

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15..02..2021

CORAM :

THE HON'BLE Mr.JUSTICE V.BHARATHIDASAN

Criminal Original Petition No.71 of 2021

R.Hemnath

... Petitioner

Vs.

1. State Rep by

The Inspector of Police,
CCB, Vepery Police Station,
Chennai.

[Crime No. 756 of 2020 on the file of T-16, Nazarethpet P.S.
Now, Crime No.4 of 2021 on the file of the CCB-II, Chennai]

[This respondent was substituted by order dated 20.01.2021 in
Crl.M.P.No.294 of 2021 accepting the cause title]

... 1st Respondent/complainant

2.V.Kamaraj

[This respondent was permitted to intervene in this matter by order
dated 20.01.2021 in Crl.M.P.No.301 of 2021]

... 2nd Respondent / de facto complainant

PRAYER: Criminal Original Petition is filed under Section 439 of
Criminal Procedure Code to enlarge the petitioner on bail in Crime
No.756 of 2020 (originally registered by the Inspector of Police,
Nazarethpet Police Station, Chennai) now being investigated by the
1st respondent police.

For Petitioner : Mr.M.Ravindran, Senior Counsel for
Mr.V.Devendhiran

For Respondent(s) : Mrs.M.Prabhavathi,
Additional Public Prosecutor for R1
Mr.R.Vivekananthan for R2

O R D E R

The petitioner, who was arrested and remanded to judicial
custody on 14.12.2020 for the alleged offence under Section 306 of
IPC in Crime No.756 of 2020 on the file of the Inspector of Police,
Nazarethpet Police Station, now, being investigated by the 1st
respondent police in Crime No.4 of 2021, seeks bail.

2. The case of the prosecution in brief is that the deceased in this case is one Chitra, a Television serial actress. She had married the petitioner on 19.10.2020 and their marriage was also registered before the office of the Sub Registrar, Kodambakkam. There was also a plan to have a marriage reception on 10.02.2021. In the mean time, on 09.12.2020, the deceased is said to have committed suicide. On that date, both the petitioner and the deceased were stated to have booked a room at Pleasant Days Hotel at Nazarethpet and stayed there. On the fateful night of 09.12.2020, in the hotel room, the deceased is said to have committed suicide by hanging. Immediately on coming to know the death of his daughter, the 2nd respondent/father of the deceased is stated to have lodged a complaint before the jurisdictional police station. Initially, a case was registered under Section 174 of Cr.P.C. and the investigation was taken up by the Inspector of Police, Nazarethpet, during which, on request, an inquest was conducted by the Revenue Divisional Officer, Sriperumbudur Sub Division. In the meant time, number of witnesses were examined and their statement were also recorded. Based on the initial investigation, the crime was subsequently altered into under Section 306 of IPC on 14.12.2021 and the petitioner was arrested on the same day. The confession statement of the accused was also recorded by the police. While so, the Revenue Divisional Officer who conducted inquiry submitted his report stating that upon inquiry he found that the deceased was not subjected to any dowry harassment. In the mean time, the investigation of the case was transferred to the 1st respondent police. Thereafter, the 1st respondent continued the investigation and examined number of witnesses and recorded their statements. So far as many as 37 witnesses have been examined and final report is yet to be filed. In these circumstances, the petitioner has come forward with the instant petition seeking bail.

3. The learned senior counsel appearing for the petitioner would vehemently contend that initially the investigation was taken up by the jurisdictional police, later on, the investigation has been continued by the 1st respondent. However, no case of abetment of suicide was made out against the petitioner. The inquiry conducted by the Revenue Divisional Officer also did not reveal any dowry harassment. The only allegation against the petitioner is that soon before the death of the deceased, there was a wordy quarrel between the couple, in which, the petitioner is stated to have abused the deceased and asked her to go and die. That itself would not amount to abetment of suicide and prima facie there must be some positive act which should drive the person to commit suicide which is lacking in this case.

4. The learned senior counsel for the petitioner would further submit that the petitioner has been in incarceration for more than 60 days and final report is yet to be filed and in these circumstances, the petitioner is entitled for statutory bail under Section 167(2) of Cr.P.C.

5. Per contra, the learned Additional Public Prosecutor would submit that initially the investigation was conducted by the jurisdictional police and subsequently, the investigation has been

continued by the Central Crime Branch, the 1st respondent herein. Charge sheet is yet to be filed and the investigation is at crucial phase. The deceased in this case is a famous television serial actress and the petitioner is also connected with the field. In these circumstances, there are chances for the petitioner to influence the witnesses, if he is released on bail at this stage. She would lastly submit that the petitioner is also involved in another case involving offence under Section 420 and 506(ii) of IPC.

6. The learned counsel for the intervenor would submit that though the crime was registered under section 306 of IPC, there is a suspicion of murder and the police is not investigating the case properly. The learned counsel would also make an attempt to convince this court that though it is alleged that the deceased committed suicide, no ligature was found on the neck of the deceased. He would further submit that the petitioner being a influential person in the industry, if he is released on bail, he will tamper with the witnesses and hamper the investigation. He therefore strongly opposed the granting of bail.

7. I have considered the rival submissions carefully.

8. Now, the learned senior counsel confined his argument for bail invoking the provision under Section 167(2) of the Code of Criminal Procedure, on the ground that even after expiry of 60 days, no final report has been filed by the respondent police.

