



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 21/09/2020

WEB COPY

PRESENT

The Hon'ble Mr.Justice V.BHARATHIDASAN

CRL OP(MD) Nos.9688 and 8977 of 2020

1. Pitchai Kani @ Purakani,
Wrongly Mentioned in FIR as Pitchai Gani

2. Mohammed Ammer @ Arun Kumar,
Wrongly Mentioned in FIR as Mohamed Amir

3. Mohammed Ali @ Manikandan,
Wrongly Mentioned in FIR as Mohamed Ali

... Petitioners/Accused Nos.2to4
in Crl.O.P(MD) No.9688 of 2020

Vs

The State rep. by
The Inspector of Police,
Devipattinam Police Station,
Ramanathapuram.
Crime No.15/2020.

... Respondent/Complainant
in Crl.O.P(MD) No.9688 of 2020

The Deputy Superintendent Of Police,
Ramanathapuram Sub Division,
Ramanathapuram District.
(Crime No. 19 of 2020 of
Devipattinam Police Station)

.... Petitioner/ Complainant
in Crl.O.P(MD) No.8977 of 2020

Vs

1. Pitchai Gani @ Puraa Gani

2. Mohamed Amir @ Arun Kumar

3. Mohamed Ali @ Manikandan

... Respondents 2to4/Accused 2to4
in Crl.O.P(MD) No.8977 of 2020



(In Crl.O.P(MD) No.9688 of 2020)

For Petitioners : M/s.T.Lajapathi Roy,
Advocate.

For Respondent : Mr.K.Chellpandian
Additional Advocate General
for Mr.M.Chandrasekaran,
Additional Public Prosecutor

(In Crl.O.P(MD) No.8977 of 2020)

For Petitioner : Mr.K.Chellpandian
Additional Advocate General
for Mr.M.Chandrasekaran,
Additional Public Prosecutor

For Respondents : M/s.T.Lajapathi Roy,
Advocate.

Prayer in Crl.O.P(MD) No.9688 of 2020 :-

For Bail in Crime No. 15 of 2020 on the file of the Respondent Police.

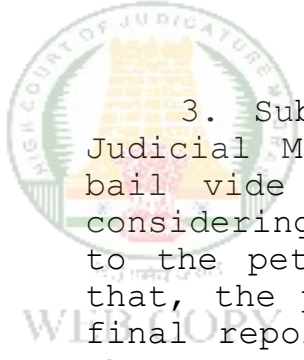
Prayer in Crl.O.P(MD) No.8977 of 2020:-

To cancel the impugned bail order granted in Crl.M.P.No.1168 of 2020 dated 14.08.2020 on the file of the Learned Judicial Magistrate No.I, Ramanathapuram.

COMMON ORDER : The Court made the following order :-

The petitioners/Accused Nos.2 to 4 in Crl.O.P.(MD)No.9688 of 2020, who were arrested and remanded to judicial custody on 22.01.2020, for the offences under Sections 153A, 153B,120B of IPC and Sections 18,18B,38 and 39 of Unlawful Activities (Prevention Act)1947 and Section 66F(2) of the Information Technology Act (Amendment Act) 2008, seek bail.

2. Earlier, the petitioners herein filed an application for bail in Crl.O.P(MD)No.7928 of 2020 and when the matter came up for hearing on 07.08.2020 the learned counsel appearing for the petitioners submitted that the petitioners are in judicial custody for more than six months and final report has not been filed so far by the respondent police before the Court concerned and hence, the petitioners are entitled for statutory bail, as per Section 43 (D) of the Unlawful Activities (Prevention Act)1947. The said petition was dismissed as withdrawn with liberty to the petitioners to approach the Court concerned to file a petition under Section 167(2) of Cr.P.C.



3. Subsequently, the petitioners have approached the learned Judicial Magistrate No.I, Ramanathapuram, on 13.08.2020, seeking bail vide Cr.M.P.No.1168 of 2020, the learned Magistrate, after considering the facts and circumstances of the case, granted bail to the petitioners with certain conditions on 14.08.2020, holding that, the petitioners were in custody for the past 240 days and no final report has been filed. Challenging the order granting bail, the prosecution filed CrI.O.P(MD)No.8977 of 2020 to cancel the bail granted to the petitioners.

4. Thereafter, the petitioners have filed another bail application before the learned Principal District and Sessions Judge, Ramanathapuram, in Cr.M.P.No.2033 of 2020, seeking bail under Section 167(2) of Cr.P.C and the Sessions Court had dismissed the bail petition on the ground that, the order of the learned Magistrate was not set aside by the High Court and as the earlier order was still in force, there is no necessity to pass any orders by the Sessions Court, against which, the petitioners have filed the present petition in CrI.O.P(MD)No.9688 of 2020 seeking bail.

