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Crl.O.P.No. 18509 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE RESERVED : 24.11.2023

DATED : 30.11.2023

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No.18509 of 2023

Jaya Selvi

... Petitioner/Defacto Complainant

Vs.

1. State by:

The Station House Officer
Elavanasoorkottai Police Station
Kallakurichi District.

... Respondent/Respondent

2. Amalameri

... Respondent/Accused-1

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C.,
pleased to cancel the bail order granted by the Hon'ble Judicial Magistrate-I,
Ulundurpet in C.M.P.No. 3002 of 2023 dated 13.07.2023.

For Petitioner : Mr. A.G.Rajan

For 1st Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl.Side)

For 2nd Respondent: Mr.Krishnasamy Chinasamy



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ORDER

The petition has been filed by the defacto complainant in Cr.No. 2 of 2023 registered under Sections 406, 420, 294(b) and 506(i) of IPC by the first respondent seeking to cancel the bail granted to the second respondent /accused by the Judicial Magistrate-I, Ulundurpet in C.M.P.No. 3002 of 2023 dated 13.07.2023.

2. The second respondent is the first accused in Cr.No. 2 of 2023 registered on 02.01.2023 under Sections 406, 420, 294(b) and 506(i) of IPC.

3. It is the case of the prosecution that the accused were running a chit fund and had cheated the petitioner to a sum of Rs.10,00,000/-. A sum of Rs.2,00,000/- had been repaid through the bank account of the daughter of the petitioner/defacto complainant and another sum of Rs.10/- lakhs had been repaid by cash. There was a balance of Rs.38,66,650/- to be repaid. The petitioner had therefore lodged a complaint leading to registration of FIR in Cr.No. 2 of 2023 under the aforementioned provisions.



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4. The second respondent/first accused had been remanded to judicial custody on 03.01.2023. Thereafter, the second respondent/first accused filed C.M.P.No. 365 of 2023 before the Judicial Magistrate-I, Ulundurpet, seeking bail. By an order dated 30.01.2023, the learned Judicial Magistrate-I, Ulundurpet had granted bail by imposing the normal conditions of execution of bond and production of sureties and appearance before the respondent daily for a period of 15 days and thereafter as and when required. The second respondent was also directed to appear before the said Court every Monday until further orders.

5. Aggrieved by the grant of bail, the petitioner herein filed Crl.O.P.No. 2927 of 2023 before this Court under Section 439(2) Cr.P.C., to cancel the bail granted by the Judicial Magistrate-I, Ulundurpet. By order dated 01.03.2023, a learned Single Judge of this Court, on examination of all the facts particularly the allegation that the learned Judicial Magistrate-I, Ulundurpet, had granted bail without any condition to deposit cash or title deed and had granted bail by a cryptic order and that there were further complaints against the second respondent/first accused, had allowed the said



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original petition and cancelled the bail granted by the Judicial Magistrate-I, Ulundurpet to the second respondent/first accused. The first respondent/investigating Officer was directed to secure the second respondent in manner known to law.

6. The second respondent was thereafter secured on 12.05.2023. She was remanded to custody and continued to be in custody till 30.06.2023. The second respondent then filed C.M.P.No. 3002 of 2023 under Section 167(2) Cr.P.C to enlarge her on bail. That application was taken up for consideration on 13.06.2023 by the Judicial Magistrate-I, Ulundurpet. In that order, it had been observed that the second respondent/first accused was in custody from 03.01.2023 till 31.01.2023 and again from 12.05.2023 to 13.06.2023 for alleged offences under Section 406, 420, 294(b) and 506(i) IPC. It had been stated that by taking the two spells of custody into consideration, the second respondent/first accused has been in custody for 62 days and final report had not been filed within the stipulated period of 60 days and therefore, the second respondent /first accused was entitled for statutory bail under Section 167(2) Cr.P.C., and accordingly, enlarged her on bail on execution of sureties, with directions not to indulge in tampering of



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witness and to co-operate with the investigating agency. That order is now sought to be cancelled by the defacto complainant.

7. It has been contended by the learned counsel that though the averments in the First Information Report revealed that the second respondent/first accused had cheated the defacto complainant to a sum of more than Rs.50/- lakhs and after repayment of a part of that amount was still due and payable more than Rs.30/- lakhs, the Judicial Magistrate-I, Ulundurpet, had granted bail without imposing any condition.

