



WEB COPY

CRL.R.C.(MD).No.409 of .



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.07.2022

PRONOUNCED ON: 11.08.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C.(MD).No.409 of 2022

Spurgeon Samuel : Petitioner/Respondent/Accused

Vs.

1.The Inspector of Police,
Asaripallam Police Station,
Nagercoil,
Kanyakumari District.
(Crime No.219 of 2021)

: 1st Respondent/Respondent/Complainant

2.R.A.Jaikumar

: 2nd Respondent/Petitioner/ Defacto
complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records relating to the order dated 26.02.2022 passed in CrI.M.P.No.531 of 2022 in Crime No.219 of 2021, on the file of the Judicial Magistrate Court No.I, Nagercoil and set aside the same.



WEB COPY

CRL.R.C.(MD).No.409 of .



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

For Respondents : Mr.S.Manikandan
Government Advocate (Criminal Side)
for R.1

: Mr.B.Michael Sebastin
for R.2

ORDER

The Criminal Revision Case is directed against the order passed in CrI.M.P.No.531 of 2022, dated 26.02.2022, on the file of the Court of Judicial Magistrate No.I, Nagercoil, cancelling the statutory bail granted to the revision petitioner, in Cr.M.P.No.147 of 2022, dated 25.01.2022, in connection with the case registered in Cr.No.219 of 2021 of Aasaripallam Police Station, Kanyakumari District.

2. The revision petitioner is the accused in Cr.No.219 of 2021, on the file of the first respondent police for the offences under Sections 326, 307, 323, 364, 452, 294(b) and 506(ii) I.P.C. On the basis of the complaint lodged by the second respondent/defacto complainant, the above said F.I.R, came to be registered. The petitioner has filed a petition in Cr.M.P.No.147 of 2022 under Section 167(2) Cr.P.C., seeking statutory bail, as charge sheet was not filed till



CRL.R.C.(MD).No.409 of .

the expiry of 90 days since the date of arrest and the learned Judicial Magistrate, vide order dated 25.01.2022, has granted statutory bail directing the petitioner to furnish two sureties for a likesum of Rs.5,000/-. Subsequently, the second respondent/defacto complainant has filed a petition in CrI.M.P.No.531 of 2022 under Section 437(5) Cr.P.C., seeking orders to cancel the bail granted to the revision petitioner in Cr.M.P.No.147 of 2022, dated 25.01.2022. The learned Magistrate, after hearing the learned Counsel for the defacto complainant and the learned Assistant Public Prosecutor for the respondent police, has passed the impugned order dated 26.02.2022 allowing the petition and thereby cancelling the bail granted to the revision petitioner. Aggrieved by the cancellation of the bail, the accused has come forward with the present revision.

3. The learned Counsel for the second respondent/defacto complainant has raised a preliminary objection questioning the very maintainability of the revision, as the impugned order is only an interlocutory order and relied on a decision of a learned Single Judge of this Court in *Abdul Nasser Madani Vs. State of Tamil Nadu* reported in **2000 CrI.L.J.1258**, wherein another judgment of this Court in *Chitra Sankaranarayanan Vs. State* reported in **(1995)1 MLJ (CrI.) 216** was referred and wherein it is observed as follows:

“When the order of bail granted by the Judicial First Class Magistrate has been cancelled by the Sessions Judge, certainly, the accused party is entitled to move again before the Sessions Judge,



who cancelled the bail, to grant the "bail under [Section 439\(1\)](#) of the Code. Therefore, the order of cancellation of the bail will not be a final order as any number of bail applications can be filed and in view of this reason, the order passed by the Sessions Judge is only an interlocutory order.”