9. Section 57 of the Code of Criminal Procedure empowers the Police Officer to detain the accused in custody for 24 hours. However, Section 167 of the Code of Criminal Procedure, as amended, authorizes the Magistrate to detain the accused in custody for a term not exceeding fifteen days in the whole. Section 167 also empowers a Magistrate to detain a person in custody while the investigation is being conducted by the police and also prescribes the maximum period for which such detention could be ordered. However, the proviso to Section 167(2) stipulates the right of an accused to be released on bail after the expiry of maximum period of detention provided therein.

10. The Hon'ble Supreme Court, in number of its pronouncements, has clearly held that the Proviso to Sub-Section (2) of Section 167 is a beneficial provision for curing the mischief of prolonging the investigation indefinitely, which ultimately affects the liberty of a citizen. Right for bail under Section 167(2) is a indefeasible right and it cannot be frustrated by the prosecution. The Court cannot extend the period within which the investigation must be completed on any reason, in the absence of any provision empowering the Court to extend the period. After expiry of the statutory period prescribed under Section 167(2) of the Code of Criminal Procedure, the accused cannot be detained in custody.

11. The Hon'ble Supreme Court in Achpal Alias Ramswaroop and Another versus State of Rajasthan reported in (2019) 14 SCC 599 has held as follows:
<https://hcservices.ecourts.gov.in/hcservices/>

"20. We now turn to the subsidiary issue, namely, whether the High Court could have extended the period. The provisions of the Code do not empower anyone to extend the period within which the investigation must be completed nor does it admit of any such eventuality. There are enactments such as the Terrorist and Disruptive Activities (Prevention) Act, 1985 and the Maharashtra Control of Organised Crime Act, 1999 which clearly contemplate extension of period and to that extent those enactments have modified the provisions of the Code including Section 167. In the absence of any such similar provision empowering the Court to extend the period, no court could either directly or indirectly extend such period."

12. The Hon'ble Supreme Court, in another judgment in Rakesh Kumar Paul versus State of Assam reported in (2017) 15 SCC 67, has held that if the charge sheet is not filed within the prescribed time, the right of the accused for 'default bail' has ripened into the status of indefeasible right and it cannot be frustrated. The relevant paragraph reads as follows:

"38. This Court also dealt with the decision rendered in Sanjay Dutt, (1994) 5 SCC 410 and noted that the principle laid down by the Constitution Bench is to the effect that if the charge sheet is not filed and the right for "default bail" has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The accused can avail his liberty by filing an application stating that the statutory period for filing the charge sheet or challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the accused is prepared to furnish the bail bond."

13. Very recently, the Hon'ble Supreme Court in Criminal Appeal No.452 of 2020 (Arising out of SLP (CRL.) No.2433/2020) [S.Kasi v. State through Inspector of Police, Samayanallur Police Station, Madurai District, decided on 19.06.2020], after considering the various other judgments, has held that an accused cannot be detained by the police beyond the maximum period prescribed under Section 167 of the Code of Criminal Procedure. It is relevant to extract the relevant paragraph of the said judgment, which reads thus:

"14. The scheme of Code of Criminal Procedure as noticed above clearly delineates that provisions of Section 167 of Code of Criminal Procedure gives due regard to the personal liberty of a person. Without submission of charge sheet within 60 days or 90 days as may be applicable, an accused cannot be detained by the Police. The provision gives due recognition to the personal liberty."

14. Admittedly the petitioner was arrested and remanded to judicial custody on 14.12.2020 for the alleged offence under Section 306 of IPC for which, if he is found guilty, he can be sentenced up to ten years of imprisonment and fine, it falls under proviso (a) (ii) to Section 167(2) of Cr.P.C. and the total period of detention of the accused shall not exceed sixty days. In the instant case, the period of detention of sixty days has already expired and final report has not been filed so far. In such circumstances, following

the above principle laid down by the Hon'ble Supreme Court on the right of the accused to get statutory bail, this court is of the considered view that the petitioner is entitled to be released on bail, as final report has not been filed even after expiry of sixty days of judicial custody.

15. Considering the legal position and in the light of the facts and circumstances, this Court is inclined to grant bail to the petitioner subject to the following conditions:-

(a) Accordingly, the petitioner is ordered to be released on bail on condition to 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 Judicial Magistrate-I, Poonamallee, and on further conditions that:

(b) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity;

(c) the petitioner, on his release from prison, shall stay at Madurai and report before the Inspector of Police, Anna Nagar Police Station, Madurai District, daily at 10.30.a.m until further orders and during that period he shall not enter Chennai;

(d) the petitioner shall not commit any offences;

(e) the petitioner shall not abscond either during investigation or trial;

(f) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(g) on breach of any of the aforesaid conditions, the learned Judicial 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];

(h) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

6. With the above directions, this Criminal Original Petition is ordered.

-sd/-

15/02/2021

This order, on being produced, be punctually observed and carried into execution by all concerned
TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
NO.I, POONAMALLEE, TIRUVALLUR DISTRICT.

2 THE CHIEF JUDICIAL MAGISTRATE
TIRUVALLUR (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
CCB, VEPERY POLICE STATION,
CHENNAI.

5 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI

6 THE INSPECTOR OF POLICE,
NAZARETHPET POLICE STATION, CHENNAI

7 THE INSPECTOR OF POLICE,
ANNA NAGAR POLICE STATION, MADURAI

+3 CC to M/S.V.DEVENDHIRAN Advocate on payment of necessary charges Sr.Nos.1612 & 1621

CRL OP.71/2021

Date :15/02/2021

RVR 16/02/2021

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