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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	16.11.2021
DELIVERED ON	23.12.2021

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH
and
THE HON'BLE MRS. JUSTICE R. HEMALATHA

Crl.O.P. No.7736 of 2021

Kannan @ Senthil @ Kumar @ Minnal

Petitioner/Accused

Vs.

The State represented by
the Deputy Superintendent of Police
"Q" Branch CID
Coimbatore
Coimbatore District
(Cr. No.523 of 2015)
Ammamet Police Station
Erode District

Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to set aside the docket order return dated 09.02.2021 on the file of the Judicial Magistrate Court No.I, Bhavani in Crl.M.P. No.2951 of 2016 in C.C. No.3 of 2016 and consequently, directing the Judicial Magistrate No.I, Bhavani, to accept the sureties, who are the petitioner's mother and brother, in C.M.P. No.2951 of 2016 dated 04.06.2016.

For petitioner

Mr. R. Sankarasubbu

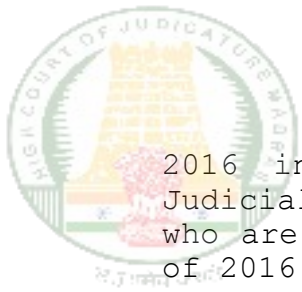
For respondent

Mr. Hasan Mohamed Jinnah
State Public Prosecutor
assisted by Mr. R. Muniyapparaj
Additional Public Prosecutor

ORDER

P.N. PRAKASH, J.

This criminal original petition has been filed seeking to quash the docket order return dated 09.02.2021 on the file of the Judicial Magistrate No.I, Bhavani in Crl.M.P. No.2951 of



2016 in C.C. No.3 of 2016 and consequently, to direct the Judicial Magistrate Court No.I, Bhavani, to accept the sureties, who are the petitioner's mother and brother, in CrI.M.P. No.2951 of 2016.

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2 Though the dispute in this case falls within a narrow compass, yet, it would be desirable to state a few admitted facts.

2.1 The petitioner was arrested on 04.05.2015 in Cr. No.1 of 2015 for the offences under Section 124 read with Section 120-B IPC and Section 20 of the Unlawful Activities (Prevention) Act (for brevity "the UAPA") and was remanded in custody. After completion of the investigation, the police filed a final report on 03.10.2015 against the petitioner in Cr.No.1 of 2015 in the Special Court for NIA Act Cases, Coimbatore.

2.2 While so, on the complaint of one Muthusamy, the police registered a case in Cr. No.523 of 2015 on 12.12.2015 for the offences under Sections 419,420,468 and 471 IPC against the petitioner. Since the petitioner was already in judicial custody in Cr.No.1 of 2015, a P.T. warrant was obtained from the Court of the Judicial Magistrate, Bhavani, in Cr. No.523 of 2015 and the petitioner was formally arrested on 30.03.2016 and was remanded in judicial custody by the Judicial Magistrate, Bhavani.

2.3 The 60 day period envisaged by Section 167 Cr.P.C. for default bail to the petitioner in Cr.No.523 of 2015 got over on 28.05.2016. The police did not complete the investigation in Cr.No.523 of 2015 within that period and therefore, on 04.06.2016, the Judicial Magistrate, Bhavani, granted default bail to the petitioner in CrI. M.P. No.2951 of 2016 on various conditions, one of which being he should execute a bond for Rs.10,000/- with two sureties, one of whom, should be his blood relative.

2.4 On 10.06.2016, the police filed an alteration report altering the penal provisions in Cr.No.523 of 2015 by including Sections 13(1)(b), 18, 18-A, 18-B, 20, 38(1), 39(1)(a) and 40(1)(b) of the UAPA and submitted a representation dated 24.06.2016 to the Judicial Magistrate, Bhavani, to transfer the case records to the Special Court for NIA Act Cases, Erode, (for brevity "the Special Court, Erode") in view of the alteration of the penal provisions.



2.5 Accordingly, the case was transferred to the Special Court, Erode. Since the UAPA permitted extension of judicial custody even after 90 days of arrest, of course, on a special application being made, the investigating agency filed CrI.M.P. No.722 of 2016 seeking extension of time for completing the investigation, along with a request for extending the period of judicial remand. This was permitted by the Special Court, Erode, on 27.06.2016. Investigation in Cr.No.523 of 2015 was completed and a charge sheet was filed on 28.09.2016 for the aforesaid offences under the IPC and UAPA in Cr.No.523 of 2015 before the Special Court, Erode.

