



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P(MD)Nos.211 and 213 of 2022

Kannan ... Petitioner in HCP(MD)No.211 of 2022

S.Revathi ... Petitioner in HCP(MD)No.213 of 2022

vs.

1.State rep by,
The Inspector of Police,
Avaniyapuram Police Station,
Madurai City,
Crime No.668 of 2021.

2.The Inspector of Police,
NIB-CID,
Madurai District.
Crime No.32 of 2021.

... R1 & R2 in both HCPs

The Superintendent,
Central Prison,
Madurai.

... R3 in HCP(MD)No.211 of 2022

The Superintendent,
District Jail,
Dindigul District.

... R3 in HCP(MD)No.213 of 2022

PRAYER in HCP(MD)No.211 of 2022 : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, as to the petitioner's son namely Prakash, S/o.Kannan aged about 30 years in Crime No.32 of 2021 on the file of the 2nd respondent and consequently direct the respondents to produce the body or person of the detenu before this Hon'ble Court and set him at liberty.

PRAYER in HCP(MD)No.213 of 2022 : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, as to the petitioner's husband namely Sathish S/o.Palanisamy aged about 35 years in Crime No.32 of 2021 on the file of the 2nd respondent and consequently direct the respondents to produce the body or person of the detenu before this Hon'ble Court and set him at liberty.

In both cases:

For Petitioner : Mr.K.K.Ramakrishnan for
Mr.B.Pandiarajan

For Respondents : Mr.S.Ravi

Additional Public Prosecutor.



COMMON ORDER

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

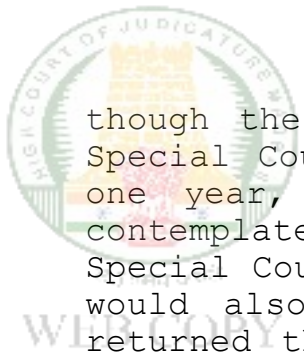
The petitioner in HCP(MD)No.211 of 2022 is the father of one Prakash, who has been arrayed as A7 in Crime No.668 of 2021 on the file of the Inspector of Police, Avaniyapuram Police Station, Madurai City. The petitioner in HCP(MD)No.213 of 2022 is the wife of A5 namely, Sathish in the same crime number. The offences for which the FIR was registered against the accused persons are under Sections 8(c), 20(b)(ii)(C), 25 and 29(1) of the Narcotic Drugs & Psychotropic Substances Act, 1985 and Section 25(1A) of the Arms Act, 1959.

2. The FIR was registered on 13.06.2021. The 7th accused whose detention is challenged in HCP(MD)No.211 of 2022 was arrested on 10.08.2021 and the 5th accused whose detention is challenged in HCP(MD)No.213 of 2022 was arrested on 11.08.2021. Since the charge sheet was not filed within the time allowed under Section 36A(4) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (in short, 'NDPS Act'), the accused sought for statutory bail under Section 167(2) of the Criminal Procedure Code, 1973 (in short 'Cr.P.C') read with Section 36A(4) of the NDPS Act. The learned Special Judge for Essential Commodities and NDPS Act Cases, Madurai, returned the bail petitions of the petitioners herein, on the ground that the prayer made by the learned Special Public Prosecutor for extension of time for filing the final report in CrI.M.P.No.164 of 2022 filed on 28.01.2022, is pending.

3. The petitioners have come up with these Habeas Corpus Petitions, primarily contending that the period of 180 days having expired and the application for extension of time for filing the final report filed by the prosecution having not been ordered, the detention of the accused persons beyond the statutory period of 180 days, is illegal and therefore, they will have to be set at liberty forthwith.

4. We have heard Mr.K.K.Ramakrishnan, learned counsel for the petitioner in both the petitions and Mr.S.Ravi, learned Additional Public Prosecutor for the respondents.