5. The learned counsel for the petitioners would submit that admittedly on the date of filing bail petition before the Magistrate Court on 13.08.2020, 180 days was over and no final report has been filed. Considering the above facts, the learned Magistrate has granted statutory bail to the petitioners. As the prosecution moved a petition to cancel the bail before this Court by way of abundant caution, the petitioners also filed another application for statutory bail before the learned Principal District and Sessions Judge, Ramanathapuram, and the same has been dismissed on the ground that the order passed by the learned Magistrate granting bail is in force and there is no reason to pass any order in the present application.

6. On the other hand, the learned Additional Advocate General appearing for the prosecution would submit that, though 180 days of judicial custody was over, due to COVID-19 Pandemic situation, the respondent police was not in a position to complete the investigation and file the final report within the time limit. Relying upon the order passed by this Court in ***S.Kasi-vs- The Inspector of Police, Samayanallur Police Station, Madurai District [CrI.O.P(MD) No.5296 of 2020, dated 11.05.2020]***, the learned Additional Advocate General would submit that the earlier order passed by the Honourable Supreme Court dated 23.03.2020 extending the limitation period, is applicable to conduct the investigation also and hence, the prosecution has time to file the final report in the case in hand, the time limit fixed under Section 43 (D) of the Unlawful Activities (Prevention Act)1947 is also extended as per the order passed by this Court in Kasi case (Supra) Thus, the order passed by the learned Magistrate is not sustainable in law and hence, the same is liable to be set aside.

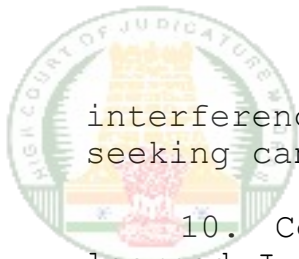
7. I have considered the rival submissions and also perused the materials available on record.

8. It is an admitted fact that that the petitioners were arrested on 23.01.2020 and remanded to judicial custody. The prosecution has 180 days to complete the investigation and file the final report under Section 43(D) of the Act and the said period has expired on 19.07.2020. Admittedly no final report was filed on that day. The petitioners have moved the application under Section 167(2) of Cr.P.C., on 13.08.2020, after the expiry of 180 days, the learned Magistrate after considering all the above facts granted statutory bail with certain conditions. However, relying upon the order passed by this Court in the case of **S.Kasi [cited supra]**, the prosecution has filed the present application to cancel the bail. It is pertinent to note that the said order passed in S.Kasi case has been set aside by the Honourable Supreme Court in **CrI.A.No.452 of 2020 [S.L.P.(Crl.)No.2433 of 2020]** dated 19.06.2020. The relevant portion is extracted hereunder:

"25. We, thus are of the clear opinion that the learned Single Judge in the impugned judgment erred in holding that the lockdown announced by the Government of India is akin to the proclamation of emergency. The view of the learned Single Judge that the restrictions which have been imposed during the period of lockdown by the Government of India should not give right to an accused to pray for grant of default bail even though charge sheet has not been filed within the time prescribed under Section 167(2) of the Code of Criminal Procedure is clearly erroneous and not in accordance with law.

26. We, thus, are of the view that neither this court in its order dated 23.03.2020 can be held to have eclipsed the time prescribed under Section 167 (2) of Cr.P.C nor the restrictions which have been imposed during the lock down announced by the Government shall operate as any restriction on the rights of an accused as protected by Section 167(2) regarding his indefeasible right to get a default bail on non-submission of charge sheet within the time prescribed. The learned Single Judge committed serious error in reading such restriction in the order of this Court date 23.03.2020".

9. Taking into consideration the aforesaid order passed by the Honourable Supreme Court, if the case at hand is looked into, on expiry of 180 days, the indefeasible right to get default bail has been accrued to the petitioners, considering the same, the learned Judicial Magistrate has also granted bail, which needs no



interference by; this Court. Hence, Crl.O.P(MD) No.8977 of 2020 seeking cancellation of bail stands dismissed.

10. Coming to bail petition, since the order passed by the learned Judicial Magistrate No.I, Ramanathapuram, in C.R.M.P.No.1168 of 2020, dated 14.08.2020, is still in force, this Court is of the view that no further order is necessary to be passed in Crl.O.P(MD) No.9688 of 2020. Hence, the petition seeking bail also stands dismissed.

sd/-
21/09/2020

/ TRUE COPY /

/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE JUDICIAL MAGISTRATE NO.I, RAMANATHAPURAM.
2. -DO- THROUGH: THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM DISTRICT.
3. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
4. THE DEPUTY SUPERINTENDENT OF POLICE,
RAMANATHAPURAM SUB DIVISION, RAMANATHAPURAM DISTRICT.
5. THE INSPECTOR OF POLICE,
DEVIPATTINAM POLICE STATION,
RAMANATHAPURAM DISTRICT.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-6518[I] dated 21/09/2020)

ORDER IN
CRL OP(MD) No.9688&8977/2020
Date :21/09/2020

AAV

<https://hccs.ecourts.gov.in/rcservices> 24.09.2020/ 5P/9C