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CRL OP(MD).



21

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)
Date : 06.01.2023
PRESENT

The Hon`ble Mr.Justice B.PUGALENDHI

CRL.O.P (MD) Nos.5104, 5843, 10854
AND 10902 OF 2021

CRL.O.P (MD) NOS.5104, 5843 OF 2021 :

JEYA SUDHA ... PETITIONER/ACCUSED No.2
in Cr1.OP.(MD) No.5104/2021

RANJITHAM ... PETITIONER/ACCUSED No.3
in Cr1.OP.(MD) No.5843/2021

Vs

THE STATE REP. BY,
1. THE INSPECTOR OF POLICE,
SINDHUPATTI POLICE STATION,
MADURAI DISTRICT.
(CRIME No.1028 of 2020) .

2. K.RAJASEKARAN,
LAW OFFICER OF THE SPECIAL COURT FOR NDPS CASES,
MADURAI.

3. SIVASAKTHI,
THE THEN INSPECTOR OF POLICE,
SINDHUPATTI POLICE STATION,
MADURAI DISTRICT.
(R2 and R3 Suo Motu Impleaded as per Common order
of this court dated 02.08.2021 in Cr1 OP(MD) Nos.
5104/2021 and 5843/2021) .

... RESPONDENTS/COMPLAINANTS
(IN BOTH PETITIONS)

CRL.O.P (MD) NO.10854 OF 2021 :

SUBBASH ... PETITIONER / ACCUSED NO.7

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
KAMUTHI POLICE STATION,
RAMNAD DISTRICT.
(IN CRIME NO.128/2021)

... RESPONDENT / COMPLAINANT

**CRL.O.P(MD)NO.10902 OF 2021 :**

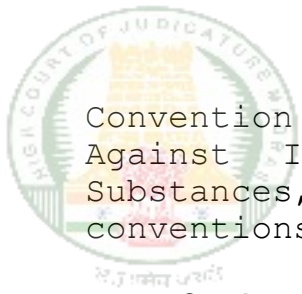
ANTHONI DHANARAJ

... PETITIONER/PETITIONER/
ACCUSED RANK NOT KNOWN**Vs****WEB COPY**THE STATE REP.BY
THE INSPECTOR OF POLICE,
RAMANATHAPURAM TOWN B-1 POLICE STATION,
RAMNATHAPURAM DISTRICT.
CRIME NO. 13 OF 2020.... RESPONDENT/RESPONDENT /
COMPLAINANTFor Petitioners : Mr.M.JAGADESH PANDIAN, Advocate
(In Crl.OP(MD)Nos.5104 & 5843 of 2021): Mr.NIRANJAN S.KUMAR, Advocate
(In Crl.OP(MD) No.10854 of 2021): Mr.S.SARAVANA KUMAR
(In Crl.OP(MD) No.10902 of 2021)For Respondents : Mr.T.SENTHIL KUMAR,
Additional Public Prosecutor
(for R.1 in Crl.OP(MD)Nos.5104 & 5843 of 2021)
(for sole respondent in Crl.OP(MD)Nos.10854 &
10902 of 2021): Mr.G.KARUPPASAMY PANDIAN, Advocate
(for R.2 in Crl.OP(MD)Nos.5104 &
5843 of 2021)

PETITIONS FOR BAIL Under Sec.439 of Cr.P.C.

COMMON PRAYER :- For Bail in Crime Nos.1028 of 2020, 128 of 2021 and 13 of 2020 on the file of the respective Respondent Police.**COMMON ORDER :** The Court made the following common order :-

Narcotic Drugs and Psychotropic Substances have several medical and scientific uses. However, they can be and are also abused and trafficked. India's approach towards Narcotic Drugs and Psychotropic Substances is enshrined in Article 47 of the Constitution of India which mandates that the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. The same principle of preventing use of drugs, except for medicinal use, was also adopted in the three international conventions on drug matters, viz., Single Convention on Narcotic Drugs, 1961;



Convention on Psychotropic Substances, 1971; and the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. India has signed and ratified these three conventions.

2. The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 was framed taking into account of India's obligations under the three UN drug Conventions as well as Article 47 of the Constitution of the India. This Act prohibits, except for medical or scientific purposes, the manufacture, production, trade, use, etc. of narcotic drugs and psychotropic substances, as well as limits the use of narcotics drugs and psychotropic substances for medical and scientific purposes.