5. Relying upon sub-section (2) of Section 167 of the Cr.P.C and Section 36A(4) of the NDPS Act, Mr.K.K.Ramakrishnan, learned counsel for the petitioners, would contend that the prosecuting agency is bound to file the charge sheet within the period of 180 days and if the charge sheet is not filed, the accused persons would be entitled to statutory bail. It is his further contention that

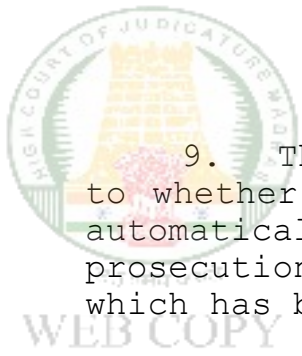


though the proviso to Section 36A(4) of the NDPS Act enables the Special Court to extend the time for filing the final report upto one year, unless such order is granted within 180 days period contemplated in sub section (4) of Section 36A of the NDPS Act, the Special Court cannot deny statutory bail to the accused persons. He would also point out that the Special Court ought not to have returned the petitions for statutory bail on the ground that the application for extension of time is pending.

6. Arguing further, Mr.K.K.Ramakrishnan, would submit that on the expiry of the period of 180 days, in the absence of an order extending the time to file charge sheet, the custody becomes illegal and therefore, the accused persons will have to be set at liberty. He would rely upon the judgments of the Hon'ble Supreme Court in **Sayed Mohd. Ahmad Kazmi vs. State (Government of NCT of Delhi) and others** reported in (2012) 12 SCC 01, **Suresh Kumar Bhikamchand Jain vs. State of Maharashtra and another** reported in (2013) 3 SCC 77 and **M.Ravindran vs. Intelligence Officer, Directorate of Revenue Intelligence** reported in (2021) 2 SCC 485, in support of his submissions.

7. Contending contra, Mr.S.Ravi, learned Additional Public Prosecutor, would submit that once an application for extension of time is filed before the expiry of the 180 days period, any application for statutory bail will have to be heard and disposed of along with the application for extension of time. According to the learned Additional Public Prosecutor, the custody would not become illegal custody automatically on the expiry of 180 days. The very fact that the requirement of a bail application was made mandatory even for releasing a person on statutory bail under Section 167(2) Cr.P.C read with Section 36A(4) of the NDPS Act, would demonstrate that statutory bail is not automatic and under certain circumstances, the same can be postponed. He would also point out that if the Special Court extends the time for filing the final report, the irregularity would be cured and the custody would become the legal custody. Mr.S.Ravi, would rely upon the judgments of the Hon'ble Supreme Court in **Rambeer Shokeen vs. State (NCT of Delhi)** reported in (2018) 4 SCC 405 and the judgment of the Division Bench of this Court in **Thiruselvam and others vs. State, rep by Deputy Superintendent of Police, National Investigation Agency, Hyderabad**, reported in (2018) 3 MLJ (Cr1) 303. Mr.S.Ravi would also draw inspiration from the judgment of the Hon'ble Supreme Court in **M.Ravindran's case** (cited supra) relied on by Mr.K.K.Ramakrishnan, to contend that where an application for extension of time is filed prior to filing of the application for default bail by the accused and is pending, both the applications will have to be heard together.

8. We have considered the submissions of the counsel on either



9. The short question that would arise for determination is as to whether the accused persons would be entitled to statutory bail automatically despite the fact that the application of the prosecution seeking extension of time to file the final report, which has been filed within the time frame, is pending.

10. In our opinion, this question is no longer *res integra*. In **Rambeer Shokeen vs. State (NCT of Delhi)** reported in **(2018) 4 SCC 405**, the Hon'ble Supreme Court considered this very question and held as follows:-

'22. After having analysed the facts and events as unfolded from 28th February, 2017 until 8th March, 2017, it is indisputable that on 28th February, 2017, the Additional Public Prosecutor had filed report for extension of time to file charge-sheet against the appellant until 15th March, 2017. The same was filed within time, before the expiry of 90 days from the date of initial arrest of the appellant in connection with the subject FIR. Realising this position, the appellant did not pursue his first application for statutory bail dated 28th February, 2017. Instead, he was advised to file a fresh statutory bail application on 2nd March, 2017. Admittedly, on 2nd March, 2017, the report submitted by the Additional Public Prosecutor dated 28th February, 2017 was still undecided. Therefore, no right can be said to have accrued to the appellant for grant of bail on the ground of default. In law, only upon rejection of the prayer for extension of time sought by the Additional Public Prosecutor, right in favour of the appellant for grant of statutory bail could have ignited. The mere fact that 90 days period from the date of initial arrest of the appellant in connection with the subject FIR had lapsed on 2nd March, 2017, could not ineluctably entail in grant of statutory bail to the appellant. More so, when no decision was taken by the Court on the report/application submitted by the Additional Public Prosecutor until 8th March, 2017, on which date the supplementary charge-sheet against the appellant was filed in Court. Considering the effect of filing of the supplementary charge-sheet against the appellant, coupled with the fact that his judicial custody was extended by the Court of competent jurisdiction until the pendency of consideration of the report/application for extension of time to file the charge-sheet, in law, it is unfathomable as to how the appellant could claim to have any accrued right to be released on bail on the ground of default or for that matter, such a right having become infeasible.'