4. The learned Judge of this Court in ***Abdul Nasser Madani's case***, has only observed that the decision in ***Chitra Sankaranarayanan's case***, can be made applicable and depend upon the facts and circumstances of each case. It is necessary to refer the decision of this Court in ***Balaji Vs State, represented by the Inspector of Police, B1, North Beach Police Station, Chennai and another, in Crl.R.C.1356 of 2016, dated 06.09.2017***, wherein the learned Judge of this Court has specifically held that the order cancelling bail being interlocutory order cannot be assailed by invoking revisional jurisdiction in view of the embargo as provided under Section 397(2) of the Code and the relevant portions are extracted hereunder:

“4. The learned Additional Public Prosecutor, as preliminary objection, raised an issue that the order impugned cancelling bail, granted to the petitioner, is an Interlocutory order. Therefore, by virtue of Section 397(2) of the Code of Criminal Procedure (in short, “the code”), no revision shall lie before this Court. Hence, if at all the petitioner is having grievance over the impugned order, he can work out his remedy in the manner known



WEB COPY



to law in an appropriate forum and not before this Court by filing revision case invoking revisional power of this Court under Section 397 r/w. 401 of the Code.

5. The learned Additional Public Prosecutor, in support of the said contention, has relied upon two decisions of this Court i.e. Crl.R.C.No.189 of 2015 dated 28.04.2015 and Crl.R.C.Nos.1016 to 1023 of 2007 dated 25.07.2007.

7. In fact, the said two judgments referred to by the learned Additional Public Prosecutor had been taken into account in an earlier judgment of this Court, where I have considered the said judgments and held that as against the order of cancellation of bail, being an Interlocutory order, no revision would lie and the same was held in the judgment made in Crl.R.C.No.967 of 2017 dated 28.07.2017. Accordingly, liberty was given to the petitioner in the said case to approach the appropriate forum.

8. Herein the case on hand, a very similar situation that are confronted as the petitioner has challenged only the order of cancellation of bail, which is impugned herein and therefore, such order being Interlocutory order cannot be assailed by invoking revisional jurisdiction of this Court in view of the embargo as provided under Section 397(2) of the Code.

9. In view of the said legal position, the preliminary objection raised by the learned Additional Public Prosecutor is sustained and accordingly, this revision is rejected as not maintainable. “



WEB COPY

5. In *Maya Venkatesan Vs. State in Crl.R.C.No.1016 to 1023 of 2007*, dated 25.07.2007, another learned Judge of this Court, by relying on the decision of this Court reported in 1980 MLJ 375 (*Somaram vs. Jewantharaj Lunia and another*), has held that the order of cancellation of bail is an interlocutory order and no revision would lie against such order and that he was in entire agreement with the proposition laid down in the above *Somaram's case* and dismissed the Criminal Revision both on merits as well as on the ground of maintainability.

6. Considering the above and also the fact that the impugned order cancelling the bail being an interlocutory order and in view of the specific bar under Section 397(2) Cr.P.C., this Court has no hesitation to hold that the Criminal Revision is legally not maintainable.

7. The learned Senior Counsel appearing for the petitioner would submit that the petitioner is in incarceration from 20.10.2021, that the detention order dated 31.10.2021 in P.D.No.43 of 2021, passed by the District Collector has already been quashed by this Court and that since the statutory bail granted to the petitioner has been cancelled by the learned Magistrate, the petitioner has been forced to remain in custody. He would further submit that the sureties were already furnished in pursuance of the statutory bail granted to the revision



petitioner and the same were accepted by the Judicial Magistrate and subsequently, on the petition filed by the defacto complainant, the Judicial Magistrate, without conducting proper enquiry and without considering the factual and legal aspects on proper perspective, has passed the impugned order cancelling the bail.

8. The learned Counsel for the second respondent as well as the learned Government Advocate (Crl.Side) appearing for the State would submit that the petitioner is a habitual offender and is having more than 20 cases, that the learned Magistrate, after considering the reasons canvassed by the defacto complainant and the respondent police, has rightly cancelled the bail, that though the detention order has been quashed, he has been in judicial custody in connection with the case on hand, as the statutory bail already granted was cancelled and that therefore, the impugned order cancelling the bail cannot be found fault with.