3. The Narcotic Drugs and Psychotropic Substances Act, 1985, views drug offences very seriously and prescribes stiff penalties. The Act follows a graded system of punishment varying with the quantum of punishment being dependent upon whether the offence pertains to small, commercial and intermediate quantities of narcotic drugs and psychotropic substances. For offences involving commercial quantities of drugs, a minimum penalty of ten years rigorous imprisonment is prescribed, which may extend to twenty years. Repeat offences attract one and half times the penalty and in a few cases even the death penalty. Therefore, stiff procedures are enumerated in the Act to be followed by the Officers, while carrying out the arrest and seizure.

4. The petitioners before this Court were arrested and remanded to judicial custody on various dates for the offence punishable under Sections 8(c), 20(b)(ii)(c), 25 & 29(1) of the NDPS Act, 1985 and they have filed the present petitions seeking bail.

5. The petitioners are facing charges that they were in possession of huge quantity of ganja more than 20 kgs, which are termed as commercial quantity as per the schedule under the NDPS Act.

6. The law framers viewed the possession of commercial quantity of contraband very seriously and therefore, Section 37 of the NDPS Act has been introduced. As per the said Section, regular bail is denied to an accused, who are found in possession of commercial quantity of contraband, unless there are reasonable grounds for believing that the accused are not guilty of such offence and that they are not likely to commit any offence while on bail. For ready reference, Section 37 of the NDPS Act is extracted as under:

"37. Offences to be cognizable and non-bailable

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 -

(a) every offence punishable under this Act shall be

cognizable;



(b) no person accused of an offence punishable under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless -

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force, on granting of bail."

7.As per the above Section, the following triple conditions were stipulated for grant of bail in case of possession of commercial quantity of ganja:-

- 1.The Public Prosecutor should be given with an opportunity to oppose the bail application.
- 2.The Court should be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence.
- 3.The accused is not likely to commit any offence, while on bail.

8.However, this Section will not be applicable to the case of grant of statutory bail under Section 167(2) Cr.P.C., as per which, if the final report is not filed within the stipulated period, the accused are entitled for default bail.

9.The law framers have thought of this aspect also and have introduced Section 36A of the NDPS Act. As per Section 36A(4) of the Act, the time limit for filing the final report in respect of commercial quantity of contraband is extended from 90 days to 180 days. A proviso to Section 36A(4) of the Act has also been introduced, as per which, if the final report could not be filed even within the 180 days period, then, on a report filed by the Public Prosecutor, the concerned Court can grant extension of time upto one year for filing the final report.

10.For better appreciation, the said provisions are extracted as under:

"36A. Offences triable by Special Courts:

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal



Procedure, 1973 thereof to "ninety days", where they shall be construed as reference to "one hundred and eighty days":

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days."

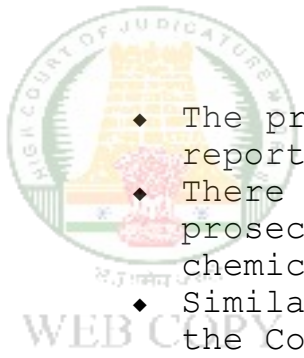
11.The earlier bail applications filed by the petitioners were dismissed by this Court, in view of the provision under Section 37 of the NDPS Act. However, pending the bail applications, the petitioners moved separate applications before the respective Special Courts and obtained statutory bail under Section 167(2) Cr.P.C.

12.The specific provisions under Sections 37 & 36(A) of the NDPS Act were introduced, considering the seriousness of the offence. But the very object is defeated by some police officials or by some Public Prosecutors by allowing the accused to get statutory bail in cases of commercial quantity, without filing the final report in time and without filing a report as contemplated under Section 36(A)(4) of the NDPS Act seeking extension of time for filing the final report.

13.Yet another aspect to be looked into is when the petitioners are eligible for statutory bail on the expiry of 180 days and when the investigating agency has not filed the final report within the stipulated period, this fact could have very well been brought to the notice of this Court for the grant of statutory bail in the pending applications itself. However, when the bail applications are pending before this Court, it is not known as to why subsequent bail applications were filed before the Special Courts by invoking the provision under Section 167(2) Cr.P.C. The pendency of the bail applications before this Court was not even mentioned in the applications filed before the Special Courts.