8. It was also contended that the learned Judicial Magistrate-I, Ulundurpet, had wrongly appreciated the provisions under Section 167(2) Cr.P.C., relating to grant of statutory bail if final report was not filed within a period of 60 days from the date of initial remand and had applied that particular provision to the second respondent, whose earlier bail had been cancelled by a learned Single Judge of this Court.

9. According to the learned counsel, when the second respondent/first accused was again taken into custody, it would not mean



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continuation of the earlier period of remand. It is stated that the Judicial Magistrate-I, Ulundurpet, had therefore wrongly applied the provision under Section 167(2) Cr.P.C and granted bail.

10. The learned Government Advocate (Crl.Side) appearing for the first respondent contended that when the second respondent/ first accused had been granted bail in the first instance, she had produced sureties and thereafter, the right of the Magistrate to further remand the accused under Section 167 Cr.P.C., had come to an end. It is further contended that having availed the right to be granted bail, the second respondent cannot claim a further right under Section 167(2) Cr.P.C. It had been contended by the learned Government Advocate (Crl.Side) that Section 167(2) Cr.P.C., would not be applicable in the second instance and there cannot be clubbing of two separate broken periods of custody. It had also been contended that the order passed granting bail under Section 167(2) Cr.P.C., has to be interfered with by this Court.

11. The learned counsel for the second respondent / first accused however supported the order of the learned Judicial Magistrate-I,



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Ulundurpet, and pointed out that the second respondent / first accused had been in custody from 03.01.2023 till 30.01.2023 when bail was granted but was actually in custody till 02.02.2023 the day when she furnished securities and stated that the first spell of custody was for a period of 31 days. It was again contended that she had been again taken into custody on 12.05.2023. She was granted bail on 14.06.2023 when sureties had been furnished and this spell of custody was for a period of 34 days. The learned counsel therefore clubbed both the two period of custody and stated that the second respondent had been in custody for a total period of 65 days which is beyond the statutory period of 60 days given to the investigating agency to file the final report and therefore stated that the Judicial Magistrate-I, Ulundurpet had correctly applied the provision under Section 167(2) Cr.P.C., and had granted bail to the second respondent.

12. In this connection, the learned counsel placed reliance on the Judgement of the Hon'ble Supreme Court reported in **(2022) 13 SCC 542 [Gautam Navlakha Vs. National Investigation Agency]**, wherein the Hon'ble Supreme Court had examined whether broken periods of custody can be counted for the purpose of default period. The learned counsel placed reliance on paragraph Nos. 66 & 67 of the said Judgment. They are as



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follows:-

“83. Let us take another example. After ordering remand, initially for a period of 15 days of which 10 days is by way of police custody and 5 days by way of judicial custody, the Magistrate enlarges an accused on bail. The High Court interferes with the order granting bail on the basis that the bail ought not to have been granted. Resultantly, the person who on the basis of the order of bail, has come out of jail custody, is put back into the judicial custody or jail custody. The order is one passed by the High Court. The order granting custody by the High Court cannot be treated as one which is not anchored in Section 167CrPC. Therefore, we would think that though the power is vested with the Magistrate to order remand by way of appropriate jurisdiction exercised by the superior courts, (it would, in fact, include the Court of Session acting under Section 439) the power under Section 167 could also be exercised by courts which are superior to the



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Magistrate.

*84. Therefore, while ordinarily, the Magistrate is the original court which would exercise power to remand under Section 167, the exercise of power by the superior courts which would result in custody being ordered ordinarily (police or judicial custody) by the superior courts which includes the High Court, would indeed be the custody for the purpose of calculating the period within which the charge-sheet must be filed, failing which the accused acquires the statutory right to default bail. We have also noticed the observations of this Court in **State of U.P. v. Abdul Samad** [**State of U.P. v. Abdul Samad, 1962 SCC OnLine SC 40 : AIR 1962 SC 1506**] . In such circumstances broken periods of custody can be counted whether custody is suffered by the order of the Magistrate or superior courts, if investigation remains incomplete after the custody, whether continuous or broken periods pieced together reaches the requisite period; default bail becomes the right of the*



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detained person. ”

13. The learned counsel also placed reliance on the Judgement reported in **SCC Online SC 40 : 1962 AIR 1506 [State of Uttar Pradesh Vs. Abdul Samad and another]**. The Hon'ble Supreme Court observed the point in issue as follows:-

“10. It would be noticed that the respondents had been in custody from about 6 p.m. on the 21st July to the evening of the 27th July when on the orders of the High Court they were released on bail. The learned Judges have divided this into two periods — the dividing line being 1 p.m. on 25th July, 1960 when they were brought to Lucknow in pursuance of the telephonic message purporting to emanate from the Under-Secretary to the Government for being produced before the High Court.

