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Crl. A.No.1406 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2023

CORAM

THE HONOURABLE MR. JUSTICE **S.S.SUNDAR**
AND
THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl. A.No.1406 of 2023

Chandra .. Appellant

Vs.

State rep. By
The Inspector of Police,
Deevattipatti Police Station,
Salem District. .. Respondent

Appeal filed under Section 21 of National Investigation Agency Act to set aside the docket order dated 25.07.2023 and direct the learned Judicial Magistrate, Omalur to accept the sureties as per order in C.M.P.No.626 of 2020 in Crime No.14 of 2020 on the file of Deevattipatti Police Station, Salem District.

For Appellant : Mr.R.Sankarasubbu

For Respondents : Mr.R.Karthikeyan,
Special Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by **S.S.SUNDAR, J.**]

Challenging the docket order dated 25.07.2023 and for a consequential direction to the learned Judicial Magistrate, Omalur to



Crl. A.No.1406 of 2023

accept the sureties as per the order in C.M.P.No.626 of 2020 in Crime No.14 of 2020 on the file of Deevattipatti Police Station, Salem District, the present criminal appeal has been filed.

2. Earlier, Registry has entertained a doubt as to the maintainability of the appeal. When the matter was listed for maintainability before this Bench, we found that the appeal could be entertained and therefore, directed the Registry to number the appeal if it is otherwise in order on 20.11.2023. On the same day, we also passed the final order in the appeal holding that the order impugned is justified. However, we also held that the appellant is entitled to statutory bail which is an indefeasible right. Hence we granted statutory bail to the appellant under Section 167(2) Cr.P.C. subject to conditions.

3. Today, it is brought to the notice of this Court that the appeal could not be numbered as the petition to condone the delay of 19 days in filing the appeal is not listed before us. However, it was not brought to our notice when we passed an order on 20.11.2023.



Crl. A.No.1406 of 2023

WEB COPY

4. It is now brought to our notice that the petition to condone the delay in filing the appeal has now been presented in Crl.M.P. No.18649 of 2023. This Court would not have passed an order on 20.11.2023 granting statutory bail if the fact that there was a delay in filing the appeal was brought to our notice. Hence the order dated 20.11.2023 is recalled.

5. Today, by a separate order, we have condoned the delay. Though we have recalled the earlier order dated 20.11.2023, the same order is now passed in the appeal, which reads as follows:

'5.1 The instant appeal has been filed challenging a docket order passed by the learned Judicial Magistrate, Omalur rejecting the sureties offered by the appellant. The learned Judicial Magistrate has rejected the sureties stating that the earlier bail granted on 24.07.2020 under Section 167(2) of Cr.P.C is without jurisdiction and therefore, learned Magistrate has no power to entertain the sureties offered by the appellant.



WEB COPY



Crl. A.No.1406 of 2023

5.2 We find that the appellant had filed a bail application under Section 167(2) Cr.P.C before the learned Magistrate for a case registered in Crime No.14 of 2020 on the file of Deevattipatti Police Station for the offences under Sections 188, 120(b), 121, 121(A), 124(A) of IPC read with Sections 10, 13, 15 and 18 of the Unlawful Activities (Prevention) Act, 1967 (UAPA). The Court competent to try the aforesaid offences is a Special Court constituted under the National Investigation Agency Act, 2008.

5.3 This Court, while considering the similar question in ***Mir Anas Ali's*** case [***Mir Anas Ali Vs. State rep. By the Inspector of Police***] in CrI.A.No.1232 of 2022 vide order dated 23.12.2022 held that a Magistrate has no power or jurisdiction to entertain the petitions under Section 167(2) filed by accused involved in the offences under the Unlawful Activities (Prevention) Act, 1967 (UAPA) which is triable in the Sessions Court and observed that orders that were passed by the Magistrate under Section



WEB COPY



Crl. A.No.1406 of 2023

167(2) were *nonest* in the eye of law. The relevant observations are as follows:

"9. The learned Magistrate assumed jurisdiction, based on the direction given by the learned Sessions Judge and proceeded to deal with the statutory bail petition filed by the appellant under Section 167(2) Cr.P.C in Crl.M.P.No.4096 of 2022 and also the extension petition filed by the respondent police in Crl.M.P.No.4098 of 2022. The learned Magistrate did not have the power and/or jurisdiction to entertain both these petitions and whatever orders that were passed by learned Magistrate in these two petitions, are non est in the eye of law and these orders are liable to be set aside on this ground alone, even without going into the merits of the case."

5.4 We find that the above observation squarely applies to the facts of the instant case. The statutory bail granted by the learned Judicial Magistrate, Omalur is *nonest* in the eye of law. Therefore, the learned Magistrate was right in not accepting the sureties.



Crl. A.No.1406 of 2023

5.5 The learned Additional Public Prosecutor, on instructions, submits that charge sheet is yet to be filed in the instant case. The learned Additional Public Prosecutor further submitted that the Principal District and Sessions Court, Salem is the Special Court competent to try the offences against the appellant.

5.6 Therefore, the appellant is entitled to statutory bail, which is an indefeasible right. Hence, we are inclined to exercise our powers to grant statutory bail to the appellant under Section 167(2) Cr.P.C. on the following conditions:

(i) The appellant shall execute a bond for a sum of Rs.10,000/-, with two sureties, each for a like sum, to the satisfaction of the learned Principal District and Sessions Judge, Salem ;

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Sessions Judge may obtain a copy of their Aadhaar card or Bank pass book and mobile number to ensure their identity; and



Crl. A.No.1406 of 2023

(iii)The appellant shall appear before the respondent Police daily at 10.30 a.m., until further orders.

(iv)If the appellant adopts any dilatory tactics, it is open to the Sessions Judge to cancel the bail and remand the appellant to custody as laid down by the Supreme Court in State of U.P. Vs. Shambhu Nath Singh [JT 2001 (4) SC 319].

(v)Though bail has been granted by this Court, as held by the Supreme Court in P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560], the Sessions Judge can cancel the bail, if situation warrants. If the appellant who is on bail absconds, a fresh FIR shall be registered against her under Section 229-A IPC.

6. This criminal appeal is disposed of in the aforesaid manner.

[S.S.S.R., J.] [S.M, J.]
24.11.2023

Index:Yes/No
Neutral Citation:Yes/No
gpa/mmi



Crl. A.No.1406 of 2023

To

- 1.The Inspector of Police,
Deevattipatti Police Station,
Salem District.
- 2.The Judicial Magistrate,
Omalur.
- 3.The Principal District and Sessions Judge,
Salem.
- 4.The Public Prosecutor
High Court, Madras.



WEB COPY



Crl. A.No.1406 of 2023

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AND
SUNDER MOHAN, J.,**

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Crl. A.No.1406 of 2023

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