



1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28/04/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.8314 of 2023

Kiran @ Uma Maheswaran : Petitioner/Petitioner

Vs.

The State rep. by
The Inspector of Police,
Town West Police Station,
Thanjavur,
(Crime No.841 of 2022) : Respondent/Complainant

Prayer:- Criminal Original Petition is filed under section 482 of the Criminal Procedure Code, to call for the records and set aside the order passed by the Judicial Magistrate No.1, Thanjavur in Surety Memo D.No.4276 of 2023 in Crl.M.P No.2237 of 2022, dated 29/11/2022.

For Petitioner : Mr.K.Sivabalan

For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

**ORDER**

WEB COPY

This criminal original petition has been filed seeking to set aside the order passed by the Judicial Magistrate No.1, Thanjavur, in Surety Memo D.No.4276 of 2023 in Cr.M.P No.222961 of 2022, dated 10/02/2023.

2.The facts in brief:-

The petitioner is arrayed as A2 in Crime No.841 of 2022 for the offence alleged to have been committed by him along with the co-accused for the offences punishable under section 364 IPC @ 364 and 302 IPC. He was arrested and remanded to custody. Since final report was not filed within the time stipulated, he moved application under section 167(2) of the Criminal Procedure Code, for granting statutory bail.

3.That was allowed by the trial court, by order, dated 29/09/2022. In the meantime, the respondent filed final report, on 22/12/2022. Finding that statutory bail cannot be refused to the petitioner, since the period expired, he was granted bail with certain conditions, which reads as follows:-



WEB COPY



(a) The petitioner/Accused shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties each for a like sum to the satisfaction of this court;

(b) The petitioner shall appear and to sign before this court daily at 5.00 p.m for 15 days without fail from the date of his release;

(c) The Petitioner/Accused shall not tamper any evidence, he shall not make any undue influence upon the witnesses, he shall co-operate with the process of investigation and he shall not indulge in similar or any offences in future.

But he could not arrange sureties immediately. Later after arrangement of the sureties, he filed the above said surety application, on 22/12/2022. The right of the petitioner to execute the bond was questioned by the trial court as well as by the prosecution. On that account, the trial court heard both sides. After going through the earlier orders and the order of the co-ordinate bench of this court in Spurgeon Samuel Vs. Inspector of Police, Nagercoil and another; and the



Division Bench order in Crl.OP(MD)No.7736 of 2021, dated 23/12/2021, was of the view that the statutory bail that was granted to the petitioner got extinguished because of his failure to furnish surety. By relying upon the above said order, again, the above said surety application was returned, by order, dated 03/01/2023.

4.Challenging the above said order, this petition has been filed.

5.Heard both sides.

6.When a similar petition was moved before this court in Crl.OP(MD)No.4432 of 2023, the following observation has been made on 21/03/2023, while allowing the petition:-

"5.The history of evaluation of right to default bail under section 167(2) of the Criminal Procedure Code has been extensively stated in the judgment reported in M.Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence [(2021)2 SCC 485]. I am not going to extract the



WEB COPY



relevant portion in this order, since the question involved here is different.

6.Now we are dealing with the extinguishment of right.

7.When a right is created, inherently in it are, restrictions, regulations and extinguishments, how the law developed on the point of extinguishment of right is also covered in M.Ravindran's case.

8.The law developed in this way,
in Hitendra Vishnu Thakur Vs. State of Maharashtra [(1994)4 SCC 602]. The issue arose in this way, the scope of section 20(4)(bb) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 r/w 161(2) Cr.P.C came up for consideration. The court was of the view that the accused must make an application and the court must release the accused on bail, if the time limit expired for filing the final report without going into the merits of the case, of course, by



WEB COPY



giving notice to the Public Prosecutor. Even remand can be refused or declined. It was also noted that it is obligatory on the part of the accused to file application. But later necessity of filing a formal application was diluted, which we are not concerned here.

9.The prosecution was not satisfied with the above said proposition laid. So again issue arose and the decision in Hitendra Vishnu Thakur Vs. State of Maharashtra [(1994)4 SCC 602] was challenged before the Constitution Bench of the Hon'ble Supreme Court in Sanjay Dutt Vs. State [(1994)5 SCC 410] on the same year itself. The question was, whether the above said right is available to the accused, even after filing of the final report, of course, after the expiry of the limitation period. The Constitution Bench settled the issue, in this way,

"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



WEB COPY

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..."

10. Again, the issue did not settle. Again issue arose to the interpretation of the phrase 'if not already availed of', that was clarified in the Three Judges Bench in **Uday Mohanlal Acharya Vs. State of Maharashtra [(2001) 5 SCC 453]**.

11. The answer was like this:-

"if not already availed of" used by this Court in **Sanjay Dutt (1994) 5 SCC 410** must be



WEB COPY



understood to mean "when the accused files an application and is prepared to offer bail on being directed."

12.It was answered that the right will not extinguish, even though such application was not considered, has not indicated the terms and conditions of bail, the accused yet to furnish the bail. Meaning of this, is very clear. Mere filing of the petition is enough to enforce the right to get the default bail. Pendency, date of order and the date of furnishing of the bail bails are not relevant factors. But however, a minority view has also been made in the above said **Uday Mohanlal Acharya's** case to the effect that the right can be exercised only on furnishing the bail bonds. The order of right can be enforced only before passing of the order and producing the bail bonds. But however, only majority view will survive, which was also a matter for consideration in the above said M.Ravindran's case, the danger in adopting the view.