9. Considering the elaborate arguments advanced by the learned Senior Counsel for the petitioner, the learned Counsel for the second respondent and the learned Government Advocate (Crl.Side) appearing for the State, though the Criminal Revision is legally not maintainable, taking note of the continuous incarceration of the petitioner as alleged by the learned Senior Counsel for the



petitioner, this Court can very well invoke inherent power under Section 482 Cr.P.C., to see as to whether the continuous incarceration of the petitioner would amount to abuse of process of law.

10. Let us first take the impugned order cancelling the bail. Section 437(5) Cr.P.C., contemplates that any Court which has released a person on bail under sub-section (1), or sub-section(2) may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

11. As rightly contended by the learned Senior Counsel for the petitioner, the main reason assigned by the learned Magistrate for cancelling the bail is that the possibility of the accused taking revenge on the defacto complainant could not be ruled out and also the involvement of accused in similar case in future also could not be ruled out.

12. The learned Magistrate, by referring the submission made by the learned Counsel for the accused that personal liberty of the accused would be curtailed, if the petition is allowed, has observed that the personal liberty of the defacto complainant is also of much more important and in the interest of justice, he was allowing the petition. Moreover, as rightly contended by the learned Senior Counsel for the petitioner, the learned Magistrate has also observed that



among other offences alleged against the petitioner, the one under Section 307 I.P.C., is more serious.

WEB COPY

13. The learned Magistrate has relied on the judgment of this Court in *Abdul Nasser Madani's case*, cited supra, for another aspect and observed that in that case, the bail granted to the accused was cancelled on the ground that the accused has committed serious offences. But that was a case relating to serial bomb blast cases at Coimbatore and the petitioner therein was shown as the prime accused and there were series of 12 powerful bomb blast killing 47 persons and injuring 218 persons, apart from causing extensive damages to properties. Hence, as rightly contended by the learned Senior Counsel, the above said *Madani's case* cannot be equated or compared with the case on hand.

14. As rightly contended by the learned Senior Counsel appearing for the petitioner, the reasons assigned by the learned Magistrate were already available at the time of granting statutory bail and the learned Magistrate, taking note of the fact that the bail was sought for under Section 167(2) Cr.P.C., and as the charge sheet has not been laid till the expiry of 90 days, with no other option, has granted the default bail. But the reasons or grounds which were available at the time of granting of statutory bail cannot be considered as a reason or ground to cancel the statutory bail already granted. No doubt, causing criminal



intimidation subsequent to the granting of bail and making life threat is a good ground for cancelling the bail. But in the case on hand, though the defacto complainant has been alleging that there is a life threat to him and his family members, he has not produced any materials to substantiate the same and the learned Magistrate, without considering the same, in proper perspective, has mechanically allowed the petition. Moreover, as rightly contended by the learned Senior Counsel for the petitioner, the petitioner was not at all released from jail and hence, the question of causing life threatening and the question of violating or non-obeying the bail condition does not arise.

15. During the pendency of the above revision, another important aspect was brought to the notice of this Court, that the learned Magistrate has accepted the sureties produced in pursuance of the order granting statutory bail, but after filing of the charge sheet. The learned Counsel for the second respondent would submit that since sureties have not been furnished in pursuance of the directions given while granting statutory bail till the filing of the charge sheet, the said right stood extinguished and that therefore, the Magistrate has no power or jurisdiction to receive and accept the sureties, as right to be released on bail under Section 167(2) Cr.P.C., stood extinguished.



