



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

Reserved on: 21.12.2020
Pronounced on: 25.01.2021

PRESENT

The Hon`ble Mr.Justice **G.K. ILANTHIRAIYAN**
CRL OP(MD). Nos.9025 and 8316 of 2020

WEB COPY

The Deputy Superintendent of Police,
Tenkasi Sub Division,
Tenkasi District.
(Crime No.19/2020).

...Petitioner/Petitioner/Complainant
in both petitions

Vs

1. Mohamed Ismail @ Meshak,
S/o. Mohamed Sahip,
Maraikayar Pallivasal Street,
Tenkasi.

2. Syed Kaja Hareem Navas,
S/o. Mydeen,
Hameempuram 5th Street,
Melapalayam, Tirunelveli.

3. Alhapeb,
S/o. Shahul Hameed,
Maiyavadi 4th Street,
Rahumaniyapuram, Pettai,
Tirunelveli.4. Mohamed Sakkaria,
S/o. Shanhul Hameed,
Mathina Nagar, Tenkasi.

5. Abdul Kadhar Meeran Mydeen,
S/o. Abdul Kani,
Maraikayar Pallivasal Street,
Tenkasi..

6. B.Syed Ali,
S/o. Basheer,
Punnakattuvila Veedu,
Ayangaman, Parasala (Post),
Trivandram.

...Respondents 1 to 6/ Respondents 1 to 6/
accused 1 to 6 in Crl.O.P(MD)No.9025 of 2020

1. Mohamed Ismail @ Meshak,
S/o.Mohamed Sahib, Maraikayar
Pallivasal Street, Tenkasi.

2. Syed Kaja Hareem Navas,
S/o.Mydeen, Hameempuram 5th Street,
Melapalayam, Tirunelveli.



3. Alhapeb,
S/o.Shahul Hameed,
Maiyavadi 4th Street,
Rahumaniyapuram, Pettai, Tirunelveli.

4. Mohamed Sakkaria,
S/o.Shanhul Hameed,
Mathina Nagar, Tenkasi.

5. Abdul Kadhar Meeran Mydeen,
S/o.Abdul Kani,
Maraikayar Pallivasal Street,
Tenkasi. ... Respondents 1 to 5/Respondents 1 to 5
accused in Crl.O.P(MD)No.8316 of 2020

Prayer in Crl.O.P(MD) No. 9025 of 2020

To set aside the impugned return endorsement, dated 19.05.2020 made in unnumbered Cr.M.P.No. of 2020 dated 22.04.2020 on the file of Learned Principal Sessions Judge, Tirunelveli preferred against the order in Cr.M.P.No.1173/2020 on the file of the learned Judicial Magistrate, Tenkasi and consequently direct the learned Principal Sessions Judge, Tirunelveli to number the un-numbered Cr.M.P.No. of 2020 dated 22.04.2020 and decide the application on merits.

Prayer in Crl.O.P(MD) No. 8316 of 2020

To Cancel the bail order granted in Cr.M.P.NO.1172 of 2020 dated 17/04/2020 on the file of the learned Judicial Magistrate, Tenkasi Confirmed in Cr.M.P.No.2975 of 2020 dated 30/06/2020 on the file of Principal District Judge, Tirunelveli by setting aside the order passed in Cr.M.P. No.2975 of 2020 dated 30/06/2020 on the file of the learned Principal District Judge, Tirunelveli confirming the order passed in Cr.M.P.No. 1172 of 2020 dated 17.04.2020 on the file of the learned Judicial Magistrate, Tenkasi.