WEB COPY



13. The issue before the Hon'ble Supreme Court in M.Ravindran's case arose in this way; the accused in that case, on the expiry of the statutory of 180 days, filed bail application on 01/02/2019 at about 10.30 am. Arguments were heard and at about 4.25 pm, on the same day, challan was filed by the prosecution. The court was requested to dismiss the application. But the trial court allowed the bail application as it happened in this matter also.

14. It was taken on appeal by the prosecution. This High Court set aside the order of the trial court on the ground that since additional complaint was filed on 01/02/2019 and the application was not disposed till the presentation of the challen, the right automatically extinguished. It was taken to the Hon'ble Supreme Court. The argument of the Government is that the date of disposal of the bail application is the deciding factor to see whether the right extinguished or not. This argument was answered by the Hon'ble Supreme Court in this way,



WEB COPY

"18.7. The arguments of the State that the expression "availed of' would only mean actual release after furnishing the necessary bail would cause grave injustice to the accused and would defeat the very purpose of the proviso to Section 167(2)Cr.P.C. If the arguments of Mr.Lekhi are accepted, there will be many instances where the Public Prosecutor might prolong the hearing of the application for bail so as to facilitate the State to file an additional complaint or investigation report before the Court during the interregnum. In some cases, the Court may also delay the process for one reason or the other. In such an event, the indefeasible right of the accused to get the order of bail in his favour would be defeated. This could not have been the intention of the legislature. If such a practice is permitted, the same would amount to deeming illegal custody as legal. After the expiry of the stipulated period, the Court has no further jurisdiction to remand the accused to custody. The prosecution would not be allowed to take advantage of its own default of not filing the investigation report/complaint against the appellant within the stipulated period."

15. The above said point was answered by concluding that right will not extinguish because of the pendency of the bail application or bail or delay in furnishing the bail bonds.



WEB COPY



16.The secondary question, which was answered by the Hon'ble Supreme Court in the above said M.Ravindran's case is, the real meaning of the explanation to proviso to 167(2) Cr.P.C., which is not relevant for reconsideration here.

17.Para 19.1 is relevant for extraction:-

"19.1.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



WEB COPY

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 charge sheet 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."

consequently the argument of the Government was rejected. So this fixes the entire issue, now under the discussion in this matter.

18. So the right will extinguish, if the accused fails to furnish the bail bond within the time stipulated or when there is violation of the conditions imposed. Here arises the difficulty. As mentioned above, the trial court has not imposed any condition to furnish the bail bonds. It was kept pending for furnishing bail bonds. In the meantime, revision was preferred by the accused, it was withdrawn, later first surety application was presented, it was returned. Again another surety application was filed and that was



WEB COPY



also returned by making the above said observation, based upon the judgement of the coordinate bench of this court in Spurgeon Samuel's case as well as the order of the Division Bench Judge in Kannan @ Senthil @ Kumar @ Minnal's case.

19. But whether any time limit was imposed by the trial court is not clear on record, so far as the Spurgeon Samuel's case is concerned. Moreover before furnishing of the surety bond, the bail was cancelled on the basis of the order passed in Cr1.MP No.531 of 2022. More-over, no occasion has arisen in the above said matter as to whether the right will extinguish on failure to furnish the bail bond immediately or within a reasonable time, since no time limit imposed. Similarly, in Kannan @ Senthil @ Kumar @ Minnal's case, the right was exercised to execute the bond after four years from the date of the order. In the meantime, crime was altered and much water has flown. But in the above said order, no time limit was imposed by the trial court, that was



WEB COPY



sought to be taken advantage by the accused and contended before the Division Bench that he can exercise the right at any time at his Will and Wish. But that was not accepted by the Division Bench of this court.

20. When the Hon'ble Supreme Court is of the considered view that right will extinguish on failure to comply the condition in furnishing the bail bond within the time stipulated. No occasion has arisen before the Hon'ble Supreme Court as to what will be the result if no time limit is imposed by the trial courts.

21. No doubt that if no time limit is prescribed by the court, it means that it must be performed either immediately or within a reasonable time. What is the reasonable time cannot be defined and it depends upon the facts and circumstances as well as the position of the accused.



7.Let the petitioner re-present the above said surety memo before the concerned court. The concerned court may give opportunity to the petitioner to put forth his reason for the delay. If the court satisfies with regard to the reason for the delay, it may permit to execute the surety bond.

8.With the above said, this criminal original petition stands **allowed**. The Registry is directed to return the impugned order passed by the trial court along with the other related documents to the learned counsel appearing for the petitioner, after retaining the Xerox copy of the same.

28.04.2023

Index:Yes/No
Internet:Yes/No

er



16

To,

WEB COPY

- 1.The Judicial Magistrate No.1,
Thanjavur.
- 2.The Inspector of Police,
Town West Police Station,
Thanjavur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



17

G. ILANGO VAN, J

er

Cr1.OP(MD) No.8314 of 2023

28/04/2023



WEB COPY

