as under:

(1) xxx xxx xxx xxx

(2)(a) Section 20(4)(bb) of the TADA Act only requires production of the accused before the court in accordance with Section 167(1) of the Code of Criminal Procedure and this is how the requirement of notice to the accused before granting extension beyond the prescribed period of 180 days in accordance with the further proviso to clause (bb) of Sub-section (4) of Section 20 of the TADA Act has to be understood in the judgment of the Division Bench of this Court in *Hitendra Vishnu Thakur*. The requirement of such notice to the accused before granting the extension for completing the investigation is not a written notice to the accused giving reasons therein. Production of the accused at that time in the court informing him that the question of extension of the period for completing investigation is being considered, is alone sufficient for the purpose.

(2)(b) The 'indefeasible right' of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in *Hitendra Vishnu Thakur* is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure.

The right of the accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage."

25. The aforementioned opinion has been expressed by the Constitution Bench in the context of question No. 2 formulated in paragraph 2 of the judgment as under:

"2. The questions of law indicated in the said order of reference, to be decided by us, are three, namely:

(1) xxx xxx xxx xxx

(2) The proper construction of clause (bb) of Sub-section (4) of Section 20 of the TADA Act indicating the nature of right of an accused to be released on bail thereunder, on the default to complete investigation within the time allowed therein;

(3) xxx xxx xxx xxx"

26. It is thus clear that no right had accrued to the appellant before filing of the charge-sheet; at best, it was an inchoate right until 8th March, 2017. Resultantly, the question of granting statutory bail after filing of charge-sheet against the appellant and moreso during the pendency of report/application for extension of time to file charge-sheet was impermissible. In other words, the application for grant of statutory bail filed by the appellant on 2nd March, 2017, even if pending, could have been taken forward only if the prayer for extension of period was to be formally and expressly rejected by the Court.

27. As held by the Constitution Bench of this Court, the consideration of application for grant of statutory bail in a situation, as in the present case, was dependent on rejection of prayer of the Additional Public Prosecutor for extension of time. When such prayer is made, it is the duty of the Court to

consider the report/application for extension of period for filing of the charge-sheet in the first instance; only if it was to be rejected could the prayer for grant of statutory bail be taken forward. In no case, the hearing on statutory bail application precede the consideration of prayer for extension of the period for filing of the charge-sheet made by the Additional Public Prosecutor."

24. After analysing the issue in entirety, ultimately, the Honourable Apex Court has concluded as follows:

31. Taking overall view of the matter, therefore, it is noticed that the Additional Public Prosecutor had Submitted his report to the concerned Court for extending time until 15th March, 2017, to file the charge-sheet. That report was Submitted on 28th February, 2017, before expiry of the initial statutory period of 90 days for filing of the charge-sheet against the appellant. That request was disposed of by the Sub Court on 8th March, 2017 as infructuous, after the charge-sheet against the appellant was Submitted in Court. Until 8th March, 2017, the appellant was sent to judicial custody by the competent Court pending consideration of request of the Additional Public Prosecutor for extension of time to file the charge-sheet. The Court, in law, could not have considered the prayer for grant of statutory bail of the appellant until 8th March, 2017, on which date the charge-sheet was already filed against the appellant in the concerned Court. Further, the High Court considered the circumstances in which the order came to be passed by the Sub Court on 8th March, 2017. In our opinion, it rightly held that the said request could not have been closed as having become infructuous. Rather, it was

the duty of the Court to decide the request on its merits and only upon its rejection, proceed to consider the prayer for grant of statutory bail. The High Court, therefore, noticed that it had two options: first, to remit the matter back to the Sub Court for a proper decision on the said report of the Additional Public Prosecutor dated 28th February, 2017 or second, to consider the same itself and pass appropriate orders thereupon. It chose to adopt the second option, which was thought desirable and not objected to by the appellant as can be discerned from the noting in paragraph 75 of the impugned judgment. The High Court, in paragraph 76 of the impugned judgment, then proceeded to consider the prayer for extension of time made in the report Submitted by the Additional Public Prosecutor on 28th February, 2017, and, for tangible reasons, found the same to be genuine and appropriate. Having thus held, it allowed the said request by extending the time to file charge-sheet till 8th March, 2017. We find no infirmity in the said approach of the High Court. Having extended the time till 8th March, 2017 and as the charge-sheet was already filed on that date, the question of considering the prayer for grant of statutory bail of the appellant vide application dated 2nd March, 2017, on the ground of default, did not survive for further consideration. Right to grant of statutory bail would have enured to the accused only after rejection of the request for extension of time prayed by the Additional Public Prosecutor. As a result, the High Court rightly rejected the prayer for grant of statutory bail pursued by the appellant vide application dated 2nd March, 2017. We are in full agreement with the said conclusion reached by the High Court.