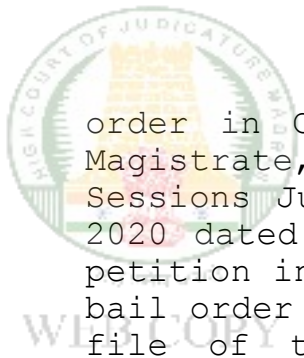
(In both petitions)

For Petitioner	: Mr.K.K.Ramakrishnan Additional Public Prosecutor,
For Respondents	: Mr.G.Prabhu Rajadurai Advocate for Mr. S.M.A.Jinnah, Advocate

COMMON ORDER

The Court made the following order :-

The petition in Crl.O.P(MD) No. 9025 of 2020 has been filed to set aside the impugned return endorsement, dated 19.05.2020 made in unnumbered Cr.M.P.No. of 2020 dated 22.04.2020 on the file of Learned Principal Sessions Judge, Tirunelveli preferred against the



order in Cr.M.P.No.1173/2020 on the file of the learned Judicial Magistrate, Tenkasi and consequently direct the learned Principal Sessions Judge, Tirunelveli to number the un-numbered Cr.M.P.No. of 2020 dated 22.04.2020 and decide the application on merits and the petition in CrI.O.P(MD) No.8316 of 2020 has been filed to Cancel the bail order granted in Cr.M.P.NO.1172 of 2020 dated 17/04/2020 on the file of the learned Judicial Magistrate, Tenkasi Confirmed in Cr.M.P. No.2975 of 2020 dated 30/06/2020 on the file of Principal District Judge, Tirunelveli by setting aside the order passed in Cr.M.P. No.2975 of 2020 dated 30/06/2020 on the file of the learned Principal District Judge, Tirunelveli confirming the order passed in Cr.M.P.No. 1172 of 2020 dated 17.04.2020 on the file of the learned Judicial Magistrate, Tenkasi.

2. The respondents herein are the accused in Crime No.19 of 2020 on the file of the Inspector of Police, Tenkasi Police Station registered for an offence under Sections 7(1)(a) of Criminal Law Amendment Act. In pursuance to the said crime they were arrested on 13.01.2020. During investigation various offences under the Unlawful Activities (Prevention) Act 1967 were brought to the knowledge of the Investigating Officer and as such the offences were altered into Sections 16, 18 and 20 of Unlawful Activities (Prevention) Act 1967 as amendment 2008(herein after called as UAPA 2008) After altering the offence, the petitioner herein filed a memo before the learned Judicial Magistrate Tenkasi to transfer all records to the learned Principal District Judge. The investigating agency could not to complete the investigation within 90 days and filed the petition for extension of time to complete the investigation from 90 days to 180 days under Section 43 D(2) of UAPA 2008 and the same was numbered by the learned Judicial Magistrate in Cr.M.P.No.1173 of 2020 on 16.04.2020. At that time the accused persons filed a petition in Cr.M.P.No. 1172 of 2020 under Section 167(ii) of Cr.P.C claiming statutory bail under the Act. The learned Magistrate had taken both the applications for hearing and dismissed the petition filed by the petitioner herein for extension of time and granted default bail to the accused persons for non-filing of final report within a period of 90 days. Aggrieved by the order of default bail, the petitioner has filed a petition for cancellation of bail in Cr.M.P.No.2975 of 2020 before the Principal Sessions Judge, Tirunelveli and the Sessions Judge by an order dated 30.06.2020, dismissed the said petition and the petition in Cr.M.P.No.1173 of 2020 was rejected as not maintainable. Aggrieved by both orders passed by the learned Judicial Magistrate and as confirmed by the Sessions Judge, the petitioner has filed these petitions.

3. The learned Additional Public Prosecutor would submit that the learned Magistrate dismissed the time extension petition under UAPA 2008 dealing with the statutory bail petition and granted default bail to the respondents herein. At the same time the learned Magistrate dismissed the petition for extension of time to file the



final report for the reason that the learned Sessions Judge, Tirunelveli alone has got jurisdiction to entertain the petition under Section 43 D(2) of UAPA 2008. He further submitted that by an order dated 23.03.2020 the Honourable Supreme Court of India in *Suo Motu Writ petition 3 of 2020* extended the time of limitation for filing final report without filing any application. Accordingly this Court categorically held in *Crl.O.P.(MD) No.5291 of 2020* which reads as follows:

*"Of course, the construction placed by me will have no application whatsoever in the case of certain offences under certain special laws, such as Unlawful Activities(Prevention Act()) 1967 and NDPS Act, 1985. For instance Section 36-A (4) of the NDPS Act enables the investigation officer to apply to the special Court for extending the period mentioned in the statute from 180 days to one year if it is not possible to complete the investigation. Thus, under certain statutes, the prosecution has a right to apply for extension of time. In those cases, the benefit of the direction of the Honourable Supreme Court made 23.03.2020 in *Suo Motu Writ Petition (Civil)No.3 of 2020* will apply. But, in respect of other offences for which section 167 of Cr.P.C is applicable, the benefit of the said direction cannot be availed".*

4.It is also endorsed by the Honourable Supreme Court of India reported in **2020 SCC Online SC 529** in the case of ***S.Kasi-vs- State of Inspector of Police, Samayanallur Police Station, Madurai District***. He further submitted that by an order dated 23.03.2020, the Honourable Supreme Court in the *Suo Motu Writ Petition 3 of 2020* held that the period of limitation of such proceedings irrespective of the limitation prescribed under the general law or Special laws whether condonable or not shall be extended w.e.f.15th March 2020 until further orders. In case the limitation has expired after 15.03.2020, then the period from 15.03.2020 till the date on which the lock down is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.

5.Therefore the petitioner need not at all file a petition for extension of time to complete the investigation since already time was extended by the order of the Honourable Supreme Court of India. He further submitted that the offence under UAPA Act is concerned, the Court means the Special Court, as specified under the notification . Therefore the learned Magistrate has no jurisdiction to entertain the petition under Section 167(ii) of Cr.P.C for default bail. In this regard, he also relied on the judgment of the Honourable Supreme Court reported in **2020 SCC Online SC 824** in the case of ***Bikramjit singh -vs- State of Punjab*** in ***Criminal Appeal No. 667 of 2020***, wherein it is held as follows:



"36. In a fairly recent judgment reported as **Rakesh Kumar Paul v. State of Assam** (2017) 15 SCC 67, a Three-Judge Bench of this Court referred to the earlier decisions of this Court and went one step further. It was held by the majority judgment of Madan B. Lokur, J. and Deepak Gupta, J. that even an oral application for grant of default bail would suffice, and so long as such application is made before the charge sheet is filed by the police, default bail must be granted. This was stated in Lokur, J.'s judgment as follows:

"37. This Court had occasion to review the entire case law on the subject in *Union of India v. Nirala Yadav* [*Union of India v. Nirala Yadav*, (2014) 9 SCC 457 : (2014) 5 SCC (Cri) 212]. In that decision, reference was made to *Uday Mohanlal Acharya v. State of Maharashtra* [*Uday Mohanlal Acharya v. State of Maharashtra*, (2001) 5 SCC 453 : 2001 SCC (Cri) 760] and the conclusions arrived at in that decision. We are concerned with Conclusion (3) which reads as follows: (*Nirala Yadav case* [*Union of India v. Nirala Yadav*, (2014) 9 SCC 457 : (2014) 5 SCC (Cri) 212], SCC p. 472, para 24)" "13. (3) On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate." (*Uday Mohanlal case* [*Uday Mohanlal Acharya v. State of Maharashtra*, (2001) 5 SCC 453 : 2001 SCC (Cri) 760], SCC p. 473, para 13)"

38. This Court also dealt with the decision rendered in *Sanjay Dutt* [*Sanjay Dutt v. State*, (1994) 5 SCC 410 : 1994 SCC (Cri) 1433] 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.

39. This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right. Reference was made to *Mohd. Iqbal Madar Sheikh v. State of Maharashtra* [*Mohd. Iqbal Madar*



Sheikh v. State of Maharashtra, (1996) 1 SCC 722 : 1996 SCC (Cri) 202] wherein it was observed that some courts keep the application for "default bail" pending for some days so that in the meantime a charge-sheet is submitted. While such a practice both on the part of the prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the indefeasible right of the accused for "default bail" during the interregnum when the statutory period for filing the charge-sheet or challan expires and the submission of the charge-sheet or challan in court.