11. The Supreme Court further pointed out that the consideration of an application for grant of statutory bail in a situation as in the present case [pending an application for extension of time filed by the prosecution] was dependent on rejection of the prayer of the prosecution for extension of time. The Supreme Court went on to observe as follows:-

''..... When such prayer is made, it is the duty of the Court to consider the report/application for extension of period for filing of the charge-sheet in the first instance; only if it was to be rejected could the prayer for grant of statutory bail be taken forward. **In no case, the hearing on statutory bail application precede the consideration of prayer for extension of the period for filing of the charge-sheet made by the Additional Public Prosecutor.**'' [Emphasis supplied]

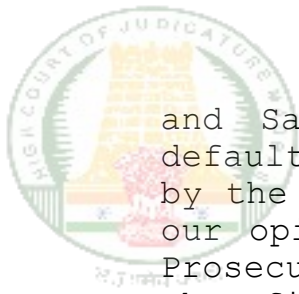
12. This judgment of the Hon'ble Supreme Court was followed by a Division Bench of this Court in **Thiruselvam and others vs. State, rep by Deputy Superintendent of Police, National Investigation Agency, Hyderabad**, reported in (2018) 3 MLJ (Crl) 303 wherein, the Division Bench observed as follows:-

''32.The question is, will the accused be entitled to default bail on this ground? As explained above, default bail is a sort of a rap on the knuckles of the police for not completing the investigation and filing the final report within 90/60 days of first remand of the accused. For the failure of the Judge to pass a formal judicial order of extension of remand on the application of the prosecution, default bail is not the remedy. The maxim, Actus Curiae Neminem Gravabit - An act of the Court shall prejudice no one, cannot be ignored. Such a ground for bail cannot be founded either u/s 167(2) or u/s 437 Cr.P.C. This Court cannot hold that, failure of the Magistrate/Judge to pass judicial orders on extension of remand applications would entail default bail to the accused and thus invent an hitherto unknown new category of default bail. ''

13. Mr.K.K.Ramakrishnan would however contend that in view of the subsequent judgment of the Supreme Court in **M.Ravindran's case** (cited supra), the judgment in **Rambeer Shokeen's case** (cited supra), has been diluted and the Hon'ble Supreme Court has held that in order to deny statutory bail, the prosecution must have either filed charge sheet within the time allowed or **must have obtained an order for extension within the time allowed.** (Emphasis supplied).

14. Heavy reliance is placed on by Mr.K.K.Ramakrishnan on paragraphs 20.1 and 20.2 of the judgment in **M.Ravindran vs. Intelligence Officer, Directorate of Revenue Intelligence** reported in (2021) 2 SCC 485, which are as follows:-

11/20/21 The observations made in Hitendra Vishnu Thakur



and Sanjay Dutt to the effect that the application for default bail and any application for extension of time made by the Public Prosecutor must be considered together are, in our opinion, only applicable in situations where the Public Prosecutor files a report seeking extension of time prior to the filing of the application for default bail by the accused. In such a situation, notwithstanding the fact that the period for completion of investigation has expired, both applications would have to be considered together. However, where the accused has already applied for default bail, the Prosecutor cannot defeat the enforcement of his indefeasible right by subsequently filing a final report, additional complaint or report seeking extension of time.

