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CrI.O.P.No. 660 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.02.2024

PRONOUNCED ON : 29.02.2024

CORAM

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

CrI.O.P.No. 660 of 2024

G.Ramesh @ Gowtham Ramesh

... Petitioner/Petitioner/
Accused No.2

Vs.

The State represented by its
Inspector of Police
Economic Offences Wing II,
Coimbatore.

Crime No. 3 of 2019. ... Respondent/Respondent/Complainant

PRAYER: Criminal Original Petitions filed under Section 439 of Cr.P.C.,
pleaded to enlarge the petitioner on bail in connection with a case in Crime
No. 3 of 2019 pending investigation on the file of the respondent police.

For Petitioner : Mr. B.Kumar
Senior Counsel
for Mr.K.Vasanthanayagan



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For Respondent : Mr.L.Baskaran
Government Advocate (Crl.Side)

ORDER

The second accused in Crime No. 3 of 2019 registered by the respondent police under Sections 406, 420 of IPC and Section 5 of TNPID Act, 1997 and Sections 3, 5 read with Section 21 of the Banning of Unregulated Deposit Scheme Act, 2019, who was remanded to custody on 26.02.2021 seeks bail.

2. The learned Senior Counsel appearing on behalf of the petitioner raised a ground for grant of bail which incidentally had not been mentioned in the Petition.

3. The entire disputes surrounds the order dated 06.06.2023 passed by the Special Judge, Special Court for TNPID Act Cases, Coimbatore. Before examining that particular order, it would only be appropriate that a few background facts are stated.



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4. On a complaint received, the respondent had registered FIR in Cr.No. 3 of 2019 under Sections 406, 420 of IPC and Section 5 of the TNPID Act and Sections 3, 5 read with 21 of BUDS Act against Universal Trading Solution Private Limited at Coimbatore and against four other individuals, who were said to be the Managing Director and partners of the said first accused. The present petitioner was shown as the second accused.

5. It is the case of the prosecution that the accused had collected deposits from the general public promising high returns as well as interest. A total number of 61 FIRs have been registered on complaints being received at various places in States of Tamilnadu, Kerala and in Union Territory of Puducherry. FIRs also registered at Salem City Crime Branch, Sivagangai District Crime Branch, Nagarkoil Economic Offence Wing, Thiruvallur District Crime Branch. Apart from the respondent, all the other accused had absconded and had filed anticipatory bail applications.

6. It must also be stated that independently the Income Tax department had also conducted a raid in the first accused company and had seized cash of Rs.9.38 crores on 30.03.2019 and had frozen 12 bank



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accounts with balance of Rs.20.82 crores. Thereafter, searches were made in various places. The entire case was then transferred to the TNPID Court at Coimbatore. Totally as on August 2018, 31 complaints had been received and the default amount was said to be Rs.38.20 lakhs.

7. This petitioner then filed a Petitions seeking anticipatory bail and a learned Single Judge of this Court had, by order dated 19.08.2019 directed the petitioner to appear before the Investigating Officer / DSP, EOW, Coimbatore. The accused however failed to appear.

8. The petitioner then filed W.P.No. 24057 of 2019 before this Court stating that the property seized must be sold in a transparent manner. A learned Single Judge of this Court, by order dated 27.08.2019 had appointed Hon'ble Mr.Justice K.N.Basha, a former Judge of this Court as One Man Committee to disburse the deposits to the depositors. The petitioner herein was then arrested on 12.09.2020 in yet another case registered by Salem City Crime Branch in FIR in Cr.No. 13 of 2020 also under Section 420 IPC and Section 4 of Price chits Money Circulation Scheme Banning Act 1978. The learned Single Judge who had been appointed in the Writ Petition,



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Hon'ble Mr.Justice K.N.Basha, filed report that a sum of Rs. 22,93,85,840/- had been disbursed to 1174 depositors.