14.Surprised over this, this Court, by invoking its inherent powers and in the interest of justice, has raised certain queries and also directed the Registrar (Judicial) of this Bench to ascertain the same and to file a report. The Registrar (Judicial) has also filed his report that:-

- ♦ There is a considerable delay in production of samples before the Special Courts.
- ♦ Delay in making request on the part of the Investigating Agency to the Court for sending the samples for Chemical Analysis from the date of remand of the accused.



- ♦ The process of sending samples to the Laboratory and report is done only through the concerned police.
- ♦ There is also a delay in some cases on the part of the prosecution in handing over the samples to Laboratory for chemical Analysis even after the orders.
- ♦ Similarly, there is huge delay in handing over the reports to the Courts.
- ♦ The delay is also due to the centralized filing in Special Courts like Madurai and Special Court at Thanjavur.

15. The report further reveals that at present, under the jurisdiction of Madurai Bench of Madras High Court, three Special Courts for NDPS Act cases are functioning. They are at Madurai, Thanjavur and Pudukkottai.

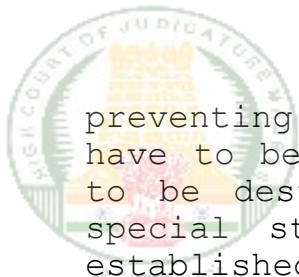
Thanjavur Special Court:- This Special Court deals with cases arising out of five districts, namely, Thanjavur, Cuddalore, Nagappattinam, Tiruvarur and newly constituted Mayiladuthurai District. It is submitted that Cuddalore, Nagappattinam, Tiruvarur and newly constituted Mayiladuthurai Districts are under the Jurisdiction of Principal Bench. Only Thanjavur District is under the jurisdiction of the Madurai Bench.

Pudukkottai Special Court:- This Special Court deals with cases arising out of eight Districts, namely, Ramanathapuram, Sivagangai, Trichy, Karur, Pudukkottai, Ariyalur, Perambalur and Virudhunagar. It is submitted that Ariyalur and Perambalur Districts are under the Principal Bench Jurisdiction.

Madurai Special Court:- There are three Special Courts, namely Principal, I Additional and II Additional NDPS Courts. These three Courts deal with cases arising out of seven Districts, namely, Kanniyakumari, Tirunelveli, Tenkasi, Thoothukudi, Madurai, Theni and Dindigul.

16. The Government is taking serious steps in eradicating drugs from the State. Most of the points as discussed above are also addressed by the Government by issuing necessary circulars. Pending these applications before this Court, the Hon'ble Chief Minister of Tamil Nadu, on the Floor of Assembly, has pointed out that within three months 10,673 cases have been registered and 149.43 tonnes of Ganja were seized and has also made an announcement on the Floor that Tamil Nadu Government would amend the Narcotic Drugs and Psychotropic Substances Act, 1985, so as to take stern action against the people peddling drugs like Ganja, Gudka., etc in and around schools and colleges.

17. In any case involving narcotic drugs and psychotropic substances, there are three factors, viz., seizure, storage and disposal. Of course, the main thing is to nip the bud, ie.,



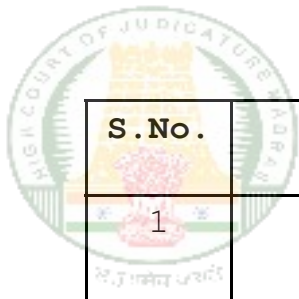
preventing the production itself. The substances which are seized have to be stored in somewhere safe and the stored substances have to be destroyed, so as to avoid the pilferage. In this regard, special storage rooms, namely, Malkanas (5 in nos.) have been established as per the Circulars of the Director General of Police in Rc.No.86290/Crime.4(3)/2019, dated 17.05.2019 and Rc.No.016443/Crime.4(3)/2019 dated 19.09.2019. The storage rooms available are as follows:

S.No.	Place of Storage	Address	Units allotted to utilize the Storage Room
1	Chennai	Old Commissioner Office campus, Egmore, Chennai.	Chennai City and North Zone
2	Trichy	City AR Campus, Trichy.	Trichy City and Central Zone (Trichy)
3	Madurai	City AR Campus, Madurai.	Madurai City, Tirunelveli City and South Zone
4	Theni	AR Campus, Theni.	Dindigul Range
5	Coimbatore	Police Quarters Campus, Podanur, Coimbatore City.	Coimbatore City, Tiruppur City, Salem City and West Zone