Procedure for obtaining default bail

40. In the present case, it was also argued by the learned counsel for the State that the petitioner did not apply for "default bail" on or after 4-1-2017 till 24-1-2017 on which date his indefeasible right got extinguished on the filing of the charge-sheet. Strictly speaking, this is correct since the petitioner applied for regular bail on 11-1-2017 in the Gauhati High Court – he made no specific application for grant of "default bail". However, the application for regular bail filed by the accused on 11-1-2017 did advert to the statutory period for filing a charge-sheet having expired and that perhaps no charge-sheet had in fact been filed. In any event, this issue was argued by the learned counsel for the petitioner in the High Court and it was considered but not accepted by the High Court. The High Court did not reject the submission on the ground of maintainability but on merits. Therefore it is not as if the petitioner did not make any application for default bail – such an application was definitely made (if not in writing) then at least orally before the High Court. In our opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for "default bail" or an oral application for "default bail" is of no consequence. The court concerned must deal with such an application by considering the statutory requirements, namely, whether the statutory period for filing a charge sheet or challan has expired, whether the charge-sheet or challan has been filed and whether the accused is prepared to and does furnish bail.

41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this



Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court"

6. Therefore the learned Magistrate has no jurisdiction to entertain the bail petition and respondents are not entitled for default bail, since the time for completion of investigation is extended by the Honourable Supreme Court in *Suo Motu Writ Petition No.3 of 2020*, and thus sought for cancellation of default bail granted to the respondents and also prayed for extension of time to complete the investigation in Crime No. 19 of 2020.

7. Per contra, the learned counsel for the respondents would submit that the respondents herein were arrested and remanded to judicial custody on 13.01.2020 and the petitioner did not complete the investigation and failed to file the final report till the expiry of 90 days i.e., 11.04.2020., Therefore the respondent filed petition for default bail under Section 167(ii) of Cr.P.C before the learned Principal Sessions Judge, Tirunelveli and the same was forwarded to the learned Judicial Magistrate, Tenkasi on 15.04.2020 and the said petition was received by the Magistrate on 16.04.2020 at about 10.30 a.m., Thereafter the petitioner filed a petition for extension of time for further 90 days to complete the investigation at about 0800 pm., on 16.04.2020, hence the learned Magistrate has rightly granted default bail to the respondents and rejected the subsequent request made by the petitioner herein for extension of time.

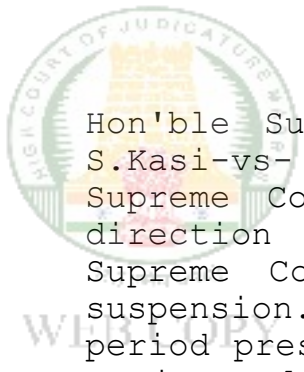
8. On the representation of the application for bail, after expiry of statutory period of remand the right of bail accrues upon the accused and as such the right cannot be taken away by the subsequent filing of report for extension of time. In this regard he also relied upon the judgment reported in

1. 2020 SCC Online SC 867 in the case of **M.Ravindran -Vs- Intelligence Officer, Directorate of Revenue Intelligence.**

2. 2020 SCC Online SC 824 in the case of **Bikramjit singh -vs- State of Punjab in Criminal Appeal No. 667 of 2020.** He also relied upon the various judgment of the Honourable Supreme Court of India in respect of default bail.

9. He further submitted that the accused were granted default bail and the request of the petitioner for extension of time to complete the investigation automatically become infructuous and as such the learned Magistrate rightly rejected the request made by the petitioner for extension of time. The learned magistrate had also no jurisdiction to extend the remand under UAPA Act.

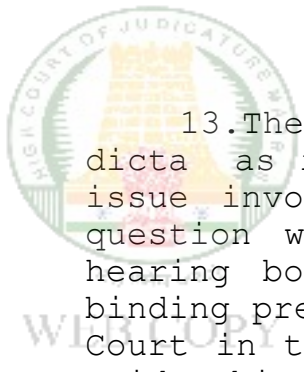
10. He further submitted that it is relevant to point out that after the judgment of this Honourable Court in Settu case, the