20.2. It must also be added and it is well settled that issuance of notice to the State on the application for default bail filed under the Proviso to Section 167(2) is only so that the Public Prosecutor can satisfy the Court that the prosecution has already obtained an order of extension of time from the Court; or that the challan has been filed in the designated Court before the expiry of the prescribed period; or that the prescribed period has actually not expired. The prosecution can accordingly urge the Court to refuse granting bail on the alleged ground of default. Such issuance of notice would avoid the possibility of the accused obtaining default bail by deliberate or inadvertent suppression of certain facts and also guard against multiplicity of proceedings.''

15. We are unable to read the judgment in **M. Ravindran's case** in the manner suggested by Mr. K. K. Ramakrishnan. A wholesome and comprehensive reading of paragraphs 20.1 and 20.2 of the judgment in **M. Ravindran's case**, would show that the Hon'ble Supreme Court has only reiterated the law as stated in **Rambeer Shokeen's case** and it had not diluted it in any manner. The Hon'ble Supreme Court has very clearly held that the observations made in **Hitendra Vishnu Thakur vs. State of Maharashtra** reported in (1994) 4 SCC 602 and **Sanjay Dutt vs. State** reported in (1994) 5 SCC 410, could be applied in cases where an application has been made by the prosecution seeking extension of time before filing of the application for default bail by the accused. They have also made it very clear that the prosecution cannot deny default bail to the accused by filing an application seeking extension of time, after an application seeking default bail had been filed by the accused persons. This is made clear in paragraph 20.3 of the judgment in **M. Ravindran's case**, where the Hon'ble Supreme Court had observed as follows:-

'However, Public Prosecutors cannot be permitted to misuse the limited notice issued to them by the Court on bail applications filed under Section 167(2) by dragging on proceedings and filing subsequent applications/reports for the purpose of 'buying extra time' and facilitating filling



up of lacunae in the investigation by the investigating agency.''

16. Even while concluding, the Hon'ble Supreme Court in M.Ravindran's case, has specifically pointed out that the application for default bail was filed on 01.02.2019 and thereafter the learned Public Prosecutor filed an application seeking extension of time. Under those circumstances, the Hon'ble Supreme Court held that the right to default bail being indefeasible, has to be granted if no application for extension of time is pending on the date when the application for default bail is filed.

17. Adverting to the facts of the present case, we find that the application for extension of time was filed on 28.01.2022 and the 180 days period expired only on 08.02.2022. Therefore, the cause of action for filing an application under Section 167(2) of the Cr.P.C read with Section 36A(4) of the NDPS Act would arise only on the expiry of the 180 days period namely, 08.02.2022. Therefore, on the day when the application for default bail was filed into the Court, the application filed by the prosecution seeking extension of time in Crl.M.P.No.164 of 2022 was pending on the file of the Special Court. Therefore, the judgment in **Rambeer Shokeen's case** would directly apply and both the applications must be heard together. May be, the learned Special Judge erred in returning the application for default bail on the ground that the application for extension of time is pending, but that may not afford a ground to the petitioners to seek immediate release of the accused persons invoking the constitutional power of this Court under Article 226 of the Constitution of India by way of these Habeas Corpus Petitions.

18. We find that the Hon'ble Supreme Court in **M.Ravindran's case** also had only restated the law as laid down in **Rambeer Shokeen's case** and therefore, we are unable to persuade ourselves to agree with the contentions of Mr.K.K.Ramakrishnan. We find that the reliance placed by Mr.K.K.Ramakrishnan on the judgments in **Sayed Mohd. Ahmad Kazmi vs. State (Government of NCT of Delhi)** and **others reported in (2012) 12 SCC 01, Suresh Kumar Bhikamchand Jain vs. State of Maharashtra and another reported in (2013) 3 SCC 77**, are not very relevant since they did not deal with the case where an application for extension of time was pending.

19. In fine, both the Habeas Corpus Petitions are dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



1. The Inspector of Police,
Avaniyapuram Police Station,
Madurai City,

2. The Inspector of Police,
NIB-CID,
Madurai District.

3. The Superintendent,
Central Prison,
Madurai.

4. The Superintendent,
District Jail,
Dindigul District.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.K.K.RAMAKRISHNAN, Advocate (SR-5780,SR-5782[F] dated
11/02/2022)

H.C.P (MD) Nos. 211 and 213 of 2022

DATED : 11.02.2022

_RD(10.03.2022) 8P 8C