9. Thereafter, on 26.02.2021, this petitioner was arrested in this case in FIR in Crime No. 3 of 2019 through PT Warrant. He had then been remanded to custody. Since the charge sheet was not filed, the petitioner was granted bail by TNPID Court at Coimbatore in Crl.M.P.No. 1399 of 2021 by an order dated 01.06.2021 with condition that he must appear before the Court every day for a period of 60 days. This order was relaxed in Crl.M.P.No. 769 of 2022 and was modified to appear before the Sultanpettai Police Station every Monday at 10.30 a.m., for the remaining 23 weeks.

10. A report was then received from the Station House Officer that the Petitioner did not appear and therefore, Non Bailable Warrant was issued against this petitioner on 22.06.2022. Thereafter, the petitioner filed a SLP before the Hon'ble Supreme Court to quash the FIR and by an order dated 09.05.2023, the Hon'ble Supreme Court directed the petitioner to surrender before the TNPID Court at Coimbatore, within a period of four weeks. The petitioner surrendered on 06.06.2023. The order passed by the learned



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Special Judge for TNPID Court on 06.06.2023 is the bone of contention in this petition.

11. On 06.06.2023, the learned Special Judge, TNPID Court, had passed the following order:-

*“Cr.M.P.No. 1116 of 2023
CNR No. TNCB06-001138-2023
In
Crime No. 3 of 2019*

Dated 06.06.2023

The petitioner/Accused No.2 had filed this application for surrender as per the order of Hon'ble Supreme Court of India. On perusal of the order, it is seen that the Hon'ble Supreme Court of India in Petition for Special Leave to Appeal (Crl.) No. 9588 of 2022 preferred by the petitioner, by its order dated 09.05.2023 has stated in para No. 7 as follows:

“7. Needless to state that the petitioner shall surrender into custody in connection with FIR No. 3 dated 22.06.2019



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registered with P.S. EOW, District Coimbatore, within a period of four weeks from today”.

In compliance of the order of the Hon'ble Supreme Court of India, the petitioner has surrendered into custody before this Court today. Surrender accepted. The petitioner is remanded for judicial custody till 20.06.2023.

*Special Judge,
Special Court under TNPID
Act, Coimbatore.”*

12. As stated, though a specific ground was not taken in the petition, learned Senior Counsel for the petitioner assailed the aforementioned order by stating that the petitioner had been originally granted bail under Section 167(2) Cr.P.C., and had then surrendered before the Court as directed by the Hon'ble Supreme Court and while remanding the petitioner to judicial custody till 20.06.2023, the Court had not cancelled the earlier bail. This is the only ground taken by the learned Senior Counsel.



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13. The learned Government Advocate (Crl. Side) replied that the Court had issued Non Bailable Warrant and even at that time had not cancelled the bail and contended that the petitioner should have challenged issuance of Non Bailable Warrant without cancelling the bail. It had therefore been contended that the contention raised by the learned Senior Counsel cannot be countenanced by this Court.

14. In view of the rival submissions made, the issues which have to be adjudicated by this Court are:-

(i) Whether the Special Court under TNPID Act, Coimbatore, was justified in issuing Non Bailable Warrant on 22.06.2022?

(ii) Whether the order of remand dated 06.06.2023 passed by the Court without cancelling the bail granted on 01.06.2021 under Section 167(2) Cr.P.C., is legally sustainable?

15. It must also be mentioned that the petitioner had not raised these grounds even when he filed subsequent bail applications before the



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TNPID Court in Crl.M.P.No. 1159 of 2023 and in Crl.M.P.No. 2407 of 2023 both of which were dismissed on 10.07.2023 and 13.12.2023 respectively.

Issue No. (i):

16. The facts have been stated. It had been pointed out earlier that the respondent had been directed to appear before the Sulthanpet Police Station every Monday at 10.30 a.m., for 23 weeks by order dated 07.06.2022 in Crl.M.P.No. 769 of 2022. It is a fact that the petitioner appeared before the said police Station only once and then failed to appear subsequently. This fact was brought to the notice of the Special Judge, TNPID Act by the Investigating Officer by a report dated 22.06.2022. This representation was placed before the Special Judge for TNPID Cases on 22.06.2022 who directed issuance of Nonailable Warrant.