11. The learned Judges of the High Court confined their attention to the second period and holding that during this period



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there had been a violation of the requirements of Article 22(2) of the Constitution, in that the respondents had not been produced before a Magistrate within 24 hours of the commencement of the custody, expressed their opinion that the detention was illegal and directed the release of the respondents. It is the correctness of this order of the High Court that arises for consideration in this appeal. ”

14. That particular case was with respect to a habeas corpus petition relating to arrest and detention of the respondents. On their arrest, a petition had been filed before the High Court at Lucknow and the respondents were directed to be produced before the High Court. But they had been sent to Amritsar. The High Court was therefore informed that the respondents were beyond its jurisdiction. However, since the matter had been taken up at the High Court at Lucknow, the respondents had been sent back to Lucknow from Amritsar. They were produced before the Deputy Registrar of the High Court, who directed them to be produced the next day. In the meanwhile, a second Habeas Corpus Petition had been filed holding that they were not produced before any Magistrate as contended under



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Article 22(2) of the Constitution. The High Court on consideration of that petition, directed the respondents to be released holding there was violation of Article 22(2) of the Constitution. The State then preferred an appeal before the Supreme Court where in by a majority decision of 3:2, it was held that detenues were produced within 24 hours of their first production before the High Court and therefore it cannot be said that their detention was illegal.

15. In the dissenting Judgement, it was however stated that there cannot be two separate spells of detention and the first period of detention of the accused should also be taken into consideration.

16. The learned counsel placed reliance on this dissenting opinion for the contention that when there were two separate spells of detention, they must both clubbed together and not viewed independently.

17. The learned counsel also relied on ***Vikas Mishra @ Vikash Mishra Vs. The Central Bureau of Investigation*** in an unreported Judgement in ***C.R.M.(DB). 1638 of 2022***, wherein a Division Bench of Calcutta High Court had examined the case of an accused, who had sought



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bail consequent to health conditions and interim bail was granted. Later, after considerable period of time, he surrendered and was taken into custody. The issue was whether the earlier period of custody and the period under which he was under interim bail and the subsequent period could be clubbed. The Division Bench placed reliance on the Judgement of the Hon'ble Supreme Court in the case of ***Gautam Navlakha*** referred *supra* and cited the same illustration as stated by the Hon'ble Supreme Court and granted bail.

18. I have carefully considered the arguments advanced and perused the records.

19. The facts in the present case are straight forward. The second respondent sought bail in Cr.No. 2 of 2023 registered under Sections 406, 420, 294(b) and 506(i) of IPC and filed C.M.P.No. 365 of 2023 before the Judicial Magistrate-I, Ulundurpet. That application was taken up for consideration on 30.01.2023 and bail was granted with the normal conditions of producing sureties and appearing before the respondent and to co-operate during the course of investigation.



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20. The second respondent/first accused was in custody from 03.01.2023, the date of remand till 30.01.2023, the date of order granting bail and actually till 02.02.2023, the date on which she furnished sureties and was actually released from custody.

21. Thereafter, the petitioner/defacto complainant filed Crl.O.P.No. 2927 of 2023 seeking to cancel the order granting bail primarily on the ground that the Judicial Magistrate-I, Ulundurpet had not imposed any conditions for grant of bail though the offence was one of cheating to an amount of more than Rs.30/- lakhs which amount was outstanding.

22. This Application in Crl.O.P.No. 2927 of 2023 came up for consideration before a learned Single Judge of this Court on 01.03.2023 and the learned Single Judge cancelled the order granting bail holding that conditions had not been imposed and a cryptic order had been passed. A direction had also been issued to take the second respondent/first accused into custody.



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23. It must be pointed out that any order passed under Section 167(2) Cr.P.C., is an order granting bail under Chapter -XXXIII of the Code of Criminal Procedure.

24. In the first instance, when the second respondent/first accused was remanded by the Judicial Magistrate-I, Ulundurpet on 03.01.2023, it was a remand under Section 167(2)Cr.P.C.

