

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.2600 of 2019

1.S.J.John Basil
2.J.Mini Thresiya

... Petitioners

Vs.

State rep. by its
Deputy Superintendent of Police,
EOW-II, Guindy, Chennai-600 032

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to set aside the order passed in Crl.M.P.No.52 of 2019 dated 21.01.2019 in Crime No.1 of 2016 pending on the file of the Deputy Superintendent of Police, EOW - II, Guindy, Chennai by the Hon'ble Special Judge under TNPID Act, Chennai insofar as dismissing the petition filed by the petitioners under Section 167(2) a (ii) of Cr.P.c. Forthwith in accordance with law.

For Petitioners: Mr.M.Ravi Kumar

For Respondent : Mr. M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed to set aside the order passed in Crl.M.P.No.52 of 2019 dated 21.01.2019 in Crime No.1 of 2016 pending on the file of the Deputy Superintendent of Police, EOW - II, Guindy, Chennai by the Hon'ble Special Judge under TNPID Act, Chennai insofar as dismissing the petition filed by the petitioners under Section 167(2) a (ii) of Cr.P.c. Forthwith in accordance with law.

2. The case of the prosecution is that the defacto complainant while was running a vegetable shop, one, Mr.Rajesh introduced himself as Manager of Chitiram Chits Private Limited and lured him to join in the chits conducted by the such company accordingly he joined in the chit. On 25.07.2014, his bid offer was accepted and he was also assured for payment of Rs.1,40,000/-, but the same was not paid. However, he paid the entire chit amount for the entire 20 months, thereafter he was issued a cheque dated 15.09.2015 for Rs.1,90,000/-, but the same

was returned as unpaid. Thereafter he was paid a part amount of Rs.20,000/-, and a cheque for Rs.40,000/-, which was also returned as unpaid. Hence, the complaint.

3. The learned counsel for the petitioner would submit that based on the complaint the petitioner was arrested on 08.11.2018 and remanded to judicial custody on 09.11.2018 and case was registered under Sections 406, 420 & 120(B) of I.P.C. & Section 5 of TNPID Act in Crime No.1 of 2016 on 09.11.2018. Thereafter after the expiry of 60 days from registration of the case, the petitioner filed a petition in Crl.M.P.No.52 of 2019 under Section 167(2)(a) (ii) of Cr.P.C. for "default bail" before the trial court since the statutory period for filing charge sheet as against the petitioners came to be over on 08.01.2019, wherein notice was ordered. After hearing both the sides, the same was dismissed mainly on the ground that the case is attracting Section 5 of TNPID Act wherein the maximum punishment is 10 years and therefore before lapse of 90 days, such petition cannot be accepted. He has relied upon the judgement rendered in the case of Rakesh Kumar Paul Vs. State of Assam in Special Leave to Appeal (Crl).No.2009 of 2017, the Hon'ble Apex Court has held further submits that an accused is entitled to statutory bail (default bail) under Section 167(2) (a) (ii) of Cr.P.C. if the police failed to file the charge sheet within 60 days of his arrest for the offence punishable with "imprisonment up to 10 years. He has also relied upon the recent judgment passed in Crl.O.P.No.30108 of 2018 of this Court, wherein it is held as at Paragraph 5 as follows:

"5.This Court has carefully considered the submissions made on either side. The statutory bail granted to the petitioner is a matter of right provided under Section 167(2) of Cr.P.C. Therefore while granting a statutory bail, Court should not impose onerous conditions and defeat the very right given to the accused person under the code. In the considered view of this Court, the conditions imposed by the Court below are onerous and incapable of being complied with the petitioner. Therefore the same required interference by this Court."

Hence, the petitioners ought to have been considered for statutory bail. He further submits that the petitioners had also contended that the petitioners have right to be granted bail without condition. In this regard, the court below had stated that the court has its discretion to impose conditions while granting bail. He relied upon the judgment passed by this Court in the case of Shanmugam @ Karthick Vs. The Inspector of Police, Central Crime Branch-1, Job Racket, Team - VIII, Chennai. Therefore he sought for setting aside the order passed in Crl.M.P.No.52 of 2019 dated 21.01.2019.