17. It must be further pointed out that on 27.06.2022, the petition for relaxation in Crl.O.P.No. 14658 of 2022 of the bail conditions came up for consideration before the learned Single Judge of this Court and by an order dated 27.06.2022, the conditions imposed against the petitioner were totally relaxed.



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18. Thus on the evening of 27.06.2022 there were two separate orders with respect to the obligation of the petitioner. The first one was the issuance of Nonailable Warrant noting his non appearance before the Sulthanpet Police Station on and after 20.06.2022 and the second was the order of a learned Single Judge of this Court dated 27.06.2022 relaxing all conditions, namely, appearance before the Investigating Officer. The order dated 27.06.2022 had also been communicated to the Special Court for TNPID Cases, Coimbatore. Thus, on receipt of such communication, the learned Special Judge for TNPID Cases should have read it in juxtaposition of his order dated 22.06.2022 directing issuance of Nonailable Warrant against the petitioner.

19. In (2012) 9 SCC 791 [*Raghuvansh Dewanchand Bhasin v. State of Maharashtra, and another*], the Hon'ble Supreme Court had examined the concept of Nonailable Warrant. It had been held as follows:-

“24. The last issue raised that remains to be considered is whether the courts can at all



issue a warrant called a “non-bailable” warrant because no such terminology is found in the Code as well as in Form 2 of the Second Schedule to the Code.

25. It is true that neither Section 70 nor Section 71 appearing in Chapter VI of the Code enumerating the processes to compel appearance as also Form 2 uses the expression like “non-bailable”. Section 70 merely speaks of form of warrant of arrest, and ordains that it will remain in force until it is cancelled. Similarly, Section 71 talks of discretionary power of court to specify about the security to be taken in case the person is to be released on his arrest pursuant to the execution of the warrant issued under Section 70 of the Code. Sub-section (2) of Section 71 of the Code specifies the endorsements which can be made on a warrant. Nevertheless, we feel that the endorsement of the expression “non-bailable” on a warrant is to facilitate the executing authority as well as the person against whom the warrant is sought to be executed to make them aware as to the nature of the warrant that has been issued.



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26. In our view, merely because Form 2, issued under Section 476 of the Code, and set forth in the Second Schedule, nowhere uses the expression bailable or non-bailable warrant, that does not prohibit the courts from using the said word or expression while issuing the warrant or even to make endorsement to that effect on the warrant so issued. Any endorsement/variation, which is made on such warrant for the benefit of the person against whom the warrant is issued or the persons who are required to execute the warrant, would not render the warrant to be bad in law. What is material is that there is a power vested in the court to issue a warrant and that power is to be exercised judiciously depending upon the facts and circumstances of each case. Being so, merely because the warrant uses the expression like “non-bailable” and that such terminology is not to be found in either Section 70 or Section 71 of the Code that by itself cannot render the warrant bad in law. The argument is devoid of substance and is rejected accordingly.

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20. In (2007) 12 SCC 1 [Inder Mohan Goswami and another v. State of Uttaranchal, and others], the Hon'ble Supreme Court had examined the effect of issuance of Non Bailable Warrant. It had been observed as follows:-

“51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain



period, only then the non-bailable warrants should be issued.

When non-bailable warrants should be issued

53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or*
- the police authorities are unable to find the person to serve him with a summon; or*
- it is considered that the person could harm someone if not placed into custody immediately.*

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences



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and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.

.....

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

57. The court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant.”



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21. It is the contention of the learned Government Advocate (Crl. Side) that the petitioner had not challenged the order of the Special Court for TNPID Cases, Coimbatore, in issuing the Non Bailable Warrant against the respondent. It is also contended that the petitioner had also not independently approached the TANPID Court and brought to the notice of TANPID the Court the effect of the order in Crl.O.P.No. 14658 of 2022 dated 27.06.2022 of this Court. The Non Bailable Warrant remain pending.