2.6 The Special Court, Erode, took cognizance of the offences disclosed in the charge sheet on 07.10.2016 and assigned a number being C.C. No.3 of 2016, to the case. The petitioner continued to be in judicial custody and was not released on bail.

2.7 However, suddenly, on 27.01.2021, the petitioner offered sureties in the default bail that was granted to him in CrI.M.P. No.2951 of 2016 in Cr.No.523 of 2015 on 04.06.2016 by the Judicial Magistrate, Bhavani, before the Special Court, Erode. The Special Court, Erode, did not accept the sureties and directed the petitioner to approach the Judicial Magistrate, Bhavani.

2.8 Accordingly, the petitioner approached the Judicial Magistrate, Bhavani and filed surety affidavits on 09.02.2021, which have been returned by the Judicial Magistrate, Bhavani on the same day with the following endorsement:

Return:

1 Condition No.1 not complied as photocopy of mortgage deed which executed at the time of accused are in minor, of remand and residential proof for the accused.

2 Bail order passed for the offence u/s 419, 420, 468 and 471 of IPC but subsequently offence u/s 13(1)(b), 18-A, 18-B, 20, 38(1), 39(1)(4)(1), 46(1)(b) of Unlawful Activities (Prevention) Act, 1967 is added. Under the above said additional act, this Court has not jurisdiction to entertain the surety as the accused is remanded for the above said offences u/s 309(2) of Cr.P.C. by the Hon'ble PDJ, Erode (As per judgment passed by the Hon'ble Supreme Court i.e. CrI.App. No.816 & 817 of 2019 dated 01.07.2019



(Pradeep Ram vs. The State of Jharkhand and another)
is to be clarified."

2.9 Challenging the return dated 09.02.2021 made by the Judicial Magistrate, Bhavani, the petitioner is before this Court invoking Section 482 Cr.P.C.

3 Heard Mr. R. Sankarasubbu, learned counsel for the petitioner and Mr. Hasan Mohamed Jinnah, learned State Public Prosecutor assisted by Mr.R.Muniyapparaj, learned Additional Public Prosecutor, appearing for the respondent State.

4 Mr. Sankarasubbu strenuously contended that once default bail has been granted to an accused under Section 167 Cr.P.C., he can furnish sureties at any time and therefore, the Judicial Magistrate, Bhavani, ought to have accepted his sureties without demur. He placed reliance on the judgments of the Supreme Court in Raghubir Singh and Others vs. State of Bihar¹ and Pradeep Ram vs. State of Jharkhand and another² and contended that on the mere addition of certain penal provisions to the FIR by way of an alteration report, the bail that was granted to the accused will not stand automatically cancelled and that the investigating agency should seek an order from the Court under Section 437(5) Cr.P.C. and 439 (2) Cr.P.C. for arrest of the accused and his custody.

5 Per contra, the learned State Public Prosecutor submitted that the law laid down in Pradeep Ram (supra) would not apply to the facts of this case inasmuch as, the petitioner had never availed of the default bail order that was granted to him by the Judicial Magistrate, Bhavani in CrI.M.P. No.2951 of 2016 by furnishing sureties within a reasonable time; on the contrary, though the default bail order was granted to him on 04.06.2016, he had come forward to furnish sureties only on 05.02.2021, which is over 4 years later; in the meanwhile, much water had flown under the bridge, inasmuch as, the provisions of the UAPA were added to the case, the case was transferred from the Court of the Judicial Magistrate, Bhavani, to the file of the Special Court, Erode, remand period was extended beyond 90 days by the Special Court, Erode at the request of the Prosecutor, charge sheet was filed on 28.09.2016 and cognizance was taken by the Special Court, Erode on 07.10.2016. Hence, he submitted that the default bail order dated 04.06.2016 stood extinguished on account of the conduct of the petitioner in not furnishing the sureties and also on account of the subsequent events set out above.

