

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.01.2021

CORAM :

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

Crl.O.P.No.14642 & 17551 of 2020

Manikandan Balakrishnan .. Petitioner in Crl.O.P.14642/2020

Sanjay Kumar .. Petitioner in Crl.O.P.17551/2020

Vs.

The State Rep. by
The Inspector of Police,
EOW-II,
Coimbatore.
(Crime No.3 of 2020) ... Respondent in both Crl.O.Ps.

COMMON PRAYER: Criminal Original Petitions are filed under Section 439 of Criminal Procedure Code to enlarge the petitioners on bail in Crime No.3 of 2020 pending investigation on the file of the Respondent.

For Petitioner : Mr. B.Kumar, Sr. Counsel,
for Mr.B.Shruthan
in both Crl.O.Ps.

For Respondent : Mr.M. Prabavathi,
Additional Public Prosecutor
in both Crl.O.Ps

COMMON ORDER

(These cases have been heard through video conference)

The petitioners, who were arrested and remanded to judicial custody on 20.07.2020 for the offence punishable under Sections 120-B, 406, 420 of IPC and Section 5 of TNPID Act 1997 in Crime No.3 of 2020 on the file of the respondent police, seek bail.

2. The petitioners are A2 and A4. The case of the prosecution is that the petitioners, who were running a finance company colluded with other accused, collected deposits from various general public, for more than one Crore and defrauded them. Hence, the case has been registered.

3. The learned counsel appearing for the petitioner would submit that the petitioner was arrested and remanded to judicial custody on 29.07.2020 and 60 days of judicial custody was over on 27.09.2020. However, the respondent police did not complete the investigation and file final report till then. Therefore, they have approached the trial Court, on 29.09.2020, by filing a petition seeking statutory bail under Section 167(2) of Cr.P.C., however, the same was dismissed on 08.10.2020. In the mean time, only on 07.10.2020, the respondent police filed a final report before the Court below. The learned Senior Counsel appearing for the petitioners would further submit that the petitioners have invoked their right under Section 167(2) of Cr.P.C. even before filing the final report. Even after expiry of the statutory period, they are in jail for more than 3 months. Hence, he prays for grant of bail.

4. The learned Additional Public Prosecutor would submit that before expiry of 60 days, final report was ready and it was submitted before the Court below on 25.09.2020, and the same was not accepted directly by the Court due to Covid-19, Pandemic situation, and directed to place the final report in a box provided by them, and hence, on 28.09.2020, they placed the final report in the box, however, the same was received by the trial Court on 07.10.2020. As the final report was filed before expiry of the statutory period, petitioner is not entitled for bail. Hence, she opposed to grant bail to the petitioners.

5. The learned counsel for the intervener would submit that the petitioners along with other accused have swindled more than seven Crores and that apart, some of the accused yet to be apprehended. If the petitioners are released on bail, they may abscond from the country.

6. I have considered the rival submissions and perused the materials available on records carefully.

7. It is admitted fact that the petitioners were arrested on 29.07.2020 and 60 days statutory period has been completed on 27.09.2020 and the petitioners have also approached the Court below on 29.09.2020 seeking bail under Section 167(2) of Cr.P.C. . The final report has been received by the Court below only on 07.10.2020, i.e., after expiry of the statutory period. Even though it is submitted by the learned Additional Public Prosecutor that the respondent police filed the final report on 25.09.2020, there is no material available to substantiate the same. This Court also called for a report from the Court below regarding the filing of final report, and the Court below submitted a report stating as follows:

" I submit that the final report was initially filed on 07.10.2020; subsequently, an Official Memorandum was issued on 09.10.2020 to rectify the defects; and the defects were rectified on 09.12.2020. I submit that it has been taken on file as C.C.No.1 of 2001 and now posted to 22.01.2021 for the appearance of the accused."

8. Considering the said facts and circumstances and also the fact that since final report has not been filed within a statutory period, and the petitioners exercised their right before filing of the final report, this Court is left with no other option except to grant bail. Hence, this Court is inclined to grant bail to the petitioner in both the petitions subject to the following conditions:

(a) Accordingly, the petitioners are ordered to be released on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the learned Special Judge, Special Court under TNPID Act, Coimbatore, 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 petitioners, on their release from prison, shall report before the Special Judge, Special Court under TNPID Act, Coimbatore, once in a week, i.e., every Monday at 10.30 a.m., until further orders.

(d) The petitioners are directed to surrender their Passport before the said Court .

(d) the petitioners shall not commit any offences of similar nature;

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

(f) the petitioners 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 petitioners in accordance with law as if the conditions have been imposed and the petitioners 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.

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

-sd/-
21/01/2021

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 SPECIAL JUDGE,
SPECIAL COURT UNDER TNPID ACT,
COIMBATORE.

2 THE INSPECTOR OF POLICE,
E.O.W-II,
COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

5 THE SECTION OFFICER,
CRIMINAL SECTION,
HIGH COURT, MADRAS.

+2 CC to M/S B.SHRUTHAN Advocate on payment of necessary charges SR.NO.645, 646

CRL OP.14642 & 17551/2020

Date :21/01/2021

TA-25/01/2021