WEB COPY

16. Considering the above, an important question arose whether any accused who was granted statutory bail, is entitled to produce the sureties at any time and that too after filing of the final report. To put it in other way, whether the right of an accused to be released on bail under Section 167(2) Cr.P.C., would stand extinguished on account of the failure of the accused to furnish sureties till the filing of the charge sheet. In my humble opinion, the position of law in this regard has already been settled by the Hon'ble Supreme Court in ***Uday Mohanlal Acharya vs State Of Maharashtra*** reported in ***(2001)5 SCC 453*** and the said position has been affirmed by the Hon'ble Apex Court subsequently in ***M. Ravindran Vs The Intelligence Officer, Directorate of Revenue Intelligence. Reported in (2021)2 SCC 485.*** Learned Judges of some of High Courts including the Madras High Court have taken a stand contradictory to the position settled by the Hon'ble Supreme Court in ***Uday Mohanlal Acharya's case*** and in ***M. Ravindran's case***. At this juncture it is necessary to refer the principles laid down by the Hon'ble Supreme Court in ***Uday Mohanlal Acharya's case*** referred in ***M. Ravindran's case*** and the same are extracted hereunder:

“ 13.

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.

13.4. When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no chargesheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.

13.5. If the accused is unable to furnish bail, as directed by the Magistrate, then the conjoint reading of Explanation I and proviso to sub section 2 of Section 167, the continued custody of the accused even beyond the specified period in paragraph (a) will not be unauthorised, and therefore, if during that period the investigation is complete and charge sheet is filed then the so called indefeasible right of the accused would stand extinguished.



WEB COPY

CRL.R.C.(MD).No.409 of .



13.6. The expression 'if not already availed of' used by this Court in Sanjay Dutt's case (*supra*) must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in paragraph (a) of proviso to sub section (2) of [Section 167](#) if the accused files an application for bail and offers also to furnish the bail, on being directed, then it has to be held that the accused has availed of his indefeasible right even though the Court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same.”

17. Subsequently, the Hon'ble Apex Court in ***M. Ravindran's case***, by observing that there continues to be confusion as to in what specific situations default bail ought to be granted, particularly with respect to paragraphs 13.5 and 13.6 of ***Uday Mohanlal Acharya's case*** and for removing all doubts, they clarified the legal position and the same are reproduced hereunder:

“12.2 The majority opinion in Uday Mohanlal Acharya (supra) clarified this ambiguity by holding that the expression “if not already availed of” used by this Court in Sanjay Dutt (supra) must be understood to mean “when the accused files an application and is prepared to offer bail on being directed”. In that case, it has to be held that the accused has enforced his indefeasible right even though the Court has not considered the said application and has not indicated the terms and conditions of bail, and the accused is yet to furnish the same.



WEB COPY

12.3 However, B.N. Agrawal, J. in his minority opinion partly dissented with the majority, particularly with respect to the conclusions expressed in paragraph 13.6 of Uday Mohanlal Acharya (supra). He opined that the phrase “the accused person shall be released on bail if he is prepared to and does furnish bail” in [Section 167\(2\)\(a\)\(ii\)](#) (emphasis supplied) and “the accused shall be detained in custody so long as he does not furnish bail” in Explanation I to [Section 167\(2\)](#) indicated that the right to be released on default bail could be exercised only on actual furnishing of bail. Further, that the decision of the Constitution Bench in Sanjay Dutt (supra) should be interpreted to have held that if the challan is filed before any order directing release on bail is passed and before the bail bonds are furnished, the right under [Section 167\(2\)](#) would cease to be available to the accused.

12.4 Having considered both opinions, we have arrived at the conclusion that the majority opinion in Uday Mohanlal Acharya (supra) is the correct interpretation of the decision rendered by the Constitution Bench in Sanjay Dutt (supra).

.....

13. It is true that Explanation I to [Section 167\(2\)](#), CrPC provides that the accused shall be detained in custody so long as he does not furnish bail. However, as mentioned supra, the majority opinion in Uday Mohanlal Acharya expressly clarified that Explanation I to [Section 167\(2\)](#) applies only to those situations where the accused has availed of his right to default bail and undertaken to furnish bail as directed by the Court, but has subsequently failed to comply with the terms and conditions of the



WEB COPY

bail order within the time prescribed by the Court. We find ourselves in agreement with the view of the majority. In such a scenario, if the prosecution subsequently files a chargesheet, it can be said that the accused has forfeited his right to bail under [Section 167\(2\), CrPC](#). Explanation I is only a safeguard to ensure that the accused is not immediately released from custody without complying with the bail order.