18. When this Court pointed out certain discrepancies with regard to the storage of case properties, pending these petitions, the Director General of Police has issued a Circular in Rc.No.187359-1/Crime.4(3)/2015, dated 02.09.2021, in and by which, the police officers are instructed to keep all the case properties relating to NDPS Act in the Malkanas. The relevant portion is extracted as under:

"3. All the unit officers are hereby instructed that all NDPS Act case properties shall be kept in special storage rooms (Malkhana) as mentioned in para 2 supra irrespective of the quantity seized. At any cost no Narcotics and psychotropic substances shall be kept in the Police Station. In the event of return of the property by court, it should be kept in the Special Storage rooms only. If any properties of Narcotics and psychotropic substances seized in old cases kept in the station that should be transferred to the special storage rooms on or before 20.09.2021."

19. Similarly, a Circular in Rc.No.86290-1/Crime.4(3)/2020, dated 24.09.2021, came to be issued, in and by which, triple lock key system for the Malkanas was introduced and Officers were also nominated. The relevant portion is extracted as under:



S.No.	Cities / District	Officer in-charge of each key
1	Trichy City	1. Deputy Superintendent of Police, NIB CID 2. Assistant Commissioner of Police, CCRB 3. Assistant Commissioner of Police, CCB
2	Coimbatore City	1. Deputy Superintendent of Police, NIB CID 2. Assistant Commissioner of Police, CCRB 3. Assistant Commissioner of Police, CCB
3	Madurai City	1. Deputy Superintendent of Police, NIB CID 2. Assistant Commissioner of Police, CCRB 3. Assistant Commissioner of Police, CCB
4	Chennai City	1. Assistant Commissioner of Police, NIB CID 2. Assistant Commissioner of Police, CCRB 3. Assistant Commissioner of Police, CCB
5	Theni District	1. Deputy Superintendent of Police, DCRB 2. Deputy Commissioner of Police, PEW 3. Inspector of Police, NIB CID

Further instructions were also issued in the said Circular as follows:

"2. The Commissioners of Police, Chennai, Coimbatore, Madurai and Trichy Cities and Superintendent of Police, Theni District are instructed to issue suitable instructions to the above Police Officers to keep one key each of three locks of the Malkana in their safe custody and ensure the arrival and dispatch of narcotic drugs from the units / Courts wherever necessary. Also ensure the maintenance of the register kept for the purpose in the Malkana with updated entries for in / out of contrabands."

20. Likewise, a Circular in Rc.No.86290/Crime.4(3)/2020, dated 24.09.2021, came to be issued, in any by which, zonal level drug disposal committee was formed as follows:

S.No.	Zones	Drug Disposal Committee Members	
1	North Zone	1. Deputy Inspector General of Police	Chairman
		2. Superintendent of Police	Member
		3. Assistant Director, FSL	Member
2	Central Zone	1. Deputy Inspector General of Police	Chairman
		2. Superintendent of Police	Member
		3. Deputy Commissioner in Trichy City	Member
		4. Assistant Director, FSL	Member



3	West Zone	1. Deputy Inspector General of Police	Chairman
		2. Superintendent of Police	Member
		3. Deputy Commissioner of Police in Tiruppur / Salem / Coimbatore Cities (Any one)	Member
		4. Assistant Director, FSL	Member
4	South Zone	1. Deputy Inspector General of Police	Chairman
		2. Superintendent of Police	Member
		3. Deputy Commissioner in Madurai City / Tirunelveli City (Any one)	Member
		4. Assistant Director, FSL	Member
5	Chennai City	1. Joint Commissioner of Police	Chairman
		2. Deputy Commissioner of Police, CCB	Member
		3. Assistant Director, FSL	Member

Further instructions were also issued in the Circular as follows:

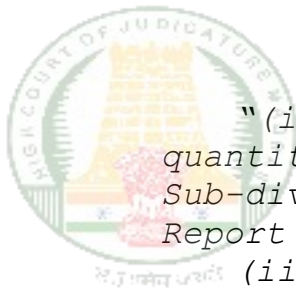
"2. ... The senior most Deputy Inspector General of Police / Joint Commissioner of Police in each Zone / Chennai City shall be the Chairman of the respective Drug Disposal Committee. Likewise, the senior most Superintendent of Police in Districts and the Deputy Commissioner of Police in Cities of each zone shall function as member(s) of the respective Committee.