22. The issue to be answered is whether on 22.06.2022 the Special Court was justified in issuing Non Bailable Warrant. The fact that the petitioner had absented himself from appearing before the Investigating Officer on 20.06.2022 is a very significant factor to be considered since there were other FIRs registered against the petitioner and therefore, there was every possibility of the petitioner absconding from the judicial process. Even though on the face of it may appear that the learned Special Judge for TANPID Cases Coimbatore had not given any specific reason for issuance of Non Bailable Warrant, still the eventualities, as stated in ***(2007) 12 SCC 1 [Inder Mohan Goswami and another v. State of Uttaranchal, and others]***



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referred supra were available, particularly the strong apprehension that the petitioner would not voluntarily appear as directed before the Investigating Officer. The Court necessarily had to take steps to pre-empt the possibility of the petitioner absconding from judicial process.

23. In view of that particular fact, taking into consideration, the gravity of the offence, the antecedents of the petitioner and the possibility of him disappearing once and for all, at the earliest time, the TANPID Court had exercised its discretion to issue a Non Bailable Warrant to secure the petitioner.

24. Viewed from that angle, I would hold with respect to **Issue No.(i)**, that the TANPID Court was indeed justified in issuing a Non Bailable Warrant on 22.06.2022. It could be argued that reasons were not given. Those arguments present a strong line to hold that the procedure adopted while issuing the Non Bailable Warrant was extremely dissatisfactory but would not affect the authority of the Court to issue a Non Bailable Warrant. I must however hold that Courts should follow the dictum laid down in **(2007) 12 SCC 1 [Inder Mohan Goswami and another v. State of Uttaranchal, and others]**.



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25. Judicial remedies were available to the petitioner to question that particular order but he had not chosen to do so. He had also not questioned the authority of so issuing a Non Bailable Warrant even before this Court. I would therefore answer **Issue No. (i)** that the TANPID Court was justified in issuing the Non Bailable Warrant on 22.06.2022.

Issue No. (ii):

26. This issue merits deep consideration since the fulcrum of the arguments advanced by the learned Senior Counsel for the petitioner was with respect to the remand order dated 06.06.2023 and its alleged lawfulness particularly when it had been issued without cancelling the bail granted on 01.06.2021.

27. It must be again pointed out that after that particular order of remand dated 06.06.2023, the petitioner had sought bail by filing two separate applications in Crl.O.P.No. 1159 of 2023 and Crl.O.P.No. 2407 of 2023 both of which were dismissed by orders dated 10.07.2023 and



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13.12.2023 respectively. In both the bail petitions, the petitioner had not raised a ground that the remand was illegal. As repeatedly pointed out even in the petition filed before this Court, he had not raised that particular ground. It was only argued by the learned Senior Counsel, with much force.

28. In *(2018) 3 CTC 156 [Pillappan Vs. State]*, a learned Single Judge of this Court (P.N.Prakash J) had examined the issue whether a Magistrate, before remanding an accused charged with a bailable offence to judicial custody on execution of a non bailable warrant should have cancelled the bail under Section 437(5) of Cr.P.C., and whether reasons must be recorded and a finding must be given that the bond had been forfeited.