13.1 However, the expression 'the accused does furnish bail' in [Section 167\(2\)](#) and Explanation I thereto cannot be interpreted to mean that if the accused, in spite of being ready and willing, could not furnish bail on account of the pendency of the bail application before the Magistrate, or because the challenge to the rejection of his bail application was pending before a higher forum, his continued detention in custody is authorized. If such an interpretation is accepted, the application of the Proviso to [Section 167\(2\)](#) would be narrowly confined only to those cases where the Magistrate is able to instantaneously decide the bail application as soon as it is preferred before the Court, which may sometimes not be logistically possible given the pendency of the docket across courts or for other reasons. Moreover, the application for bail has to be decided only after notice to the public prosecutor. Such a strict interpretation of the Proviso would defeat the rights of the accused. Hence his right to be released on bail cannot be defeated merely because the prosecution files the chargesheet prior to furnishing of bail and fulfil the conditions of bail of furnishing bonds, etc., so long as he furnishes the bail within the time stipulated by the Court.



.....

WEB COPY

18. Therefore in conclusion:

18.1. Once the accused files an application for bail under the Proviso to [Section 167\(2\)](#) he is deemed to have 'availed of' or enforced his right to be released on default bail, accruing after expiry of the stipulated time limit for investigation. Thus, if the accused applies for bail under [Section 167\(2\)](#), [CrPC](#) read with [Section 36A \(4\)](#), [NDPS Act](#) upon expiry of 180 days or the extended period, as the case may be, the Court must release him on bail forthwith without any unnecessary delay after getting necessary information from the public prosecutor, as mentioned *supra*. Such prompt action will restrict the prosecution from frustrating the legislative mandate to release the accused on bail in case of default by the investigative agency.

18.2 The right to be released on default bail continues to remain enforceable if the accused has applied for such bail, notwithstanding pendency of the bail application; or subsequent filing of the chargesheet or a report seeking extension of time by the prosecution before the Court; or filing of the chargesheet during the interregnum when challenge to the rejection of the bail application is pending before a higher Court.

18.3 However, where the accused fails to apply for default bail when the right accrues to him, and subsequently a chargesheet, additional complaint or a report seeking extension of time is preferred before the Magistrate, the right to default bail would be extinguished. The Magistrate would be at liberty to take



WEB COPY

cognizance of the case or grant further time for completion of the investigation, as the case may be, though the accused may still be released on bail under other provisions of the [CrPC](#).

18.4 Notwithstanding the order of default bail passed by the Court, by virtue of Explanation I to [Section 167\(2\)](#), the actual release of the accused from custody is contingent on the directions passed by the competent Court granting bail. If the accused fails to furnish bail and/or comply with the terms and conditions of the bail order within the time stipulated by the Court, his continued detention in custody is valid.”

18. At this juncture, it is necessary to refer the judgments relied on by the learned Senior Counsel for the petitioner.

19. In ***Salman @ Baba and another Vs. State of Maharashtra*** in ***Criminal Writ Petition No.139 of 2014***, the High Court of Bombay at Nagpur Bench has held that filing of charge sheet before processing of surety application cannot defeat the right already accrued to the accused and the relevant passage is extracted hereunder:

“ 6. It is thus, clear that if the accused has applied for bail and bail has been granted to him and he is ready to offer surety he has availed the indefeasible right available to him under Section 167(2) of the Code of Criminal Procedure. In the present case, the order of bail was passed on 27th November, 2013. Chargesheet was filed on



WEB COPY

28th November, 2013. The application for acceptance of surety was filed on 30th November, 2013. As such, the chargesheet was filed in the period intervening the order of bail and the application for acceptance of surety. In my opinion, filing of chargesheet immediately after grant of bail will not frustrate the order already passed by the Court. It may take some time for the accused in whose favour the bail order has been passed to arrange for sureties and furnish the same before the competent authority. It may also take some time for the authority concerned (Magistrate or the Registrar, as the case may be) to consider the surety application and to pass necessary orders. Time consumed in such a process cannot frustrate the order passed by the Magistrate in favour of the accused.

