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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.13319 of 2022

Sathesh Kumar

... Petitioner

Versus

The State rep. by
The Sub-Inspector of Police,
K8-Arumbakkam Police Station,
Chennai
Crime No.149 of 2022.

... Respondent

Prayer :- Criminal Original Petition filed under Section 439 (1)(b) of Cr.P.C. r/w 482 of Cr.P.C., praying to set aside the condition imposed by the V Metropolitan Magistrate, Egmore in Crl.M.P.No.13484 of 2022 dated 27.05.2022 in Crime No.149 of 2022 on the file of the respondent police.

For Petitioner : Mr.N.Ganeshmurthy

For Respondent : Mr.V.J.Priyadarsana
Government Advocate (Crl.Side)

O R D E R

This petition has been filed to set aside the condition imposed by the learned V Metropolitan Magistrate, Egmore in Crl.M.P.No.13484 of 2022 dated 27.05.2022 in Crime No.149 of 2022.

2. The case of the prosecution is that the petitioner has committed the offence under Section 406, 420 IPC and 66 D IT Act 2000. Further, the petitioner was arrested and remanded to judicial custody on 26.03.2022 and thereafter as the final report was not filed within 60 days and the petitioner/accused was in the custody over 63 days. Therefore, statutory bail was granted under Section 167(2) Cr.P.C by the trial Court. Unfortunately, the learned trial Judge had imposed the following conditions:

"(i)The petitioner is hereby directed to deposit sum of Rs.2,00,000/- in to this Court. Besides, sent the petitioner will execute a bond by himself along with Two solvent sureties for Rs.10,000/- (Rupees



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Ten Thousand only) and one of the surety shall be parents or blood relatives or family members of the petitioner and they shall produce Ration card and Aadhar Card or any other Photo identity Proof.

(b)The petitioner shall not abscond either during investigation or trial.

(c)The petitioner shall not in any manner influence or intimidate the witnesses and they shall not have any contact with the material witnesses directly or over telephone or otherwise.

(d)The petitioner shall appear before the respondent police for investigation as and when required.

(e)The petitioner should not involve any criminal activity in future."

Therefore, he sought for modification of the conditions imposed by the Court of the learned V Metropolitan Magistrate, Egmore.

3. The learned Additional Public Prosecutor would submit that the petitioner involved in huge and grave crime. She would also submit that already the petitioner was detained under Act 14. Therefore, she sought for dismissal of this petition seeking modification.

4. It is seen from the records that the petitioner was arrested and remanded to judicial custody on 26.03.2022. The respondent has not laid the charge sheet in this case. Therefore, he is entitled for the statutory bail under Section 167(2) Cr.P.C. Hence, the Court of the learned V Metropolitan Magistrate, Egmore granted bail and released the petitioner on condition that the petitioner shall deposit Rs.2,00,000/- to the below Court. When the accused was granted bail on default clause, there should not be any conditions for his release. In this regard, it is relevant to point out the judgment in the case of the order in CrI.O.P.No.18056 of 2006 dated 29.09.2000 reported in MANU/TN/0913/2000 in the matter of Baskar and others Vs. State and others the following paragraphs :-

"14. The failure to file charge sheet or final report before the period prescribed under Section 167(2) Code of Criminal Procedure will automatically result in releasing the accused on bail subject to only two conditions that there is an application for bail from the person in custody and he must be in a position to offer adequate sureties. The bail cannot be denied to him on an other ground less on the ground that on merits the



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petitioners do not deserve to be released on bail. The provision 167(2) Code of Criminal Procedure has been introduced in the code with a view to avoid unnecessary detention of persons or the accused in prison under judicial custody. Legislature in its wisdom has thought that the prosecution must be compelled to come out with a final report or charge sheet with expiry of 60 days or 90 days depending upon the gravity of the offence and intended period on punishment and in case the prosecution takes more time than that the legislature wanted to mitigate, the rigor of the remand by making release on bail compulsorily after the expiry of the said period. The rulings made by the Supreme Court has further clarified this position by stating that a person in judicial custody must exercise the option of coming out of bail by making an application on expiry of the period before laying of charge sheet and he cannot come leisurely to the Court after the charge sheet has been filed even though the charge sheet is filed after expiry of the prescribed period in 167(2) Code of Criminal Procedure. Neither the Legislature nor the Apex Court in any of the ruling have stated that any exemption can be made in such a case where application is filed in accordance with Section 167(2). So once the bail application is filed after expiry of the prescribed period and before challan is filed, the Court has no business to look into the gravity of the crime committed to justify the judicial custody beyond the prescribed period under Section 167(2) Code of Criminal Procedure.