3. The Drug Disposal Committee shall:-

- a) meet as frequently as possible and necessary;
- b) conduct a detailed review of seized contrabands pending disposal;
- c) order disposal of seized items as per the directions of the Court; and
- d) advise the respective investigating officers or supervisory officers to take steps for the expeditious disposal."

21. It was also brought to the knowledge of this Court by the learned Additional Public Prosecutor that sufficient strength has been provided to the Crime Wing by way of transfer and posting of police personnel vide Circular in Rc.No.111/08-07/NGB IV(2)/2021, dated 24.09.2021.

22. With regard to the non-filing of charge sheet within the stipulated period of 180 days, learned Additional Public Prosecutor submitted that a Circular in Rc.No.010/ADGP/Cr./Camp/2022, dated 22.01.2022, came to be passed, wherein, the following instructions were issued:-



"(i) All cases under NDPS Act involving comme quantity shall be treated as GCR cases and the concerned Sub-divisional Police Officer shall initiate Grave Crime Report in all such cases.

(ii) Superintendent of Police shall supervise the investigation of these cases through monthly GCR.

(iii) All efforts shall be made to charge sheet the case in one hundred and eighty days.

(iv) In case of inability of Investigation Officer to finalize charge sheet within 180 days, the Superintendent of Police shall put his remark on the specific reasons for delay in investigation.

(v) In all such cases the Superintendent of Police shall ensure that a special report, as envisaged in Section 36A of NDPS Act is filed by the Public Prosecutor well in advance before lapse of one hundred and eighty days.

(vi) All efforts should be made to complete investigation in extended time.

(vii) All cases of grant of statutory bail to accused shall be reviewed by the concerned Superintendent of Police. In case there are no justified reasons for delay, the concerned Investigation Officer shall be dealt appropriately."

23. Learned Additional Public Prosecutor has also brought to the notice of this Court about the communication of the Additional Chief Secretary to Government in Letter No.17531/H.P & E (XVI)/2022-1 dated 14.10.2022, addressed to the Director, Forensic Sciences Directorate, Chennai, to issue suitable instructions to earmark two lab technicians and Scientific Officers exclusively for leading NDPS cases in each laboratory and to ensure that the report from the concerned laboratories are sent to the concerned police officials within the least possible time not exceeding 10 days.

24. The location of the Special Courts and the distance factor certainly would cause inconvenience to the investigating officer in attending the Court regularly and in following up their cases. The existing Specials Courts for EC & NDPS Act Cases are as follows:-

S.No.	Special Court	Jurisdictional Districts
1	Chennai	1.Chennai 2.Kancheepuram 3.Chengalpattu 4.Thiruvallur
2	Coimbatore	1.Coimbatore 2.Erode 3.Nilgiris 4.Tirupur



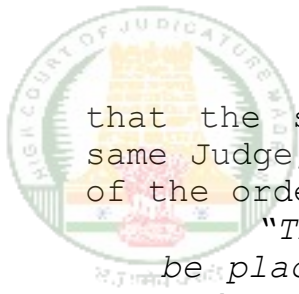
3	Salem	1.Salem 2.Namakkal 3.Dharmapuri 4.Krishnagiri 5.Thiruppathur 6.Vellore 7.Ranipet 8.Thiruvannamalai
4	Villupuram	1.Villupuram 2.Kallakurichi
5	Thanjavur	1.Thanjavur 2.Thiruvarur 3.Nagapattinam 4.Mayiladuthurai 5.Cuddalore
6	Pudukottai	1.Pudukottai 2.Trichy 3.Karur 4.Ariyalur 5.Perambalur 6.Virudhunagar 7.Sivagangai 8.Ramanathapuram
7	Madurai	1.Madurai 2.Dindigul 3.Theni 4.Tirunelveli 5.Tenkasi 6.Thoothukudi 7.Kanyakumari

The police from Virudhunagar District has to travel to the Special Court at Pudukkottai only after crossing Madurai. The possibility for establishing Special Courts covering 100 km radius or a Special Court for every four Districts may be explored, so that the distance between the police station and the Special Courts are reduced, which will enable the effective follow up by the Investigating Agency. The possibility of designating the Additional District Courts in the Districts as Special Courts to deal with EC / NDPS Act Cases may also be explored. Since the Government has already addressed most of the issues referred to supra, this Court refrains from passing any further orders in this regard, however, expects the learned Additional Public Prosecutor to address the Government in this regard and on the difficulties faced by the Investigating Agency.