In a recent judgment in the matter of Sayed Mohd. Vs. State, reported at AIR 2013 SC 152 has, at paragraph 24, said as under:

"24. Having carefully considered the submissions made on behalf of the respective parties, the relevant provisions of law and the decision cited, we are unable to accept the submissions advanced on behalf of the State by the learned Additional Solicitor General, Mr. Raval. There is no denying the fact that on 17th July, 2012, when CR No.86 of 2012 was allowed by the Additional Sessions Judge and the custody of the Appellant was held to be illegal and an application under Section 167(2) Cr.P.C. was made on behalf of the Appellant for grant of statutory bail which was listed for hearing. Instead of hearing the application, the Chief Metropolitan Magistrate adjourned the same till the next day when the Public Prosecutor filed an application for extension of the period of



WEB COPY

custody and investigation and on 20th July, 2012 extended the time of investigation and the custody of the Appellant for a further period of 90 days with retrospective effect from 2nd June, 2012. Not only is the retrospectivity of the order of the Chief Metropolitan Magistrate untenable, it could not also defeat the statutory right which had accrued to the Appellant on the expiry of 90 days from the date when the Appellant was taken into custody. Such right, as has been commented upon by this Court in the case of Sanjay Dutt (supra) and the other cases cited by the learned Additional Solicitor General, could only be distinguished once the charge-sheet had been filed in the case and no application has been made prior thereto for grant of statutory bail. It is well-established that if an accused does not exercise his right to grant of statutory bail before charge-sheet is filed, he loses his right to such benefit once such charge-sheet is filed and can, thereafter, only apply for regular bail."

20. A learned Judge of this Court in **Periyasamy Vs. State** reported in **2010 Crl.L.J.3815**, after referring to the decisions of the Hon'ble Supreme Court in **Uday Mohanlal Acharya's case** and **Sanjay Dutt's case**, has held that an order made under Section 167(2) Cr.P.C., granting bail to the accused, shall hold good, until it is cancelled and the accused is entitled to produce sureties and execute bond in terms of the order of bail at any time, irrespective of the fact whether the case is at the stage of committal or at the stage of trial before the

Court of Sessions and the relevant portion is extracted hereunder:



WEB COPY

“7. In my considered opinion too, the learned Magistrate was not right in declining to entertain the production of sureties. The order of the learned Magistrate would go to indicate that she is under the impression that the production of sureties should be made while the case is pending committal proceedings and if once the case has been committed, the committal court becomes functus officio to entertain the sureties. This view of the learned Judicial Magistrate does not reflect correct understanding of law. In this regard, it should be underlined that there are two judicial processes in the matter of release of an accused on bail. Firstly, an order granting bail is passed either under [Section 436](#) or [437 of the Code](#) or under [Section 167\(2\)](#) of the Code and thereafter, the execution of bond by accused and sureties is made by a separate process as enshrined in [Section 441](#) of the Code. If once bail is granted under any of these provisions, unless the same is cancelled in the manner known to law, it will remain in force for ever. The second process viz., execution of bond by accused and the sureties can be made at any time subsequently. If the accused, after having got released from prison, fails to comply with the bond executed under [Section 441](#) of the Code, then, the bond executed by him and the sureties alone shall stand automatically cancelled under [Section 446A](#) of the Code, unless sufficient cause is shown for such non compliance. In this context, the cancellation of bond under [Section 446A](#) of the Code should not be confused with cancellation of bail, as both are two different judicial processes. This would clearly indicate that there can be no time limit for the accused and for the sureties to execute the bonds in terms of the order of bail granted by the Court.