29. That was a case in which the accused was involved in a bailable offence and it was held that the Magistrate need not have cancelled the bail under Section 437(5) Cr.P.C. The learned Single Judge had examined the effect of Section 446-A of Cr.P.C and the consequent amendments in Section 436 Cr.P.C. It was observed and held as follows:-



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“21 In reality, the problem of bail jumping remains unsolved even after the amendment. The malaise plagues the system even today as could be seen from the Report called for by this Court from one District, viz., Dindigul, which shows that from 1990 to 2018, 2,595 non-bailable warrants are pending execution against the accused who have jumped bail, out of which, 39 warrants are in respect of the offence under Sec. 302 IPC and 125 warrants relate to the offence under Sec. 307 IPC. To put it more pithily, the police arrest the accused and bail is granted by the Court, after which, the accused absconds and if the police once again arrest the accused and produce him in execution of non-bailable warrant, can it be said that the accused should be just like that released on the ground that his bail has not been formally cancelled? In a case where the Magistrate had granted bail, the Magistrate can cancel the bail under Sec. 437 (5) of the Code. In a case where bail has been granted by the Sessions



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*Court/High Court, the Magistrate cannot cancel the bail, unless the superior Court had expressly authorised the Magistrate to do so, in terms of the law laid down by the Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**. In the absence of such an express authorisation, the Magistrate cannot cancel the bail in a case where it has been granted by the superior Court.*

22 The Code was amended again in 1980 vide the Code of Criminal Procedure Amendment Act, 1980 with effect from 27.12.1980. The said amendment introduced Sec. 446-A to the Code and also made consequential changes in Sec.436. Sec. 446-A of the Code reads as under:

"446-A Cancellation of bond and bail bond:

Without prejudice to the provisions of section 446, where a bond under this Code is for appearance of a person in a case



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and it is forfeited for breach of a condition-

a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and

b) thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition;

Provided that subject to any other provision of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient."



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(emphasis supplied)

*23 To reiterate, Sec. 446-A of the Code was included by the 1980 Amendment in order to curb the menace of bail jumping. It is a trite law that cancellation of bail is not synonymous to cancellation of bail bond and this has been recognised by this Court in **Prabakaran vs. State [2010 (2) MLJ (Crl.) 353]**, wherein, a learned Single Judge of this Court has held in no uncertain terms as under:*

“16. Thus, it emerges tacitly clear that prior to the introduction of Section 446-A, the bail bond shall stand cancelled only when the bail is cancelled either under Section 437 or 439 of the Criminal Procedure Code, whereas, now, such cancellation takes place automatically by operation of Section 446-A of the Criminal Procedure Code without there being an order of cancellation of bail.”



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24 Sec. 446 essentially deals with sureties for breach of bond by the accused, whereas, Sec. 446-A deals with the consequences that would befall the accused himself, upon forfeiture, for breach of bond conditions. That is why, Sec. 446-A begins with the expression “without prejudice to the provisions of Sec. 446”. This means that, without prejudice to the power of the Court to take action against the sureties under Sec. 446 of the Code, the Court can deal with the accused separately under Sec. 446-A of the Code for breach of bond. When the accused is produced and if he is not able to satisfactorily give reasons as to why he did not appear before the Court, then, the Magistrate/Court is required to record an order of forfeiture and remand the accused to judicial custody under Sec. 309 of the Code. Thereafter, bail is not a matter of right even in a case involving a bailable offence. If the accused is able to give satisfactory reasons for his absence at the time of his production in execution of the



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non-bailable warrant / appearance, then, there is no necessity to remand him to judicial custody. If the accused seeks time to give his explanation, he can be remanded to judicial custody pending enquiry. The order of forfeiture of bond that has been recorded by the Court will not automatically have any consequence on the sureties under Sec. 446 of the Code, because, a separate notice is required to be given to the sureties to show cause as to why penalty should not be paid by them and only if they are not able to show cause, can the Court proceed to recover the penalty as if it were a fine imposed under the Code. Thus, the consequences of forfeiture of the bond operates differently for the accused and the sureties. The fact that the accused had been in abscondence for a long period and that he has not been able to give satisfactory explanation for his absence at the time of his production/appearance, is, by itself, a sufficient ground for forfeiture of the bond. What the Court/Magistrate shall record is,