Suppression of facts:-

25.The Hon'ble Supreme Court in Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and another, reported in 1987 AIR 1613 has issued certain directions to prevent abuse process of Court. One such direction is

<https://www.mhc.tn.gov.in/judis>



that the subsequent bail application should be placed before the same Judge, who have passed the earlier orders. The relevant portion of the order is extracted as under:-

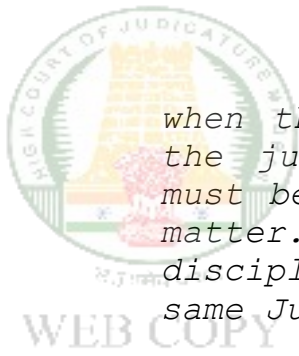
"The convention that subsequent bail application should be placed before the same judge who may have passed earlier orders has its roots in principle. It prevents abuse of process of court inasmuch as an impression is not created that a litigant is shunning or selecting a court depending on whether the court is to his liking or not, and is encouraged to file successive applications without any new factor having cropped up. If successive bail applications on the same subject are permitted to be disposed of by different Judges there would be conflicting orders and a litigant would be pestering every Judge till he gets an order to his liking resulting in the credibility of the court and the confidence of the other side being put in issue and there would be wastage of court's time. Judicial discipline requires that such a matter must be placed before the same judge, if he is available for orders."

This position holds good till date. Based on the aforesaid order, necessary instructions have already been issued by the Registry. The counsels are also expected to refer the earlier orders of the Court in the successive bail applications.

26. This Court in **Crl.O.P.No.26819 of 2008**, in the case of **G.Samuel Vs. the Inspector of Police, K-6, T.P.Chatram Police Station, Chennai - 600 030**, passed a detailed order on the maintainability of entertaining the successive applications by the Court of Sessions, wherein, directions were issued to all the Sessions Courts not to entertain any application for anticipatory bail, if the applicant has already approached the High Court. That apart, this Court in **Raja Elango, City Public Prosecutor Vs.State**, reported in **1998-1 L.W.(Crl)**, has passed a detailed order, which is also relevant in this issue, as follows:

"64.No doubt it is true that Section 439, Code of Criminal Procedure confers concurrent powers in the matter of grant of bail to the Court of Session as well as this Court. But, once High Court took up the matter and gave a finding in the application, the Sessions Court either to have refrained from dealing with the bail application by directing the party to approach the High Court or to find out any substantial change of circumstances, after going through the High Court's order. Admittedly, this was not done.

67.As held by the Apex Court in the various decisions referred to above, even among the Judges of this High Court,



when the second application comes before some other Judge, the judicial propriety demands the subsequent application must be placed before the Judge, who already dealt with the matter. The Supreme Court says in its words "the judicial discipline" requires such matters must be placed before the same Judge.

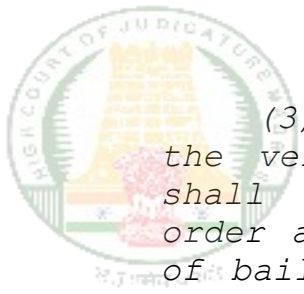
68. The concurrent jurisdiction conferred to the Sessions as well as the High Court would not help the Sessions Court to entertain lightly the bail application after it was dismissed by the High Court. It should be borne in mind the distinction between the existence of jurisdiction and its proper exercise. Entertaining of such bail application, in the absence of substantial change of circumstance, would amount to improper exercise of jurisdiction, which must necessarily be avoided.

69. On the same material, if this Court has already dismissed an application for bail, the learned Sessions Judge should not have allowed that bail application without considering the earlier order, as it would amount to interference in the order of this Court. The judicial discipline demands that the bail order should not have been passed, virtually reversing all the earlier orders passed by his predecessor and this Court, in the absence of any substantial change in the fact-situation.