WEB COPY

9. *A close reading of the above judgement of the Hon'ble Supreme Court in Sanjay Dutt's case and Uday Mohan Lal Acharya's case cited supra would make things beyond any pale of doubt that the right to be released on bail under [Section 167\(2\)](#) of the Code is indefeasible and if once such right is exercised by the accused, and consequentially an order is passed, the same shall survive irrespective of the fact that final report is submitted subsequently.”*

21. Another learned Judge of this Court in ***Ravi @ Steel Ravi and another Vs. State*** represented by ***the Inspector of Police, Chithode Police Station***, reported in ***(2001)1 LW (Crl.)450***, has referred two views and held that the view which is beneficial to the accused has to be accepted and the related passage is extracted hereunder:

“20. One view expressed is that unless the accused offers surety also in pursuance or sequel to the order of granting bail passed by the Magistrate, the right would not become enforceable. As per provision of Section 167(2) Cr.P.C. the accused shall be released on bail if he is prepared to and does furnish bail, unless he has furnished sureties, it cannot be said that he has fully enforced his right. The other view is that once bail order is granted there is no limitation provided to offer sureties under the provisions of Chapter XXXIII Cr.P.C. Once die release of the accused is ordered by the Magistrate under Section 167(2) Cr.P.C. there is completion of enforcement of the right. Regarding two views. I feel that the view which is beneficial to the



accused has to be accepted. In that view of the matter, I hold that the learned Judicial Magistrate No. III Erode has no authority to cancel the bail when the accused was granted bail and only procedural aspect of furnishing sureties has to be complied. Further cancellation of bail could be done only under any of the grounds mentioned under Section 437(5) Cr.P.C. and the factum whether such grounds have arisen has to be considered only after the release of the accused on bail. In that view of the matter. I am inclined to allow the instant Criminal Revision.”

22. The Punjab and Haryana High Court in ***Jatinder Singh Vs. The State of Punjab*** in C.R.R.No.1718 of 2021, dated 02.02.2022, by referring to the ***Uday Mohanlal Acharya's case*** and ***M. Ravindran's case***, has held that a perusal of the aforesaid judgment shows that in order to extinguish the right accrued in favour of an accused under Section 167(2) Cr.P.C, the accused must fail to furnish bail and / or comply with the terms and conditions of the bail order within the time stipulated by the Court and that since no such time frame for furnishing the bail bonds had been prescribed in the impugned order, the same cannot be construed that the accused committed a default in complying with the terms and conditions of the order of bail within the specified time schedule.



23. At this juncture, it is also necessary to refer the judgment of the Constitutional Bench of the Hon'ble Supreme Court in ***Sanjay Dutt vs. State*** reported in **(1994)5 SCC 410** and the relevant paragraph is extracted hereunder:

“48.....The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167 CrPC ceases to apply.....”

24. The Hon'ble Justice B.N.Agrawal, who gave dissenting judgment in ***Uday Mohanlal Acharya's case***, has held as follows:

“I have perused the judgment of my learned Brother Pattanaik,J., for whom I have the highest regard and while agreeing with him with respect to conclusion nos. 1 to 5, I find myself unable to agree on conclusion no. 6, enumerated hereunder, upon which alone



decision of this appeal is dependent, and observations and direction connected therewith:-

The expression `if not already availed of used by this Court in *Sanjay Dutt vs. State* through CBI Bombay(II), (1994) 5 SCC 410, must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in paragraph (a) of proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail, on being directed, then it has to be held that the accused has availed of his indefeasible right even though the Court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same.”