15. It is not as if the difficulty of prosecution agency in certain cases to file final report within the period because of the voluminous evidence or records or difficulty in gathering evidence in case of complicated matters has been overlooked. Neither the Act nor the Apex Court had held that no charge sheet can be laid after expiry of prescribed period. In fact the Supreme Court has pointed out in those rulings that even if the accused has been released



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on bail by having recourse to 167(2) and the charge sheet is subsequently laid after expiry of the prescribed period the prosecution can ask for cancellation of bail on merits and this cancellation also cannot be automatically given to the prosecution if a petition for that is filed after filing the charge sheet. The Court is not expected to oblige the prosecution by keeping an application filed under Section 167(2) Code of Criminal Procedure Pending which has been filed after expiry of the period and giving opportunity to the prosecution to file charge sheet in the meantime and thereafter disposing the application holding that charge sheet has been already filed even though after expiry of the period."

Further he relied upon the judgment reported in 2006(2) MWN (Cr.) 414 in the matter of K.S.J.Kumar Vs. State rep by the Inspector of Police, in which this Court held as follows :-

"9. A perusal of the impugned order clearly shows that the learned Magistrate mainly proceeded with the case on merits of the case while dismissing the petitioner filed by th petitioner mainly invoking the provision under Section 167 (2) Cr.P.C. The learned Magistrate is not at all discussed the right of the petitioner accrued due to the non filing of the charge sheet within 90 days as stipulated. As a matter of fact, the learned counsel for the petitioner also placed reliance on a decision of this Court in Nagarajan, etc. & others V. State of Tamil Nadu, 2002 (2) L.W. (Cr1.) 545 wherein this Court has held that filing of a defective charge sheet and returning the same of rectify the defect amounts to non-filing of charge-sheet and will not defeat the right of the accused to be released on bail after expiry of 90 days.

10. In the decision cited supra, this Court has taken into consideration of the decision rendered by the Honourable Supreme Court in respect of the right of the accused under Section 167(2) Cr.P.C., elaborately. In spite of the above said reliance placed before the learned Magistrate, the learned Magistrate simply



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brushed aside the same with a single line that the petitioner is not entitled for the benefit of the decision rendered by this Court as cited supra. It is very unfortunate that the learned Magistrate has not even considered the submission regarding the non-filing of the charge sheet within the time stipulated and without giving any finding regarding such submission, proceeded mainly on the basis of the merits of the case.

11. The submission of the learned Government Advocate (Criminal side) makes its crystal clear that the investigation agency has filed the charge sheet only on 19.09.2006. Earlier submission of the learned Government Advocate (Criminal Side) that the draft charge sheet was filed on 10.07.2006 and the same was returned for corrections, would not amount to filing of a charge sheet as it is rightly held by this Court in the decision cited supra and filing a defective charge sheet and returning the same to rectify the defect amounts to non-filing of charge sheet.

12. It is also relevant to be noted that the petitioner is incarcerated from 18.04.2006 and now the investigation is over and the charge sheet has been filed in the case. As already stated that in view of the non-filing of the charge sheet within the time stip', the petitioner is having indefeasible right till the charge sheet is filed. This right also exercised by the petitioner within the stipulated time as the petitioner filed a petition for bail on 24.08.2006 after the expiry of 90 days.

13. Therefore, this Court has no hesitation to release the petitioner on statutory bail under Section 167(2) Cr.P.C. on condition to reside at Madurai and to report before the learned Judicial Magistrate No.I, Madurai once in fifteen days till the date of committal of the case."



5. In the case on hand, admittedly, the charge sheet has not been filed by the respondent police. Therefore the petitioner is entitled to be released on statutory bail under Section 167(2) Cr.P.C. When it being so, the right to be released under Section 167(2) Cr.P.C. is an indefeasible right and such a right cannot be extinguished by imposition of onerous conditions.

6. In view of the above discussions, this Court is inclined to modify the condition "a" imposed by the Court of the V Metropolitan Magistrate, Egmore Accordingly, the condition "a" of the order dated 27.05.2022 on the file of the Court of the V Metropolitan Magistrate, Egmore stands deleted. The other conditions shall remain intact.

7. This Criminal Original Petition is ordered accordingly.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

dhk/cda

To

1.The V Metropolitan Magistrate,
Egmore, Chennai.

2.-do- through The Chief Metropolitan Magistrate,
Chennai.

3.The Sub-Inspector of Police,
K8-Arumbakkam Police Station,
Chennai.

4.The Public Prosecutor,
High Court of Madras, Chennai.

+1cc to Mr.N.Ganeshmurthy, Advocate SR. No. 38793 (29/06/2022)

CRL.O.P.No.13319 of 2022

KK (CO)

PR (28/06/2022)