



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 22/06/2021

PRESENT

The Hon'ble Mr. Justice K.MURALI SHANKAR

CRL OP (MD) . Nos.7522 and 8068 of 2021

Solai Mani :Petitioner/1st Accused
(in Crl.OP (MD) No.7522/2021)

Muthukumar :Petitioner/Accused No.2
(in Crl.OP (MD) No.8068/2021)

Vs.

The state represented by
The Inspector of Police,
Ganesh Nagar Police Station,
Pudukkottai District.
Crime No.207 of 2021..

... Respondent/Complainant
(in both petitions)

S.Sakthikumaran ... Petitioner/Intervener/
Defacto Complainant
in Crl.MP (MD) No.4200/2021
in Crl.OP (MD) No.7522/2021

For Petitioner : Mr.K.R.Laxman.
in Crl.OP (MD) No.7522/2021.

For Petitioner : Mr.N.Mohideen Basha,
in Crl.OP (MD) No.8068/2021.

For Intervenor : Mr.M.Kannan
in Crl.OP (MD) No.7522/2021.

For Respondent : Mr.P.Kottaichamy,
Government Advocate (Crl.Side)
(in both petitions)

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :-

<https://hcservices.ecourts.gov.in/hcservices/>

For Bail in the Crime No.207 of 2021 on the file of the
respondent Police.



ORDER : The Court made the following common order :-

The petitioner/A1, who was arrested and remanded to judicial custody on 24.04.2021 for the offences punishable under Sections 381, 120(b), 411, 414 r/w Section 34 IPC in Crime No.207 of 2021, on the file of the respondent police, seek bail.

2.The petitioner/A2, who was arrested and remanded to judicial custody on 24.04.2021 for the offences punishable under Sections 381 IPC altered into Sections 120(b), 411, 414, 381 r/w Section 34 IPC, in Crime No.207 of 2021, on the file of the respondent police, seek bail.

3.The case of the prosecution is that the petitioners are working in Gold Loan Section of HDB Financial Service, at Pudukkottai Branch and they were conspired with other accused, who were the employees of the aforesaid financial company and stolen jewels from the safety locker of the Company from 01.09.2020 to 21.04.2021, totally weighing 2716.91 grams. At the time of audit, the said theft was found and it was also revealed that the accused persons had re-pledged the said jewels in Indel Money Private Limited. Hence the complaint.

4.The learned counsel for the petitioners would submit that the petitioners have been falsely implicated in this case and they have not committed any offence as alleged by the prosecution. They further submitted that the co-accused was arrested and subsequently, released on bail. He would further submit that the petitioners are in jail from 24.04.2021, hence they may be granted bail.

5.The learned counsel for the intervenor would submit that still 1000 grams of Gold are yet to be recovered and that they have already filed an application for cancellation of bail granted to the co-accused by the Sessions Court and the same is pending before this Court and that they are seriously objecting to release the petitioners on bail.

6.The learned counsels for the petitioners would submit that 60 days had elapsed, since the date of the arrest of the petitioners and the respondent has not filed the charge sheet sofar, the petitioners are entitled to get statutory bail under Section 167(2) Cr.P.C and relied on the decision of the Hon'ble Supreme Court in CrI.A(MD)Nos.681 and 682 of 2020, **Saravanan Vs. state represented by the Inspector of Police**, and it is necessary to refer the relevant passage hereunder :

"8. ... However, as observed by this Court in catena of decisions and more particularly in the case of Rakesh Kumar Paul (supra), where the investigation is not completed within 60 days or 90 days, as the case may be, and no charge sheet is filed by 60th or 90th day,



accused gets an "indefeasible right" to default bail, and the accused becomes entitled to default bail once the accused applies for default bail and furnish bail. Therefore, the only requirement for getting the default bail/statutory bail under Section 167(2) Cr.P.C is that the accused is in jail for more than 60 or 90 days, as the case may be, and within 60 or 90 days, as the case may be, the investigation is not completed and no charge sheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail. No other condition of deposit of the alleged amount involved can be imposed. Imposing such condition while releasing the accused on default bail/ statutory bail would frustrate the very object and purpose of default bail under Section 167(2) Cr.P.C. As observed by this Court in the case of Rakesh Kumar Paul (supra) and in other decisions, the accused is entitled to default bail/statutory bail, subject to the eventuality occurring in Section 167 Cr.P.C., namely, investigation is not completed within 60 days or 90 days, as the case may be, and no charge sheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail."

9. The learned Government Advocate(Crl.Side) would admit that the charge sheet has not filed sofar.

10.The learned counsels for the petitioners would submit that they are restricting their arguments with respect to the petitioners' entitlement to get default/statutory bail, since the final report has not been filed. Considering the fact that the respondent has not filed the final report sofar and also the fact that the petitioners are in judicial custody for the past 60 days, they are entitled to get statutory bail under Section 167(2) Cr.P.C. Hence, this Court is inclined to release the petitioners on bail, subject to the following conditions:

11.Accordingly, the petitioners are ordered to be released on bail on their executing 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 Judicial Magistrate Court No.I, Pudukkottai.

i)the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity

ii)the petitioners shall report before the respondent police once in a week (i.e., every Monday at 10.00 am)for a period of two months,



iii) the petitioners shall not tamper with evidence or witness.

iv) the petitioners shall not abscond during trial.

v) On breach of any of the aforesaid conditions, the learned 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].

vi) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-

22/06/2021

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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 JUDICIAL MAGISTRATE No.I, PUDUKKOTTAI.
2. DO-THROUGH : THE CHIEF JUDICIAL MAGISTRATE,
PUDUKKOTTAI DISTRICT.
3. THE INSPECTOR OF POLICE,
GANESH NAGAR POLICE STATION,
PUDUKKOTTAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.
5. THE OFFICER INCHARGE,
BORSTAL SCHOOL AND DISTRICT JAIL,
PUDUKKOTTAI.
6. THE OFFICER INCHARGE,
SUB JAIL, ARANTHANGI,
PUDUKKOTTAI DISTRICT.

ORDER

IN

CRL OP (MD) Nos.7522 & 8068/2021

Date : 22/06/2021