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the period of abscondence, explanation given by the accused and the reasons for non acceptance. This, by itself, will complete the forfeiture proceedings qua the accused. Thus, the Magistrate has the option to release the accused on his personal bond with one or more sureties or refuse to release him. If the Magistrate / Court refuses to release the accused, he will have to, perforce, remand him to custody under Sec. 309 of the Code. Thereafter, the accused will have to apply for fresh bail. The accused would have been granted bail in the earlier proceedings judging the gravity of the offence, his antecedents and other factors. In the subsequent bail application, the Court will have to consider an additional factor, viz., the factum of the accused having absconded after availing bail. Thus, the consequences of cancellation of bail and the cancellation of bail bond vis-a-vis the accused are one and the same. Any other interpretation of Sec. 446-A would make it otiose. This Court garners support



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*for this interpretation in the judgment of the Kerala High Court in **Mahesh vs. State of Kerala** [2009 SCC Online Ker. 6601].*

25 In the case at hand, the petitioner was appearing before the Magistrate from 14.06.2010 onwards and from 14.12.2015, he did not appear. Hence, he was arrested upon execution of the warrant on 20.02.2018. His conduct, ex facie, shows that his non appearance continuously was not on account of sufficient cause or due to inadvertence. However, the Magistrate questioned the petitioner on 20.02.2018. Since his explanation was not satisfactory, the Magistrate remanded him to custody under Sec. 309 of the Code by cancelling his bail. In the opinion of this Court, it was not necessary for the Magistrate to have cancelled the bail at all, because, he was well within his powers even under Sec. 446-A of the Code read with Sec. 309 of the Code to remand him to custody. For taking action under Sec. 446 of the



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*Code, notice should be issued to the sureties and it should be proved in a separate proceedings that the accused had violated the bail bond for the sureties to make good the bond amount. Proviso to Sec. 446-A(b) of the Code states that the Court may release him in that case upon execution of a personal bond. The expression “may” has been recently interpreted by the Supreme Court in **Pankaj Jain vs. Union of India and another [2018 SCC OnLine SC 160]** in connection with Sec. 88 of the Code. Paragraphs 23 and 31 of the said judgment read thus:*

“23 Section 88 of the Cr.P.C. does not confer any right on any person, who is present in a Court. Discretionary power given to the Court is for the purpose and object of ensuring appearance of such person in that Court or to any other Court into which the case may be transferred for trial. Discretion given under Section 88 to the Court does not confer any right on a



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person, who is present in the Court rather it is the power given to the Court to facilitate his appearance, which clearly indicates that use of word “may” is discretionary and it is for the Court to exercise its discretion when situation so demands.

31. We thus conclude that the word “may” used in Section 88 confers a discretion on the Court whether to accept a bond from an accused from a person appearing in the Court or not.”

The aforesaid interpretation will apply in all fours to the interpretation of the word “may” used in proviso to Sec. 446-A(b) of the Code. A fortiori, the Court / Magistrate may not release him and after recording that the bond has been forfeited since the accused had been in abscondence for a long period and that the reason given by him for his abscondence is not satisfactory, the Court / Magistrate can remand him to judicial custody under Sec.



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309 of the Code. Thereafter, the accused should have to apply for fresh bail which can be considered on merits by taking into consideration the period of his abscondence and the desirability to grant bail to such a person.

27 To recapitulate, if an accused on bail, be it in a case involving a bailable or non-bailable offence, (whether granted by the superior Court or by the Magistrate), does not appear on a hearing date and no petition is filed for dispensing with his presence, non-bailable warrant can be issued under Sec. 89 of the Code. On the appearance of the accused or on his production by the police, what is required to be given is, an opportunity to him to explain as to why he did not appear from that particular date onwards. If he gives a satisfactory explanation, he can be let off by recalling the warrant. If his explanation is not satisfactory, the Magistrate/Court is required to record the reasons and give a