4. The learned Additional Public Prosecutor would submit that the court below has rightly rejected the said petition filed by the petitioners mainly on the ground that Section 4 of TNPID Act attracts maximum punishment is 10 years and hence statutory bail cannot be considered immediately even after 60 days and before 90 days. Hence he sought for dismissal of this petition.

5. The question involved in this petition is whether the petitioner is entitled for statutory bail under Section 167 (2) Cr.P.C. In this regard, this Court rely upon the judgement rendered in the case of Rakesh Kumar Paul Vs. State of Assam in Special Leave to Appeal (Crl).No.2009 of 2017, the Hon'ble Apex Court has held further submits that an accused is entitled to statutory bail (default bail) under Section 167(2) (a) (ii) of Cr.P.C. if the police failed to file the charge sheet within 60 days of his arrest for the offence punishable with "imprisonment up to 10 years.

6. Another point raised by the learned counsel for the petitioners is that the petitioners are entitled for statutory bail without any conditions. It is relevant to read the Section 167(2) Cr.P.C. as follows:

"Section 167(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, 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 authorise 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 authorise 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 subsection shall be deemed to be 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 "

It is also relevant to refer the order passed in in CrI.O.P.No.18056 of 2006 dated 29.09.2000 reported in MANU/TN/0913/ 2000 in the matter of Baskar and others Vs. State and others, wherein it is held as follows:

"14. The failure to file charge sheet or final report before the period prescribed under Section 167(2) Code of Criminal Procedure will automatically result in releasing the accused on bail subject to only two conditions that there is an application for bail from the person in custody and he must be in a position to offer adequate sureties. The bail cannot be denied to him on an other ground less on the ground that on merits the petitioners do not deserve to be released on bail. The provision 167(2) Code of Criminal Procedure has been introduced in the code with a view to avoid unnecessary detention of persons or the accused in prison under judicial custody. Legislature in its wisdom has thought that the prosecution must be compelled to come out with a final report or charge sheet with expiry of 60 days or 90 days depending upon the gravity of the offence and intended period on punishment and in case the prosecution takes more time than that the legislature wanted to mitigate, the rigor of the remand by making release on bail compulsorily after the expiry of the said period. The rulings made by the Supreme Court has further clarified this position by stating that a person in judicial custody

must exercise the option of coming out of bail by making an application on expiry of the period before laying of charge sheet and he cannot come leisurely to the Court after the charge sheet has been filed even though the charge sheet is filed after expiry of the prescribed period in 167(2) Code of Criminal Procedure. Neither the Legislature nor the Apex Court in any of the ruling have stated that any exemption can be made in such a case where application is filed in accordance with Section 167(2). So once the bail application is filed after expiry of the prescribed period and before challan is filed, the Court has no business to look into the gravity of the crime committed to justify the judicial custody beyond the prescribed period under Section 167(2) Code of Criminal Procedure.

15. It is not as if the difficulty of prosecution agency in certain cases to file final report within the period because of the voluminous evidence or records or difficulty in gathering evidence in case of complicated matters has been overlooked. Neither the Act nor the Apex Court had held that no charge sheet can be laid after expiry of prescribed period. In fact the Supreme Court has pointed out in those rulings that even if the accused has been released on bail by having recourse to 167(2) and the charge sheet is subsequently laid after expiry of the prescribed period the prosecution can ask for cancellation of bail on merits and this cancellation also cannot be automatically given to the prosecution if a petition for that is filed after filing the charge sheet. The Court is not expected to oblige the prosecution by keeping an application filed under Section 167(2) Code of Criminal Procedure Pending which has been filed after expiry of the period and giving opportunity to the prosecution to file charge sheet in the meantime and thereafter disposing the application holding that charge sheet has been already filed even though after expiry of the period."

Referring the above two judgments, this Court has recently rendered order in the case of Shanmugam @ Karthick Vs. the State

rep. By the Inspector of Police, Central Crime Branch-1, Job Racket, Team - VIII, Chennai, wherein this Court has held as follows:

"8. In the case on hand, admittedly, the charge sheet has not been filed by the respondent police. Therefore the petitioner is entitled to be released on statutory bail under Section 167(2) Cr.P.C. When it being so, the right to be released under Section 167(2) Cr.P.C. is an indefeasible right and such a right cannot be extinguished by imposition of onerous conditions."