78. In the backdrop of the analysis of the fact-situation and detailed discussion made above, I am of the considered opinion that the guidelines given below to be followed by the subordinate Judiciary in the situation as referred above would be conducive to the clean administration of justice:

(1) It is the bounden duty of the Court of Session to invariably satisfy itself by obtaining a note of the counsel presenting the petition that either no such bail application has been previously moved before the said Court or in the High Court or if any such application made and dismissed by the said Court or by the High Court, a reference to be made by the Counsel in the petition about the change of circumstances. The change of circumstances should not merely be a cosmetic change, which is of little consequence, but it must be a material and substantial one, which has a direct impact on the earlier decision either by the said Court or by the High Court.

(2) If the Sessions Court feels that passing an order of bail in the face of an earlier order of rejection of bail by the High Court, would appear to overstep the limits of propriety and judicial decorum, it should direct the accused to approach the High Court for bail.



(3) The Court of Session, after verification found the very same Court has been moved previously for bail, shall consider the reasonings contained in the previous order and then decide the bail petition. Even in the grant of bail in those situation unless there is a material and substantial change of circumstances, it would not be proper for the Sessions Court to pass an order of granting bail by indirectly reversing the earlier order of the same Judge or predecessor to him, because the judicial authorities are not only to serve the public but also to create confidence in the minds of the public that there is a judicial consistency.

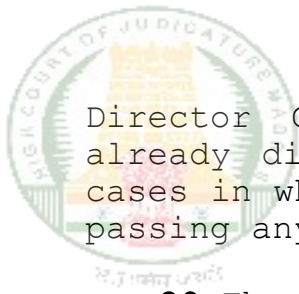
(4) The Sessions Court, apart from considering the earlier order, should follow the guidelines in Gurcharan Singh's case (supra), especially in grave crimes.

(5) The Court of Session and the High Court have been given special and concurrent powers under the Code of Criminal Procedure to deal with the bail application under Section 439 The restriction put in Section 437 would not put embargo on the jurisdiction of the Sessions Court and the High Court to exercise discretion in grant of bail, though the object of the restriction put in the section has to be taken note of by this Court. Therefore, the judicial discretion must be exercised in such a way not to violate the basic principles relating to bail and overruling the earlier decision given by the High Court, though the powers are concurrent.

(6) Such a special power given to the Sessions Court should not be exercised by surrendering its exercise of judicial discretion at the feet of Public Prosecutor. Even when the Public Prosecutor says 'no objection', the Sessions Court cannot shut its eyes and "obey for the direction" in the form of no objection by the Public Prosecutor. The Sessions Court should independently, on consideration of various aspects, such as materials collected in the investigation, the earlier orders passed by the Sessions Court and the High Court, if any, and other guidelines given by this Court and the Supreme Court, decide the bail application."

27.Based on the above orders, certain instructions were also issued to all the Sessions Court that the petitioners were expected to mention in their applications, with regard to the details as to whether this is the first bail application and whether they have already moved High Court or not.

28.However, in the cases on hand, though bail applications are pending before this Court, successive bail applications were filed before the Special Courts and statutory bail was obtained. Since the



Director General of Police, by Circular dated 22.01.2022 as already directed the Superintendents of Police to review all the cases in which statutory bail was obtained, this Court refrains from passing any order in this regard.

29. The learned Additional Public Prosecutor shall instruct all the officers concerned to give instructions / inform the facts in writing to the concerned Public Prosecutors appearing before the Special Courts, in a uniform format.

30. This Court, in **Prabakaran @ China Prabakaran v. Inspector of Police, Subramaniyapuram Police Station, Madurai and Another** [Crl.OP (MD) No.4750 of 2022, decided on 01.07.2022], while dismissing the application for bail, has held as follows:-

"16. On going through the e-courts website, it appears that the Courts are not utilizing the facilities in full. The trial proceedings alone are being entered in the Case Information System and therefore this mistake had erupted in. Learned Additional Public Prosecutor has brought to the knowledge of this Court a Circular issued by the Registry regarding the e-Courts Mission Mode project, dated 29.08.2013, wherein, the following instructions were issued:-

"Therefore, all the Presiding Judicial Officers in the State are hereby instructed to

