

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.09.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.OP.No.4712 of 2020

Venkatesan @ Senu @ Srinivasan @ Baskaran
@ Radio @ Prakasam

.... Petitioner

Vs.

1. The Superintendent of Prison,
Central Prison-1, Puzhal,
Chennai 600 066

2. The Inspector of Police,
Q-Branch CID Police Station,
Perambalur District.

... Respondents

Prayer :- This Criminal Original Petition is filed under Section 428 r/w 482 of Cr.P.C. praying to direct the respondent to set off the petitioner's remand period from 24.03.2005 to 28.02.2006, from 22.04.2008 to 22.04.2009 and from 21.04.2014 to 23.12.2014 as an undertrial prisoner produced under P.T. Warrant in SC.No.2 of 2002 (on the file of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai).

For Petitioner : Mr.P.Pugalenth

For Respondents : Mr.S.Karthikeyan,
Additional Public Prosecutor

ORDER

This petition has been filed to direct the respondent to set off the petitioner's remand period from 24.03.2005 to 28.02.2006, from 22.04.2008 to 22.04.2009 and from 21.04.2014 to 23.12.2014 as an under trial prisoner produced under P.T. Warrant in SC.No.2 of 2002 (on the file of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai).

2. The learned counsel for the petitioner would submit that the petitioner was arrested and remanded to judicial custody on 08.03.1998 in Crime No.234 of 1997 on the file of

Andimadam Police Station. After completion of investigation, final report was filed and the same was taken cognizance in SC.No.2 of 2002 on the file of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai, and the petitioner is arrayed as A2 and he was released on bail in SC.No.2 of 2002 on 24.03.2005. Though the petitioner was released on bail, since he was facing some other cases he was not released from prison. Therefore, again the petitioner was produced on PT warrant before the trial court and his remand was extended till 28.02.2006. He was convicted in Crime No.346 of 1993 on the file of the Kullanchavadi Police Station on 22.04.2008 as such he was produced under PT Warrant in SC.No.2 of 2002 till 22.04.2009. On 24.03.2014, he was convicted in SC.No.12 of 2001, and during his detention period, he is was produced under PT warrant from 21.04.2014 to 23.12.2014 in SC.No.2 of 2002. Thereafter, he was convicted in SC.No.2 of 2002 for the offences punishable under Sections 120(b), 148, 450, 395 r/w 397, 307 and 332 of IPC and sentenced him to undergo 10 years imprisonment. Unfortunately the trial court rejected the plea of set off the petitioner's remand period produced under PT warrant under Section 428 of Cr.P.C. In this regard, he relied upon the Order of this Court in CrI.OP.No.15669 of 2010 dated 16.12.2010.

3. Per contra, the learned Additional Public Prosecutor submitted that the petitioner did not prefer appeal as against the conviction made in SC.No.2 of 2002 on the file of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai and request made by the petitioner was duly considered by the trial court and rejected for the reason that the remand period in other cases cannot be considered for the present case under Section 428 of Cr.P.C. Therefore, the present petition is not maintainable under Section 482 Cr.P.C. to set off the remand period. When the trial court considered the said request and rejected the same, the petitioner ought to have filed appeal as against the conviction before the appellate court. As such he prayed for dismissal of this petition.

4. Heard Mr.P.Pugalenthil, learned counsel for the petitioner and Mr.S.Karthikeyan, Additional Public Prosecutor for the respondents.

5. The petitioner was arrested and remanded to judicial custody on 08.03.1998 in Crime No.234 of 1997 on the file of Andimadam Police Station. After completion of investigation, final report was filed and the same was taken cognizance in SC.No.2 of 2002 on the file of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai, and the petitioner is arrayed as A2 and he was released on bail in

SC.No.2 of 2002 on 24.03.2005. Though the petitioner was released on bail, since he was facing some other cases he was not released from prison. Therefore, again the petitioner was produced on PT warrant before the trial court and his remand was extended till 28.02.2006. He was convicted in Crime No.346 of 1993 on the file of the Kullanchavadi Police Station on 22.04.2008 as such he was produced under PT Warrant in SC.No.2 of 2002 till 22.04.2009. On 24.03.2014, he was convicted in SC.No.12 of 2001, and during his detention period, he is was produced under PT warrant from 21.04.2014 to 23.12.2014 in SC.No.2 of 2002. Thereafter, he was convicted in SC.No.2 of 2002 for the offences punishable under Sections 120(b), 148, 450, 395 r/w 397, 307 and 332 of IPC and sentenced to undergo 10 years imprisonment. The petitioner made request to set off his remand period produced under PT warrant under Section 428 of Cr.P.C. The trial court rejected the said plea stating that under Section 428 of Cr.P.C., the remand period of the said case can be set off and the remand period in other case cannot be set off under Section 428 of Cr.P.C.

6. In this regard, it is relevant to rely upon the Order of this Court in Crl.OP.No.15669 of 2010 dated 16.12.2010, in which this Court relied upon the judgment rendered in the case of State of Maharashtra and Another Vs. Najakat Alia Mubarak Ali reported in (2001) 6 SCC 311, wherein the Hon'ble Supreme Court of India held as follows:

"18. Reading Section 428 of the Code in the above perspective, the words "of the same case" are not to be understood as suggesting that the set-off is allowable only if the earlier jail life was undergone by him exclusively for the case in which the sentence is imposed. The period during which the accused was in prison subsequent to the inception of a particular case, should be credited towards the period of imprisonment awarded as sentence in that particular case. It is immaterial that the prisoner was undergoing sentence of imprisonment in another case also during the said period. The words "of the same case" were used to refer to the pre-sentence period of detention undergone by him. Nothing more can be made out of the collocation of those words."

The Hon'ble Supreme Court of India held that under Section 428 of Cr.P.C., if the accused is in remand on the same case, irrespective of remand in another case, the period has to be considered for set

off. The words "to the same case" were used to refer to the pre-sentence period of detention undergone by him".

7. In the case on hand, the petitioner was produced under PT warrant when he was arrested in another case and his remand was extended by the trial court in the said case. Therefore, the remand period of the petitioner while he was produced under PT warrant has to be considered for set off under Section 428 of Cr.P.C.

8. In view of the above discussion, this Criminal Original Petition is allowed and the first respondent is directed to set off the petitioner's remand period from 24.03.2005 to 28.02.2006, from 22.04.2008 to 22.04.2009 and from 21.04.2014 to 23.12.2014 as an under trial prisoner produced under P.T. Warrant in SC.No.2 of 2002 on the file of the Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai.

Sd/-
Assistant Registrar(CS. III)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Court for Exclusive Trial of Bomb Blast Cases, Poonamallee, Chennai).
2. The Superintendent of Prison, Central Prison-1, Puzhal, Chennai.
3. State By: The Inspector of Police, Q-Branch CID Police Station, Perambalur District.
4. The Public Prosecutor, High Court of Madras.

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