Hon'ble Supreme Court considered a similar situation in case of S.Kasi-vs- state in Crl.A.No.452/20 dated 19.06.2020. The Honourable Supreme Court in para 15,16,17 and 18 reproduced the earlier direction of the Supreme Court suspending limitation and the Supreme Court further went on to assign the reasons for such suspension. The Supreme Court made it very clear that the limitation period prescribed under the Special and General Laws stood extended as it would be difficult for litigants and lawyers to approach the Court during lock down. However the Hon'ble Supreme Court differentiated the duty of the prosecution to file a charge sheet and held that the order dated 23.03.2020 cannot be read to be that it even intended to extend the period of filing charge sheet by police. It can be explained that the prosecution has to bring its case within the direction of the Supreme Court dated 23.03.2020. The said direction is only extended the period of limitation prescribed under Special and General laws stood extended as it would be difficult for litigants and lawyers to approach the court during lock down.

11.However the Hon'ble Supreme Court differentiated the duty of the prosecution to file a charge sheet and held that the order dated 23.03.2020 cannot be read to be that it even intended to extend the period of filing charge sheet by police. It can be explained that the prosecution has to bring it's case within the direction of the Supreme court dated 23.03.2020. The said direction is only extended to the period of limitation prescribed under the Special and General Law. But the law of limitation bars the remedy of any person through court on its expiry. Hence a person not filing suit within the prescribed time can never file a suit thereafter. It is a prescription of time to approach the Court. As far as the duty of prosecution to file the charge sheet is concerned there is no time limit prescribed under law. The prosecution can file charge sheet at any time, Hence the direction of the Supreme Court dated 23.03.2020 is not applicable for filing charge sheet either under IPC or under a Special Act like Unlawful Activities(Prevention) Act, 2008.

12.The Hon'ble Supreme Court in the case of **Kasi Vs. State** has recollected para 20 of the infamous judgment in **ADM Jabalpur case** and the overruling of the said judgment in case **K.S.Puttasamy case in (2017)10 SCC 1**. The Supreme court in so many words highlighted the importance of presence of fundamental right under Article 21 of the Constitution of India and that the same could not be suspended even by the proclamation of emergency. Hence the accrual right for default bail under Article 21 of the Constitution of India would not be taken away by the Supreme Court and that by any stretch of imagination the direction of the Supreme Court dated 23.03.2020 extending the period of limitation would bring within its compass the right of the accused to claim the default bail which is a fundamental right.



13. The observation of this Court in para 15 is only obiter dicta as it is an expression of opinion by the Court though not an issue involved in deciding the case. Any observation on a legal question without the same is raised as an issue and decided on hearing both the sides would be an obiter and may not be taken binding precedent. Even otherwise the finding of the Hon'ble Supreme Court in the case of Kasi Vs- State in para 15,16,17 and 18 would guide this Hon'ble Court is whether by the direction of the Supreme Court dated 23.03.2020 the remand period for the accused in Unlawful Activities(Prevention Act),2008 would be automatically extended.

14. He further submitted that First Information Report in Crime No. 19 of 2020 is still pending on the file of the learned Magistrate and not yet referred to any other agency and as such he has got power to grant default bail under Section 167(ii) of Cr.P.C, therefore he sought for dismissal of the said petition.

15. Heard Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing to the petitioner and Mr.S.M.A.Jinnah learned counsel appearing for the respondents.

16. The respondents herein are arrayed as A1 to A6 in Crime No. 19 of 2020 on the file of the petitioner herein. The prosecution alleging that they have been participated in the secret meeting in dilapidated house on 03.01.020 at about 10.30 pm., and they were arrested and the case has been registered for offence under Section 7(1)(a) of Criminal Law Amendment Act in Crime No. 19 of 2020 on the file of the Inspector of Police, Tenkasi Police Station and subsequently the case was altered to offence under Sections 16,18 and 20 of Unlawful Activities (Prevention) Act 1967. On 15.04.2020 the respondents filed petition for default bail under Section 167 (ii) of Cr.P.C before the learned Principal Sessions Judge, Tirunelveli and the same was forwarded to the learned Judicial Magistrate, Tenkasi it was received by the learned Magistrate on 16.04.2020 at about 10.30 am.,. Admittedly after filing the petition for default bail, the petitioner filed petition for extension of time. The learned Magistrate granted default bail and rejected the request of the petitioner for extension of time to complete the investigation.