25. Section 167(2) Cr.P.C., is as follows:-

“167. Procedure when investigation cannot be completed in twenty four hours-

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has



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no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub- section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of



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that Chapter;]

..... ”

26. This provision gives the authority to the Magistrate to remand an accused for a period of 15 days initially and thereafter for a maximum period of 90 days if the offence attracts a punishment of not less than 10 years or life imprisonment or punishable with death and for a maximum period of 60 days for any other offence if final report had not been filed. This would conversely mean that the investigating officer should file the final report on completion of investigation within a period of 90 days depending on the nature of the offence and within the period of 60 days again depending on the nature of the offence.

27. In the instant case, the investigating officer was under obligation to file a final report within a period of 60 days from the date of first remand, namely, 30.01.2023. However, even before the expiry of the period of 60 days, the second respondent/first accused had applied for bail and had been granted bail by the learned Judicial Magistrate-I, Ulundurpet. That bail was not granted under Section 167(2) Cr.P.C., but under Section



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437(2) Cr.P.C.

28. Section 437(2) Cr.P.C., is as follows:-

“(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are no reasonable grounds for believing that the accused has committed a non- bailable offence, but that there are sufficient grounds for further inquiry into his guilt the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail or at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided. ”

29. This grant of bail is on the reasons stated by the Court. The Court then exercises its discretion to grant bail.

30. In the instant case, the bail granted to the second



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respondent/first accused had been cancelled under Section 439(2) Cr.P.C., by an order dated 01.03.2023 in CrI.O.P.No. 2927 of 2023 by the High Court. Consequently the second respondent / first accused had been again taken into custody. The Judicial Magistrate-I, Ulundurpet had again remanded the accused.

31. The Hon'ble Supreme Court in *Gautam Navlakha* referred *supra* had given an illustration of two broken periods and had also stated that statutory bail can be granted when the High Court had cancelled the bail. The Hon'ble Supreme Court had stated as follows:-

“The order granting custody by the High Court cannot be treated as one which is not anchored in Section 167 of the Cr.P.C.”

32. In the instant case, the Hon'ble High Court had cancelled the bail under Section 439(2) Cr.P.C. It had been further explained that the *power under Section 167 could also be exercised by Courts which are superior to the Magistrate*, which would indicate that the High Court can



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also enlarge the accused under Section 167(2) Cr.P.C. The Hon'ble Supreme Court had further stated as follows:-

“In such circumstances broken periods of custody can be counted whether custody is suffered by the order of the Magistrate or superior courts, if investigation remains incomplete after the custody, whether continuous or broken periods pieced together reaches the requisite period; default bail becomes the right of the detained person. ”

33. In view of the above ratio, I hold that the order granting bail under Section 167(2) Cr.P.C., by the learned Judicial Magistrate has to be upheld in C.M.P.No. 3002 of 2023 dated 13.07.2023.

34. The other aspect is whether the Magistrate could impose conditions while granting bail under Section 167(2) Cr.P.C.

35. In *Saravanan Vs. State, represented by the Inspector of Police, reported in (2020) 9 SCC 101*, the Hon'ble Supreme Court had laid



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down the principle as follows in paragraph 9:

*“9. Having heard the learned counsel for the respective parties and considering the scheme and the object and purpose of default bail/statutory bail, we are of the opinion that the High Court has committed a grave error in imposing condition that the appellant shall deposit a sum of Rs 8,00,000 while releasing the appellant on default bail/statutory bail. It appears that the High Court has imposed such a condition taking into consideration the fact that earlier at the time of hearing of the regular bail application, before the learned Magistrate, the wife of the appellant filed an affidavit agreeing to deposit Rs 7,00,000. However, as observed by this Court in catena of decisions and more particularly in **Rakesh Kumar Paul [Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67 : (2018) 1 SCC (Cri) 401]**, 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, the accused*



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*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) CrPC 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) CrPC. As observed by this Court in **Rakesh Kumar Paul [Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67 : (2018) 1 SCC (Cri) 401]** and in other decisions, the accused is entitled to default bail/statutory bail, subject to the eventuality occurring in Section 167 CrPC, namely,*



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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.”

36. In view of the reasons stated, the order of the learned Judicial Magistrate No.I, Ulundurpet in C.M.P.No. 3002 of 2023 dated 13.07.2023 is upheld. This Petition stands dismissed.

30.11.2023

vsg

To

1. Judicial Magistrate-I, Ulundurpet
2. The Station House Officer
Elavanasoorkottai Police Station
Kallakurichi District.



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vsg

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