

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.RC.No.212 of 2020

Lakshmanan

... Petitioner /Petitioner/Accused/
A-8

Vs.

The State rep. by
Inspector of Police,
EOW-II, V.K.Industries Estate,
Guindy, Chennai.
Crime No.05 of 2019.

... Respondent/Respondent/
Complainant

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C, to call for the records in pursuant to rejection order passed in S.R. No.42 of 2020 in Crime No.05 of 2019 on the file of the Special Judge TNPID Court vide order dated 29.01.2020 and set aside the same and enlarge petitioner on mandatory bail under Section 167 (ii) of Cr.P.C.

For Petitioner : Mr.M.Sathish Kumar

For Respondent : Mr.T.Shanmugarajeswaran, GA(Crl.Side)

ORDER

This Criminal Revision Case has been filed by the Accused No.8 against the rejection order passed by the Special Judge under TNPID Act, Chennai in SR.No.42 of 2020 in Cr.No.5 of 2019 dated 29.01.2020.

2. The petitioner herein was arrested and remanded to judicial custody on 22.11.2019 for the alleged offence under Sections 420, 406 and 109-B IPC read with Section 5 of TNPID Act in Cr.No.5 of 2019 on the file of the respondent. The petitioner herein has filed a petition under Section 167 (2) Cr.P.C on 29.01.2020 seeking statutory bail. The Trial Court has rejected the said petition stating that already he has filed a bail application in Crl.MP.No.1720 of 2019 in which the Trial Court has passed an order on 03.01.2020 to enlarge the petitioner on bail with a condition to deposit a sum of Rs.50,00,000/- and without complying the said condition and without challenging the

said order by filing revision, the petitioner is not entitled to file a petition under Section 167(2) Cr.P.C seeking statutory bail. Challenging the same, the petitioner has filed the present Criminal Revision Case.

3. The learned counsel for the petitioner has submitted that the petitioner was not able to comply with the condition imposed by the Trial Court in CrI.MP.No.1720 of 2019 which was filed under Section 437 Cr.P.C. He further submitted that the earlier order passed in the bail petition on merit will not stand in the way of filing statutory bail petition under Section 167(2) Cr.P.C. In support of the aforesaid contention he relied upon the decision in Umadevi Vs. The State rep by, The Inspector of Police, E.O.W - II, Coimbatore, 2019(1) MWN (Cr.) 244.

4. Per contra, the learned Government Advocate (CrI.Side) has submitted that the petitioner has not only complying with the conditions imposed by the Trial Court in the previous bail petition in CrI.MP.No.1720 of 2019 but also the order passed by this Court in this Criminal Revision case dated 19.02.2020. He further submitted that this Court by the order dated 19.02.2020, has observed that "the learned counsel for the petitioner has submitted that the petitioner is now inclined to comply the conditional order, passed by the Court below in CrI.MP.No.1720 of 2019 by depositing a sum of Rs,25,00,000/- and hence he seeks some time to comply with the said order. Considering the said submissions, this Court has granted time till 21.02.2020 to deposit the said amount. He further submitted that the said undertaking also has not been keep up by the petitioner. He further submitted that for the offence under Section 5 of the TNPID Act, the period of sentence prescribed is imprisonment which may extend to 10 years. Hence, the petitioner is not entitled to seek statutory bail under Section 167 (2) Cr.P.C before expiry of 90 days and therefore he prayed to dismiss this petition.

5. Section 5 of the TNPID Act reads thus:-

"5. Default in repayment of deposits and interests honouring the commitment:- Notwithstanding anything contained in Chapter II, where any Financial Establishment defaults the return of the deposit or defaults the payment of interest on the deposit, [or fails to return in any kind, or fails to render service for which the deposit has been made], every person responsible for the management of the affairs of the Financial Establishment shall be punished with imprisonment for a term which may extend to ten years and with fine which may extend

to one lakh of rupees and such Financial Establishment is also liable for fine which may extend to one lakh of rupees]"

6. In this context, it would be relevant to refer to the decision in *Rajeev Chaudhary Vs. State (N.C.T.) of Delhi* (Appeal (crl.) 606 of 2001 dated 04.05.2001) wherein the Apex Court has held as follows:

"167. Procedure when investigation cannot be completed in twenty-four hours (2)..