32. *A priori*, these appeals must fail. Indeed, rejection of the prayer for grant of statutory bail will not come in the way of the appellant in pursuing his remedy for grant of regular bail on merit.

The appellant is free to pursue that remedy which may be considered on its own merits in accordance with law.

33. Accordingly, these appeals are dismissed being devoid of merits."

(emphasis is mine)

25. In view of the legal position declared by the Honourable Apex Court in Sanjay Dutt Case cited supra and amplified in the recent judgement, the right of the accused seeking statutory bail under Section 167(2) of the Code is limited or restricted till the extension petition seeking extension of remand from 90 days to 180 days is pending consideration before the court concerned. It seems, even if the initial statutory period of 90 days is expired and until a petition to seek extension of remand filed before the Court is not disposed of, and the petition for such extension is pending, even then, if at all any petition to seek statutory bail under Section 167(2) of the Code is filed, the same shall be considered and decided only after the disposal of the petition seeking extension of remand. In otherwords, once the extension of remand petition is rejected or the remand is not extended beyond the 90 days, because of non-filing of extension

petition, the accused person shall be entitled to seek for statutory bail under Section 167(2) of the Code.

26. Here in the case in hand, it was recorded by the learned Judge that on 16.10.2014 itself, petition had been filed by the Public Prosecutor with sufficient reasons seeking for extension of remand for 180 days. The learned Judge also has recorded that, the court has extended the remand upto 180 days on the said petition filed by the Public Prosecutor. However, the said fact is disputed by the learned counsel for the petitioners stating that no copy of the petition nor an order extending the remand beyond 90 days had been served on the accused/petitioners and therefore, according to the learned counsel for the petitioners, in the eye of law, there was no such extension of remand beyond 90 days. That being the position, the remand of these petitioners beyond 90 days is unauthorised and hence, they are entitled to be considered for release on bail statutorily under Section 167 of the Code, he contended.

27. This arguments or plea made by the learned counsel for the petitioner can be safely rejected in view of the law laid down by the Honourable Apex Court in *Sanjay Dutt's* case cited supra as well as the law laid down in the latest case in *Rambeer Shokeen* cited supra. Assuming that the petition seeking extension of remand filed by the Public Prosecutor had not been disposed as on 10.11.2014, the date on which, these petitioners along with other accused persons filed a petition under Section 167(2) of the Code, unless such petition filed by the Public Prosecutor seeking extension of remand beyond 90 days is decided, this petition filed by these petitioners and other accused persons under Section 167(2) of the code shall not required to be considered and therefore, on that score also, the ground urged by the petitioners cannot be tenable and therefore, it is to be rejected. Moreover, in the latest case i.e., *Rambeer Shokeen* cited supra, considering the facts of the said case therein, the Honourable Apex Court has made an observation that the appellant therein can pursue the remedy of seeking regular bail on merits. Here in the case in hand, as rightly

pointed out by the learned Additional Public Prosecutor the charge sheet was filed on 12.01.2015 and the case was transferred to the Special Court under National Investigation Agency Act, on 16.09.2017 and admittedly, the petitioners had moved this Criminal Revision case after 925 days. Instead, they could have moved before the court below seeking for regular bail on merits, if they were advised to do so.

