

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
Crl.RC.No.324 of 2020

Balaji

... Petitioner

Vs.

State Rep by its
The Inspector of Police,
W-25, All Women Police Station,
T. Nagar,
Chennai District.
(Crime No.6 of 2019)

... Respondent

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C, to set aside the order dated 10.02.2020 made in Crl.MP.No.184 of 2020 passed by the learned Special Court for Exclusive Trial of Cases Under POCSO Act, Chennai and consequently, enlarge the petitioner on bail in Crime No.6 of 2019 on the file of the respondent police.

For Petitioner : Mr.S.N.Arunkumar

For Respondent : Mr.T.Shunmugarajeswaran
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case has been filed by the accused against the dismissal of the petition filed by him under Section 167 (2) Cr.P.C in Crl.MP.No.184 of 2020 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai dated 10.02.2020.

2. The petitioner herein was arrested on 05.11.2019 and remanded to judicial custody for the alleged offences under Sections 375, 376, 383, 386, 387 and 503 IPC r/w Sections 4 & 6 of POCSO Act, 2012. Even after expiry of 90 days, since the respondent has not filed charge sheet, the petitioner has filed an application under Section 167 (2) Cr.P.C., seeking statutory bail and the same was numbered in Crl.MP.No.184 of 2020. The learned Trial Court Judge has dismissed the said petition by the order dated 10.02.2020 stating that the petitioner has been

detained under the Tamil Nadu Act 14 of 1982.

3. The learned counsel for the petitioner has submitted that on the expiry of the said period of 90 days, an indefeasible right accrues in favour of the petitioner/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/Court. He further submitted that merely because the petitioner was detained under the Tamilnadu Act 14 of 1982, that will not prevent the petitioner from seeking statutory bail under Section 167 (2) Cr.P.C., and therefore, he prayed to set aside the order passed by the trial court and grant bail to the petitioner.

4. The learned Government Advocate (Crl.Side) appearing for the respondent has submitted that since the petitioner has been detained under the Tamilnadu Act, 14 of 1982, even if the petitioner is released on bail in this case, he cannot come out and taking into consideration of the same, the trial court has rightly dismissed the petition by giving liberty to the petitioner to file a fresh petition after revoking the detention order and therefore he prayed to dismiss this petition.

5. At this juncture, it would be relevant to refer to the decision of this court in Baskar and Others Vs. State and Others, in Crl.OP.18056 of 2006, wherein this court has observed in paragraph Nos.14 and 15 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 CRL.O.P.No.20382 of 2019 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 CRL.O.P.No.20382 of 2019 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."

6. From the aforesaid decision, it is clear that the failure to file Charge-sheet or Final Report before the period prescribed under Section 167 (2) of Cr.P.C., will automatically result in releasing the Accused on bail subject to only two conditions that there is an application for bail from person in custody and he must be in a position to offer adequate sureties. The bail cannot be denied to him on any other ground less on the ground that on merits the petitioner do not deserve to be released on bail. Therefore, this court is of the view that the detention of the petitioner/accused under the Tamilnadu Act 14 of 1982 will not stand in the way of the petitioner to seek statutory bail under Section 167 (2) Cr.P.C., in this case. At the time of considering the bail application under Section 167 (2) Cr.P.C., the court has to see that in that particular case, the accused is in custody for more than the statutory period. It is immaterial that even if the petitioner is released on bail in this case, whether the petitioner will come out or not on the ground that he is detained under the Tamilnadu Act, 14 of 1982. Therefore, the order passed by the trial court in CrI.MP.No.184 of 2020 dated 10.02.2020 is liable to be set aside.

7. In the result, this Criminal Revision Case is allowed. The order passed by the learned Trial Court Judge in CrI.MP.No.184 of 2020 dated 10.02.2020 is set aside. The trial court is directed to release the petitioner on bail with the following conditions.

a) the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties, each for a like sum to the satisfaction of the learned Special Court for Exclusive Trial of Cases Under POCSO Act, Chennai.

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 respondent police twice a day at 10.30 a.m and 05.30 p.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 229A IPC.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

gv

To

1. The Special Court for Exclusive Trial of Cases
Under POCSO Act, Chennai .

2.The Inspector of Police,
W-25, All Women Police Station,
T. Nagar,
Chennai District.
(Crime No.6 of 2019)

3. The Public Prosecutor,
High Court, Madras.

4 The Section Officer
Crl.Records Section
High Court, Madras

+1 cc to Mr.W.Camyles Gandhi Advocate sr20729

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