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) Further, Section 386 of IPC provides as under:

386. Extortion by putting a person in fear of death or grievous hurt. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(Emphasis added) From the relevant part of the aforesaid decisions, it is apparent that pending investigation relating to an offence punishable with imprisonment for a term not less than 10 years, the Magistrate is empowered to authorise the detention of the accused in custody for not more than 90 days. For rest of the offences, period prescribed is 60 days. Hence in cases, where offence is punishable with imprisonment for 10 years or more, accused could be detained up to a period of 90 days. In this context, the expression not less than would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or

more. Under Section 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context also if we consider clause (i) of proviso (a) to Section 167(2), it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be imprisonment for less than 10 years. Under Section 386 of the IPC, imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years".

7. From the aforesaid decision, it is clear that clause (i) of proviso (a) to Section 167 (2) of Cr.P.C., would apply in case where investigation relates to an offence punishable with death; imprisonment for life and imprisonment for a term of not less than 10 years. It would not cover the offence for which punishment could be imprisonment which may extend to 10 years. Under Section 5 of the TNPID Act the punishment provided is imprisonment for a term which may extend to ten years and with fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, in view of the aforesaid decision of the Hon'ble Supreme Court, it could not be said that minimum sentence would be 10 years or more. Therefore, this case falls under clause(ii) of proviso (a) to Section 167 (2) of Cr.P.C., That is after expiry of 60 days the accused is entitled to seek default bail.

8. In Umadevi Vs. State rep by Inspector of Police, EOW-II, Coimbatore (cited supra), this court after referring to judgments of the Hon'ble Supreme Court, has observed in paragraph No.17 as follows:

"17. Insofar as the first issue is concerned, even though the petitioner was granted bail, by considering the merits of the case and by imposing certain conditions, the same was not able to be complied with by the petitioner and as a result of the same the petitioner was not able to come out on bail. The same will not stand in the way of the

petitioner to file a fresh bail petition under Section 167(2) of Cr.P.C, once the statutory period expires and no final report is filed by the respondent-police. The earlier order has worked itself out and the petitioner is now armed with a statutory right to seek bail as a matter of right. The Accused person should be released on bail if she is prepared to and does furnish the bail which has been termed by judicial pronouncements to be "compulsive bail" and such bail would be deemed to be a bail under chapter XXXIII. Therefore, the petitioner has every right to invoke the provisions of Section 167(2) of the Code of Criminal Procedure, and seek for Statutory Bail independently".

9. From the aforesaid decision, it is clear that even though the accused was granted bail on merits by imposing certain conditions, the same was not able to be complied with by the petitioner and as a result of the same the petitioner was not able to come out on bail. The same will not stand in the way of the accused to file a fresh bail petition under Section 167(2) Cr.P.C., once statutory period expires and no final report is filed by the respondent-police. In this case admittedly, the respondent has not filed any charge sheet so far and as such he is entitled to get statutory bail under Section 167(2) Cr.P.C.

10. In the result, this Criminal Revision Petition is allowed. The order passed by the learned Trial Court in Sr.No.42 of 2020 in Cr.No.5 of 2019 dated 29.01.2020 is set aside. The Trial Court is directed to release the petitioner on bail on the following conditions:

a) the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties, each for a like sum to the satisfaction of the Special Judge TNPID Court.

b) 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.

c) the petitioner shall report before the Trial Court on all working days at 10.30 a.m., until further orders.

d) the petitioner shall not abscond either during

investigation or trial.

e) the petitioner shall not tamper with evidence or witness either during investigation or trial.

f) On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner 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].

g) If the accused thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.

Sd/-
Asst.Registrar (CCC)

/true copy/
Sub Asst. Registrar

drl
To

1. The Special Judge under TNPID Court,
Chennai.

2. Inspector of Police,
EOW-II, V.K.Industries Estate,
Guindy, Chennai.

3. The Public Prosecutor,
High Court, Madras.

copy to

The Section Officer
Criminal Section
High Court Madras

+1 cc to Mr.M.Sathish Kumar Advocate sr19839

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