¹ (1986) 4 SCC 481

² (2019) 17 SCC 326



6 This Court gave its anxious consideration to the rival submissions.

7 As contended by Mr. R. Sankarasubbu, a 2 Judge Bench of the Supreme Court, in Raghubir Singh (supra), at paragraph 20, has held as under:

"20. What is of importance is that there is no limit of time within which the bond may be executed after the order for release on bail is made. Very often accused persons find it difficult to furnish bail soon after the making of an order for release on bail. This frequently happens because of the poverty of the accused persons. It also happens frequently that for various reasons the sureties produced on behalf of accused persons may not be acceptable to the court and fresh sureties will have to be produced in such an event. The accused persons are not to be deprived of the benefit of the order for release on bail in their favour because of their inability to furnish bail straightway. Orders for release on bail are effective until an order is made under Section 437(5) or Section 439(2)....."

8 If we were to go based on what has been held in Raghubir Singh (supra), then, the contention of Mr. Sankarasubbu that the sureties furnished by the petitioner on 27.01.2021 for the default bail that was granted on 04.06.2016 should have to be accepted. However, in Sanjay Dutt vs. State³, a Constitution Bench of the Supreme Court has held as under:

"48.....The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167 CrPC ceases to apply....."

(emphasis supplied)

³ (1994) 5 SCC 410



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9 This has been further elaborately considered by a 3 Judge Bench of the Supreme Court in Uday Mohanlal Acharya vs. State of Maharashtra⁴, wherein, at paragraph 13.5, it has been held as under:

"5. If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in para (a) will not be unauthorised, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished."

Even in the partly dissenting judgment of Justice B.N. Agrawal in Uday Mohanlal Acharya (supra), it has been held as under:

"B.N. AGRAWAL, J. (partly dissenting)- I have perused the judgment of my learned brother Pattanaik, J., for whom I have the highest regard and while agreeing with him with respect to Conclusions 1 to 5, I find myself unable to agree on Conclusion 6, enumerated hereunder, upon which alone decision of this appeal is dependent, and observations and direction connected therewith: (para 13 above)"

10 Thus, even the dissenting Judge in Uday Mohanlal Acharya (supra) has agreed with the law laid down by the other two Judges of the Bench in paragraph 13.5, which would squarely apply to the case in hand. Since Raghubir Singh (supra) was decided by a 2 Judge Bench and following the Constitution Bench judgment in Sanjay Dutt (supra), when a 3 Judge Bench in Uday Mohanlal Acharya (supra) has so categorically held that if the accused is unable to furnish bail as directed by the Magistrate, then, the so-called indefeasible right of the accused will stand extinguished on the police filing the final report, we are afraid we cannot fall back on Raghubir Singh (supra) and grant relief to the petitioner. To be noted, the expression "furnish bail as directed by the Magistrate" employed in Uday Mohanlal Acharya (supra) means "furnish sureties as directed by the Magistrate".

11 At the risk of repetition, in this case, default bail was granted on 04.06.2016 and the petitioner came forward to furnish bail (sureties) only on 27.01.2021 after a span of over four years. In the meanwhile, the offences under the UAPA were added, remand period was extended from 90 days to 180 days by

⁴ (2001) 5 SCC 453



the Special Court, Erode, investigation was completed and charge sheet was filed on 28.09.2016.

12 Therefore, it is too late in the day for the petitioner to infuse life into the default bail order dated 04.06.2016 passed by the Judicial Magistrate, Bhavani in CrI.M.P. No.2951 of 2016. We are in agreement with the submissions of the learned Public Prosecutor that the law laid down in Pradeep Ram (supra) would not apply to the facts of this case, as the petitioner had never availed of the default bail order by furnishing sureties. Now, it is open to the petitioner to seek only regular bail under Sections 437 and 439 Cr.P.C. Further, the law laid down in Uday Mohanlal Acharya (supra) has been affirmed by the Supreme Court subsequently in M.Ravindran vs. Director of Intelligence⁵. That apart, we are unable to subscribe ourselves to the contrary view that has been expressed by a learned single Judge of this Court in Periasamy vs. State⁶.

In the result, this criminal original petition is dismissed as being devoid of merits.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Deputy Superintendent of Police
"Q" Branch CID
Coimbatore
Coimbatore District
(Cr. No.523 of 2015)
Ammamet Police Station
Erode District
- 2 The Judicial Magistrate No.I
Bhavani

⁵ (2021) 2 SCC 485

⁶ (2010) CrI. LJ 3815



3

The Public Prosecutor
Madras High Court
Chennai 600 104

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AD(CO)
SU(05/01/2022)