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finding that the bond has been forfeited. On such finding, the bail bond gets automatically cancelled. Thereafter, the Magistrate/Court cannot release him on his own bond in view of the bar under Sec.446-A(b). He may be released under the proviso to Sec.446-A(b) on his executing a bond with fresh sureties, or, he may be remanded to custody under Sec. 309 of the Code. If he is so remanded to judicial custody, he should apply for fresh bail. Thereafter, the Magistrate/Court can issue notice under Sec. 446 of the Code to the sureties separately for payment of penalty. In the bail application filed afresh by the accused either under Sec.436 or 437 or 439 of the Code, the Court will have to consider not only the usual parameters for grant of bail but also the additional factor, viz., his abscondence. ”

30. In (2019) 3 MLJ (CrI.) 351 [Palanivel Vs. State, rep. by Inspector of Police, a learned Single Judge of this Court [Anand Venkatesh,J] considered a Prisoner on Transit Warrant issued under Section



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267 of the Code of Criminal Procedure and after placing reliance on

Pollappan Vs. State referred *supra*, finally held as follows:-

“34. The above judgment has elaborately considered the effect of the execution of the bail bond and non-compliance of the conditions of the bail bond. This Court is completely in agreement with the ratio that has been enunciated in the above judgment. Reiterating the ratio, if an accused on bail in a non-bailable offence, whether granted by a Superior Court or a Magistrate, does not appear on the hearing date and no petition is filed for dispensing with his presence and non-bailable warrant has been issued, on the appearance of the accused or on his production by the police (through PT warrant in this case), an opportunity should be given to the accused person to explain as to why he did not appear from that particular date onwards. If a satisfactory explanation is given, he can be let off by recalling the warrant. If his explanation is not satisfactory, the trial Court is required to record the reasons and give



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a finding that the bond has been forfeited. On such finding, the bail bond gets automatically cancelled. The effect of Section 446-A is that, on the cancellation of the bail bond, the bail also gets automatically cancelled. Thereafter, the accused person may be released under the proviso under Section 446-A(b) on his executing a bond with fresh sureties or he may be remanded to custody under Section 309 of Cr.P.C.”

31. In the instant case, the records reveal that as directed by the Hon'ble Supreme Court, the petitioner had surrendered before the TNPID Court on 06.06.2023. On that date, he filed C.M.P.No. 1116 of 2023, which could be termed as a surrender petition. When he so surrendered, the learned Special Judge, Special Court for TNPID Act Cases, Coimbatore, had passed the following Order:-

*“Cr.M.P.No. 1116 of 2023
CNR No. TNCB06-001138-2023*



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*In
Crime No. 3 of 2019*

Dated 06.06.2023

The petitioner/Accused No.2 had filed this application for surrender as per the order of Hon'ble Supreme Court of India. On perusal of the order, it is seen that the Hon'ble Supreme Court of India in Petition for Special Leave to Appeal (CrI.) No. 9588 of 2022 preferred by the petitioner, by its order dated 09.05.2023 has stated in para No. 7 as follows:

“7. Needless to state that the petitioner shall surrender into custody in connection with FIR No. 3 dated 22.06.2019 registered with P.S. EOW, District Coimbatore, within a period of four weeks from today”.

In compliance of the order of the Hon'ble Supreme Court of India, the petitioner has surrendered into custody before this Court today. Surrender accepted. The petitioner is remanded for judicial custody till 20.06.2023.

*Special Judge,
Special Court under TNPID
Act, Coimbatore.””*



CrI.O.P.No. 660 of 2024

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32. One factor which had emanated on examining the records forwarded by the Special Court under TNPID Act Cases, Coimbatore, is that the petitioner had also filed yet another petition under Section 70(2) Cr.P.C., to recall the Non Bailable Warrant issued on 22.06.2022. The following order was passed in that petition on 06.06.2023:-

*“Cr.M.P.No. 1117 of 2023
CNR.No.TNCB06-001139-2023
in
Crime No.3 of 2019*

Dated: 06.06.2023

This is an application filed by the petitioner to recall NBW passed against him on 22.06.2022 by this Court. The learned counsel for the petitioner had endorsed as not pressing t his recall application.