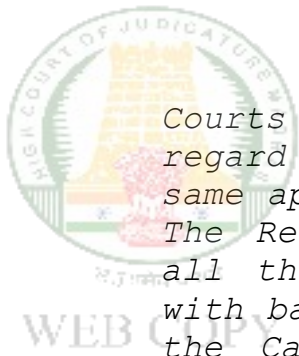
1) Ensure completion of the data entry of all cases pending in courts under their control. Accuracy of the data entered and to locally upload the information on the National Judicial Data Grid;

2) Upload the judgments / orders of all cases dealt with during the day, on a daily basis; (emphasis supplied) and

3) Spread awareness of the portal <http://ecourts.gov.in> amongst lawyers and litigants through the Cause List / information on the Notice Board and also by informing the Bar Associations.

It is also informed that since the case information is now available on the internet and is accessible to all lawyers and litigants, the Presiding Officers shall strictly comply with the above instructions to avoid complaints and criticism."

17. The Courts must be cautious enough while dealing with the bail petitions and necessary pre-trial proceedings should be entered in the Case Information System and all the order copies, including grant or dismissal of bail / anticipatory bail applications, shall be uploaded by the



Courts concerned immediately. Though a Circular in regard was already issued as early as in the year 2013, the same appears not to have been followed in its stricto sensu. The Registrar General may issue necessary instructions to all the Subordinate Courts, especially the Courts dealing with bail / anticipatory bail to enter the pre-trial data in the Case Information System and upload the order copies immediately, so that the purpose and object of the earlier orders of this Court as well as the Circular already issued can be preserved."

31. This Court hopes and trusts that the Circulars issued by the Registry and the Director General of Police referred supra are given effect to and are followed in its stricto sensu. Since the petitioners are already on statutory bail, no further order is required to be passed in these petitions.

With these observations, these Criminal Original Petitions are disposed of.

sd/-

06/01/2023

/ TRUE COPY /

08/02/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

GK

TO

1. THE ADDITIONAL DISTRICT AND SESSIONS JUDGE/PRESIDING OFFICER, SPECIAL COURT FOR EC&NDPS ACT CASES, PUDUKKOTTAI.
2. THE ADDITIONAL DISTRICT JUDGE AND PRESIDING OFFICER, PRINCIPAL SPECIAL COURT UNDER E.C ACT, MADURAI.
3. THE PRINCIPAL SPECIAL JUDGE FOR EC & NDPS ACT CASES, MADURAI.
4. THE JUDGE,
I ADDITIONAL SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES UNDER N.D.P.S ACT, MADURAI.
5. THE JUDGE,
II ADDITIONAL SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES UNDER N.D.P.S. ACT, MADURAI.
6. THE ADDITIONAL DISTRICT JUDGE AND PRESIDING OFFICER, SPECIAL COURT UNDER E.C ACT, THANJAVUR.
7. THE INSPECTOR OF POLICE,
SINDHUPATTI POLICE STATION,
MADURAI DISTRICT.



8. THE INSPECTOR OF POLICE,
RAMANATHAPURAM TOWN B-1 POLICE STATION,
RAMANATHAPURAM DISTRICT.

9. THE INSPECTOR OF POLICE,
KAMUTHI POLICE STATION,
RAMANATHAPURAM DISTRICT.

10. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

11. THE OFFICER INCHARGE,
SPECIAL PRISON FOR WOMEN, MADURAI.

12. THE SUPERINTENDENT,
CENTRAL PRISON, RAMANATHAPURAM.

13. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

14. THE ADDITIONAL PUBLIC PROSECUTOR,
MADRAS HIGH COURT, CHENNAI.

COPY TO:

1 THE REGISTRAR GENERAL,
MADRAS HIGH COURT, CHENNAI.

2 THE REGISTRAR (JUDICIAL),
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

3 THE SECRETARY TO GOVERNMENT,
HOME DEPARTMENT,
GOVERNMENT OF TAMIL NADU,
SECRETARIAT, CHENNAI.

4 THE DIRECTOR GENERAL OF POLICE, CHENNAI.

5 THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.NIRANJAN S.KUMAR, Advocate SR.No.400

ORDER IN

CRL.O.P(MD)Nos.5104, 5843,
10854 AND 10902 OF 2021
Date :06/01/2023

SA/SSS/SAR.2/02.02.2023/17P/21C