7. Admittedly, in the case on hand even after the expiry of 60 days, the respondent did not file charge sheet. Hence, considering the facts and circumstances of the case and also the above said judgments, this Court is inclined to allow the prayer sought for by the petitioners and as such the order passed in CrI.M.P.No.52 of 2019 dated 21.01.2019 in Cr.No.1 of 2016 pending on the file of the the Deputy Superintendent of Police, EOW-II, Guindy, Chennai by the Hon'ble Special Judge under TNPID Act, Chennai is set aside.

8. Accordingly, the petitioners are ordered to be released on bail on their executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties, each for a like sum to the satisfaction of the learned Special Judge under TNPID Act, Chennai and on further conditions that:-

[a] the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioners shall report before the Magistrate concerned daily at 10.30 a.m. until further orders.

[c] the petitioners shall not abscond either during investigation or trial.

[d] the petitioners shall not tamper with evidence or witness either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioners in accordance with law as if the conditions have been imposed and the petitioners released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560].

[f] If the accused thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

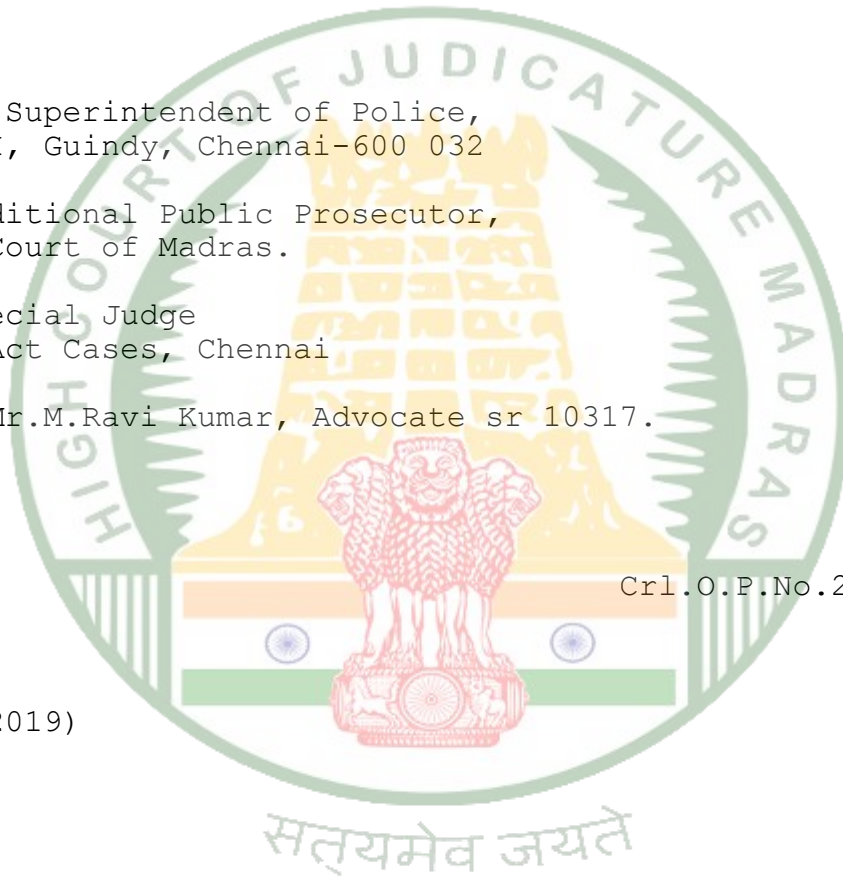
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To

1. Deputy Superintendent of Police,
EOW-II, Guindy, Chennai-600 032
 2. The Additional Public Prosecutor,
High Court of Madras.
 3. The Special Judge
TNPID Act Cases, Chennai
- +1 CC to Mr.M.Ravi Kumar, Advocate sr 10317.

Crl.O.P.No.2600 of 2019

MPI (CO)
SP (08/02/2019)



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