In view of the same, this Petition is dismissed as not pressed.”



Crl.O.P.No. 660 of 2024

33. It is thus seen that the application seeking to recall the Non Bailable Warrant was withdrawn as not pressed by the learned counsel for the petitioner. The only option therefore available to the learned Special Judge was to remand the accused to judicial custody. The actual endorsement by the learned counsel is as follows:-

*“Based on surrender of this petitioner,
not press this recall application.*

*Counsel signed for the petitioner
06.06.2023”*

34. The question which begs an answer is whether in the absence of any application seeking to recall the warrant, the Court should have remanded the petitioner to judicial custody. The petitioner had surrendered before the Court and he had subjudicated himself to the authority of the Court. The Court had, in view of violation of the condition imposed while granting bail had remanded him to custody. Nodoubt, the order would have been more clear and it had been specifically stated that the bond had been forfeited, which would imply that the bail granted earlier stood automatically cancelled. At this stage, it is not possible to go backwards in time.



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35. It might be a thin line drawn by this Court regarding necessity to pass an order with reasons and then remanding the accused to custody. The accused had however surrendered to the Court and had voluntarily withdrawn the application filed seeking to recall the Non Bailable Warrant. Once the application filed seeking to cancel the Non Bailable Warrant was dismissed as not pressed and as withdrawn, the Court necessarily had to other option but to remand the accused to judicial custody and call upon him to seek bail in normal process. The very act of issuance of Non Bailable Warrant would indicate the right of the Court to arrest and remand the accused.

36. I do agree that in normal course, the accused should have been questioned and reasons sought for violation of the condition imposed while granting bail, and then, if not satisfied with the reasons, the Court should have passed an order forfeiting the bond, but when the application seeking to recall the Non Bailable Warrant was withdrawn by the accused, the further proceedings would only be otiose.



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37. Taking that view, I would answer **Issue No.(ii)** that the trial Court was justified in directing remand of the petitioner on 06.06.2023 in view of the surrender of the petitioner and in view of the counsel for the petitioner withdrawing the application filed to recall the Non Bailable Warrant. It was an order consequential to the issuance of the Non Bailable Warrant.

38. Even though the issues have been answered as aforementioned, still it is evident that the order dated 06.06.2021 had been passed without following the stipulations as stated in the aforementioned Judgments, namely, recording satisfaction that the reasons given by the accused for violation of the condition was not sufficient to accept surrender and release him either on own bond or by directing him to execute fresh sureties. The order does not also indicate forfeiture of the bonds.

39. This petition has been filed under Section 439 Cr.P.C., and the specific grounds argued had also not been raised in the petition. However I would still set aside the order dated 06.06.2023 as being bereft of any reasons. Issue No.(ii) had been answered only with respect to the authority



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of the TANPID Court to remand the accused. This would not automatically mean that the petitioner should be granted bail. The TNPID Court should record satisfaction about the reasons for non appearance of the petitioner and for the violation of condition granting bail. Therefore, I would grant a small window to the petitioner to be heard again by the learned Special Judge for TNPID Court cases. The learned Special Judge is directed to take up the petition filed for surrender, record reasons to either accept it and grant bail or to forfeit the bond or to remand the accused. Giving that opportunity to the petitioner and placing a caveat and responsibility on the learned Special Judge, this Petition stands dismissed.

40. In view of the aforementioned reasons, this Criminal Original Petition stands dismissed.

29.02.2024

vsg

Index:Yes/No

Neutral Citation:Yes/No

Speaking order : Yes/No



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To

1. Inspector of Police
Economic Offences Wing II,
Coimbatore.
2. The Central Prison, Coimbatore.
3. The Public Prosecutor,
High Court of Madras.



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C.V.KARTHIKEYAN, J.

vsg

Pre Delivery Order made in
CrI.O.P.No. 660 of 2024

29.02.2024