28. Learned counsel for the petitioner also relied upon the judgement of this Court in CrI.A.No.227 of 2017 in Thagarajan @ Tamilarasan vs. State rep. by the Deputy Superintendent of Police [2017(2)L.W.CrI.406]. I have perused the said judgement also, where, the Division Bench at paragraph 15 of the judgement has observed that, the Public Prosecutor filed the report seeking extension of judicial period beyond 90 days but, there was no specific order of the Special Judge, extending the period of judicial custody beyond 90 days on the said report. The Division Bench further observed that since the extension of remand is not an empty formality as per proviso clause to Section 43-D of the Unlawful Activities

(Prevention) Act, 1967, the Special Judge is to be satisfied that the report of the Public Prosecutor for further detention of the accused by applying his judicial mind after affording sufficient opportunity to the accused and pass orders about the detention.

29. Only in view of the said factual matrix the Division Bench has taken a view that the accused persons shall be enlarged on bail by way of statutory bail. However, in this case, it is asserted by the learned Judge in the order impugned itself that he has passed orders extending the remand period on the application filed by the Public Prosecutor. Therefore, since the facts of the case in the Division Bench judgement is different from the present one, which this court dealt with, the said judgement cannot be applied to the present case.

30. For all these reasons and discussions made above, this Court is not inclined to entertain this petition to condone the delay as no useful purpose would be served, even if the delay is condoned. As on the merits of the case also since reliance has been placed before this court and it was considered accordingly,

this condone delay petition is dismissed as devoid of merits.
Consequently, connected Crl.R.C.Sr.No.36472 of 2017 is closed.

07.03.2018

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

To,

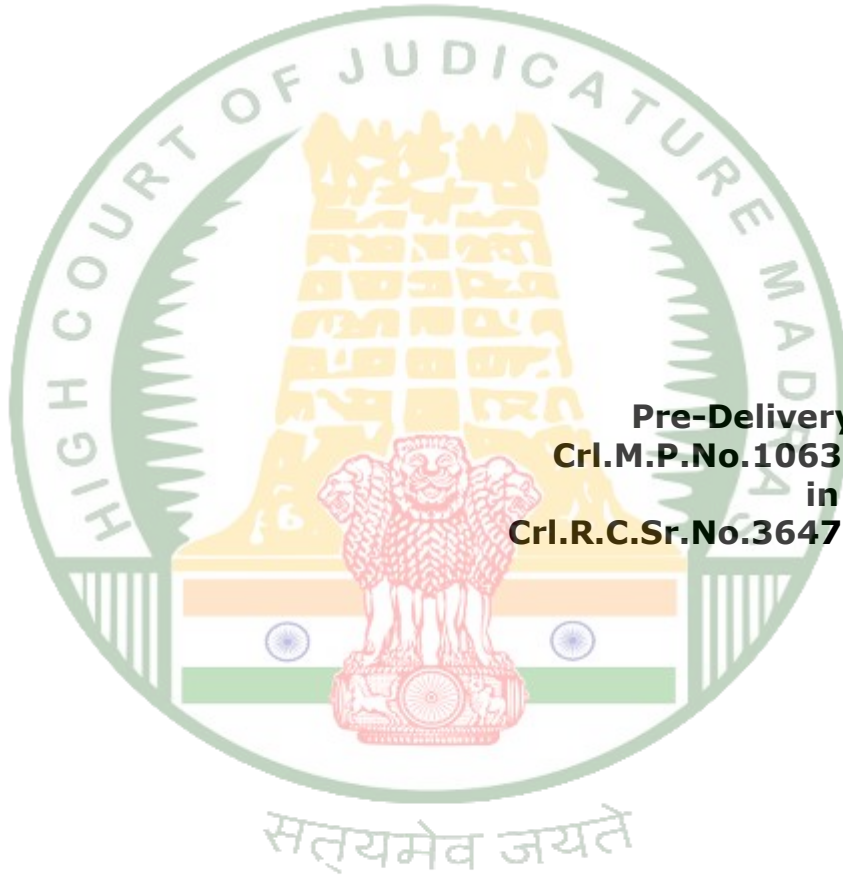
1. The Principal Sessions Judge, Thriuvallur.
2. The Sub Court for exclusive trial of
Bomb Blast cases, Ponnammallee, Chennai.



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R.SURESH KUMAR, J.

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**Pre-Delivery Order in
Crl.M.P.No.10632 of 2017
in
Crl.R.C.Sr.No.36472 of 2017**

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