

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.02.2021

CORAM :

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

Crl.O.P.No.19274 of 2020

K.V.Theivaneethi

... Petitioner

Vs.

The State rep. by
The Inspector of Police,
W-19 All Women Police Station,
Adyar, Chennai.
(Crime No.4 of 2020)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in Crime No.4 of 2020 pending investigation on the file of the Respondent.

For Petitioner : Mr. M.Ajmal Khan, Senior Adv.,
for M/s.Ajmal Associates

For Respondent : Mrs.M. Prabhavathi,
Addl. Public Prosecutor

O R D E R

(The case has been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 10.02.2020 for the offence punishable under Sections 3,4,5(1), 5(n), 6, 9(n) and 10 of Protection of Child from Sexual Offences Act, 2012 in Crime No.4 of 2020, seeks bail.

2. The petitioner is the sole accused in this case. The case of the prosecution is that, the victim girl is the own daughter of the petitioner, and he has sexually assaulted her continuously for more than 11 years. Earlier, they were in U.S.A. and after came back to India, he continued his sexual assault. Hence, based on the complaint given by mother of victim girl, who is wife of the petitioner, a criminal case has been registered against the petitioner. The petitioner was arrested and remanded to judicial custody on 10.02.2020 and now, he has filed this petition seeking for bail.

3. The learned Senior Counsel appearing for petitioner would submit that the petitioner was arrested on 10.02.2020, now 90 days period was also expired, so far, the respondent has not completed the investigation and the respondent has not filed the final report. Hence, the petitioner is entitled for statutory bail under Section 167(2) of Cr.P.C. and accordingly, he prays to grant bail to the petitioner.

4. The learned Additional Public Prosecutor would oppose the petition on the ground that even though the investigation is over, now, they are awaiting for some more materials and the report is yet to be filed. However, she opposed to grant bail to the petitioner.

5. 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.

6. 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:

"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."

7. 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."

8. Very recently, the Hon'ble Supreme Court in CRIMINAL APPEAL No.452 OF 2020 (ARISING OUT OF SLP (CRL.) NO.2433/2020) [S.KASI VERSUS STATE THROUGH THE INSPECTOR OF POLICE, SAMAYNALLUR 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."

9. Following the above principles laid down by the Hon'ble Supreme Court, this Court is of the considered view that in the case at hand, the petitioner was arrested on 10.02.2020 and the final report has not been filed even after lapse of 90 days and hence, the petitioner is entitled to be released on bail.

(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 learned Principal POCSO Special Judge at Chennai 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 shall surrender his passport before the Principal POCSO Special Judge at Chennai;

(d) the petitioner, on his release from prison, shall report before the respondent police as and when required for interrogation;

(e) the petitioner shall not commit any offences of similar nature;

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

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

(h) 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];

(i) 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/-
08/02/2021

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 PRINCIPAL POCSO SPECIAL JUDGE,
CHENNAI.

2 THE OFFICER INCHARGE
SUB-JAIL, CHENGALPATTU.

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3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

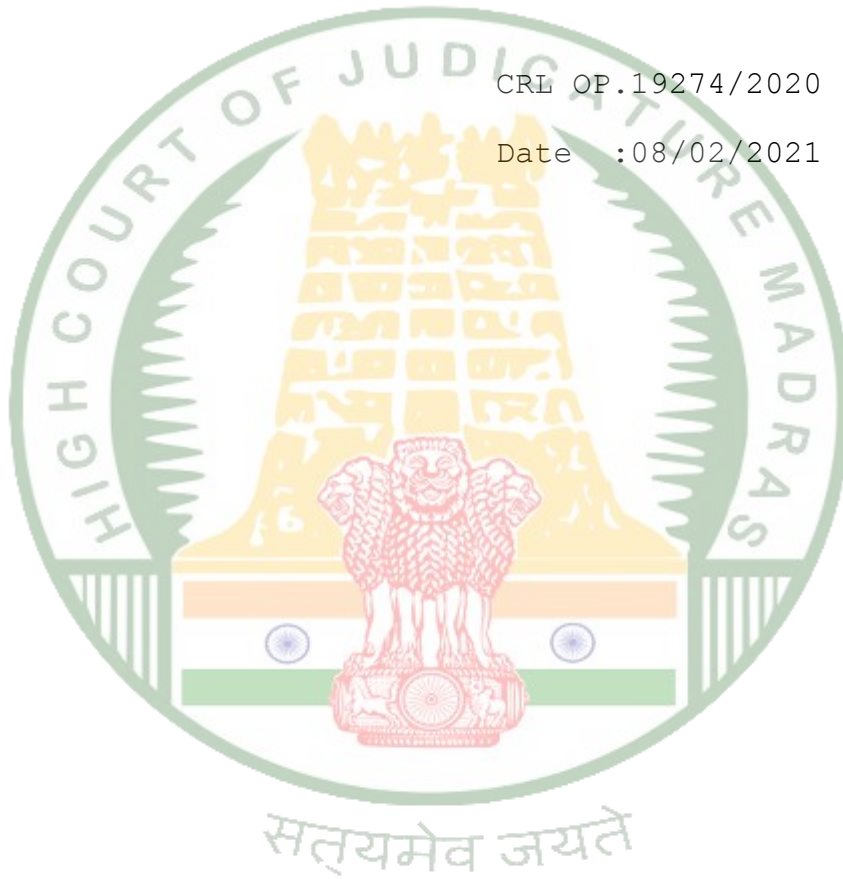
4 THE INSPECTOR OF POLICE,
W-19, ALL WOMEN POLICE STATION,
ADYAR, CHENNAI.

+1 CC to M/S.AJMAL ASSOCIATES Advocate on payment of necessary
charges SR.NO. 1312

CRL OP.19274/2020

Date :08/02/2021

cs 09/02/2021



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