25. Recently, the Hon'ble Division Bench of this Court in ***Kannan @ Senthil @ Kumar @ Minnal Vs. the State represented by the Deputy Superintendent of Police, Q Branch, Coimbatore in Crl.O.P.No.7736 of 2021, dated 23.12.2021*** has specifically observed that they are unable to subscribe themselves to the contrary view that has been expressed by the learned Single Judge of this Court in ***Periyasamy Vs. State***, referred supra and the Division Bench, after referring to the ***Uday Mohanlal Acharya's case, M. Ravindran's case, Sanjay Dutt's case and Raghubir Singh's case***, has observed as follows:

“10 Thus, even the dissenting Judge in ***Uday Mohanlal Acharya*** (supra) has agreed with the law laid down by the other two Judges of the Bench in paragraph 13.5, which would



WEB COPY

squ岸ely apply to the case in hand. Since Raghubir Singh (supra) was decided by a 2 Judge Bench and following the Constitution Bench judgment in Sanjay Dutt (supra), when a 3 Judge Bench in Uday Mohanlal Acharya (supra) has so categorically held that if the accused is unable to furnish bail as directed by the Magistrate, then, the so-called indefeasible right of the accused will stand extinguished on the police filing the final report, we are afraid we cannot fall back on Raghubir Singh (supra) and grant relief to the petitioner. To be noted, the expression “furnish bail as directed by the Magistrate” employed in Uday Mohanlal Acharya (supra) means “furnish sureties as directed by the Magistrate”.

26. Considering the above, the position of law is very clear that an accused, who was granted statutory bail, is entitled to produce the sureties at any time, but not after the filing of the charge sheet / final report and that the right of an accused to be released on bail under Section 167(2) Cr.P.C., would stand extinguished on account of the accused's failure to furnish sureties till the laying of the charge sheet.

27. Now it is necessary to refer the events chronologically. FIR was registered on 21.09.2021; the accused was arrested on 20.10.2021; the accused was granted statutory bail under Section 167(2) Cr.P.C., on 25.01.2022; the charge sheet was filed on 28.01.2022; the case was taken on file on 07.02.2022;



sureties were furnished and accepted on 15.02.2022; and the statutory bail granted to the accused was cancelled on 26.02.2022. Considering the above, it is clearly evident that though the petitioner was granted statutory bail on 25.01.2022, he produced the sureties on 15.02.2022 after the lapse of more than 20 days and in the meanwhile, the charge sheet was filed on 28.01.2022 itself and the case was also taken on file on 07.02.2022.

28. Considering the legal position settled by the Hon'ble Supreme Court and also taking note of the fact that the petitioner has not produced the sureties in pursuance of the statutory bail order till the filing of the charge sheet and as such, the very furnishing of sureties by the petitioner and the acceptance of the same by the learned Magistrate would not only be improper, but is illegal. As rightly contended by the learned Counsel for the second respondent, the learned Magistrate has committed a mistake in accepting the sureties. As already pointed out, the order cancelling the bail is also not good in law. In case, as rightly contended by the learned Counsel for the second respondent, the learned Magistrate has refused to accept the sureties, as the same were furnished after the filing of the final report, the question of cancelling the statutory bail, would not have arisen. Taking note of all the above facts and circumstances, the petitioner's continuous incarceration cannot be considered as unauthorised and is



perfectly legal and as such, the same would not amount to abuse of process of law.

WEB COPY

29. Considering the above, this Court has no hesitation to hold that the Criminal Revision Case is absolutely devoid of merits and the same is liable to be dismissed.

30. In the result, the Criminal Revision Case is dismissed. The petitioner is at liberty to file an application for regular bail before the appropriate Court and on filing of such a petition, the learned Judge is directed to consider the same on merits and in accordance with law.

11.08.2022.

Index : Yes/No

Internet : Yes/No

SSL

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

CRL.R.C.(MD).No.409 of .



1. The Judicial Magistrate Court No.I, Nagercoil.

2. The Inspector of Police,
Asaripallam Police Station,
Nagercoil,
Kanyakumari District.

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

4. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



CRL.R.C.(MD).No.409 of .

K.MURALI SHANKAR, J.

SSL

PRE-DELIVERY ORDER MADE IN

CRL.R.C.(MD).No.409 of 2022

11.08.2022