17. Aggrieved by the same the petitioner filed Cr.M.P.No. 2975 of 2020 before the learned Principal District and Sessions Judge, Tirunelveli to cancel the bail granted to the respondents. The petitioner also filed petition as against the rejection order passed by the learned Magistrate in Cr.M.P.No. 1173 of 2020 and the learned District and Sessions Judge, dismissed both the petitions.

18. Points for consideration are that :-

i) Whether the learned Magistrate has got jurisdiction to entertain the petitioner under Section 167(ii) of Cr.P.C r/w. 43 D (2) of UAPA 2008.

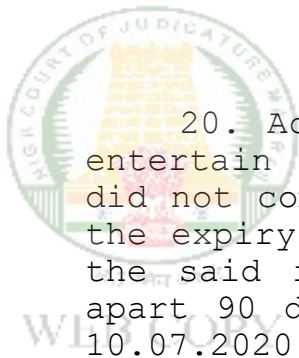


ii) whether the respondents are entitled for right of default bail under Section 167(ii) of Cr.P.C r/w. 43 D(2) of UAPA 2008?

19. The Inspector of Police, Tenkasi registered a case in Crime No. 19 of 2020 for offence under Section 7(1)(a) of Criminal Law Amendment Act and subsequently the case was altered to offence under Sections 16, 18 and 20 of Unlawful Activities (Prevention) Act 1967, are triable by the Session Court. The First Information Report is still pending on the file of the learned Judicial Magistrate, Tenkasi and the petitioner did not take any steps to transfer the entire file to the file of the Sessions Court. When the First Information is very much pending on the file of the learned Judicial Magistrate, Tenkasi the learned Magistrate has got power to entertain the petition for default bail. In this regard the learned counsel for the respondents relied upon the judgment of the Honourable Supreme Court reported in **2020 SCC Online SC 868** in the case of **M.Ravindran v. Directorate of Revenue Intelligence**, where it is held as follows:

"52. There also appears to be some controversy on account of the opinion expressed in *Hitrendra Vishnu Thakur*(supra) that the Public Prosecutor may resist grant of default bail by filing report seeking extension of time for investigation. The Court held that

"30... It is, however, permissible for the public prosecutor to resist the grant of bail by seeking and extension under clause(bb) by filing a report for the purpose before the Court. However, no extension shall be granted by the Court without notice to an accused to have his say regarding the prayer for grant of extension under clause(bb). In this view of the matter, it is immaterial whether the application for bail on ground of 'default' under Section 20(4) is filed first or the report as envisaged by clause(bb) is filed by the public prosecutor first so long as both are considered while granting or refusing bail. If the period prescribed by clause(b) of Section 20(4) has expired and the court does not grant an extension on the report of the public prosecutor made under clause (bb) the court shall release the accused on bail as it would be an indefeasible right of the accused to be so released. Even where the Court grants and extension under clause(bb) but the charge sheet is not filed within the extended period, the court shall have no option but to release the accused on bail if he seeks it and prepared to furnish the bail as directed by the Court".



20. Accordingly the learned Magistrate has got jurisdiction to entertain the petition for default bail. Admittedly the petitioner did not complete the investigation and file the final report before the expiry of 90 days. Thereafter the learned Magistrate considered the said request and grant bail to the respondents/accused. That apart 90 days completed on 11.04.2020 and 180 days completed on 10.07.2020. Even till today the petitioner did not complete the investigation and filed the final report in Crime No. 19 of 2020. Therefore the request made by the petitioner for extension of time by statute itself expires and the respondents/accused are very much entitled for default bail. Therefore nothing survives in these petitions and are liable to be dismissed.

21. Accordingly both the petitions stand dismissed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

AAV

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 Deputy Superintendent of Police,
Tenkasi Sub Division,
Tenkasi District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

COMMON ORDER IN
CRL OP(MD)Nos.9025 and 8316 of 2020
Date : 25.01.2021

VB (04.02.2021) 11P 3C