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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.03.2024

Pronounced on : 27.03.2024

Coram:

THE HONOURABLE MR. JUSTICE VIVEK KUMAR SINGH

Crl.A.(MD) Nos.198 & 199 of 2024

In Crl.A.(MD) No.198 of 2024:

Seethapriya

.. Appellant/A1

Vs.

1.State rep. by
The Deputy Superintendent of Police,
Sivagangai Sub-Division,
Sivagangai.

2.State through
The Inspector of Police,
DCB Police Station, Sivagangai.
(In Crime No.18 of 2023)

3.Uma Maheswari,
The Special Tahsildar,
Adi Dravidar Welfare Department,
Sivagangai.

.. Respondents

**In Crl.A.(MD) No.199 of 2024:**

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Ramkumar

.. Appellant/A2

Vs.

1.State rep. by
The Deputy Superintendent of Police,
Sivagangai Sub-Division,
Sivagangai.

2.State through
The Inspector of Police,
DCB Police Station, Sivagangai.
(In Crime No.18 of 2023)

3.Uma Maheswari,
The Special Tahsildar,
Adi Dravidar Welfare Department,
Sivagangai.

.. Respondents

Common Prayer: Criminal Appeals filed under Section 14-A(2) of the SC/ST (POA) Act, to call for the records and set aside the order passed in Crl.M.P.Nos.430 & 431 of 2024 on the file of the Special Court for Exclusive Trial of Cases under SC/ST (POA) Act, 1989, Sivagangai dated 21.02.2024.

For Appellants : Mr.V.Sasikumar
in Crl.A.Nos.198 & 199 of 2024

For Respondents : Mr.A.Thiruvadi Kumar
in both Appeals Additional Public Prosecutor



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COMMON JUDGMENT

These Criminal Appeals arise out of the order passed in Crl.M.P.Nos.430 & 431 of 2024 on the file of the Special Court for Exclusive Trial of Cases under SC/ST (POA) Act, 1989, Sivagangai dated 21.02.2024.

2. With the consent of both the learned counsels, these Criminal Appeals have been taken up for final disposal at the admission stage itself.

3. The brief facts of the case are as follows:

a) A complaint was raised by an Adi Dravidar Welfare Committee member in regard to misappropriation of funds allotted to the Adi-Dravidar Welfare Hostels and on the strength of the said complaint, the District Collector, Sivagangai formed a committee for inspection and on initial inspection, it was held that the appellants herein along with other accused had misappropriated a sum of Rs.9 lakhs in which, Rs.5 lakhs has been repaid by the first appellant and therefore, a case has been registered against them and the appellants herein were arrayed as accused No.1 and 2. During the



course of inspection, it was found that the first appellant herein, who was working as a Senior Revenue Inspector in Adi Dravidar Welfare Department, Sivagangai Division had abused her official capacity and misappropriated a sum of Rs.2,43,27,647/- and had only repaid Rs.5 Lakhs to the Government vide challan on 20.10.2023. On further investigation, it came to light that the first appellant and her husband/the second appellant herein along with other accused entered into criminal conspiracy to misappropriate the funds allocated to the Hostels run by the Adi Dravidar Welfare Department and have cheated the Government to the tune of Rs. 2,43,27,647/-. Hence, a case initially registered against the appellants herein along with other accused have been altered and registered under Sections 403, 409, 468, 471, 420 and 120(B) of IPC and 3(1)(q), 3(2)(vii) of SC/ST PoA Act, 1989. Against the same, the appellants herein filed a petition for statutory bail under Section 167(2), which was dismissed by the Court below.

b) Aggrieved over the same, the appellants herein have come forward before this Court with the present appeals.



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4. Heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the respondents.

5. The learned counsel for the appellants submitted that the appellants were arrested and remanded to judicial custody on 18.11.2023 for the alleged offences under Sections 403 and 420 @ 403, 409, 468, 471, 420 and 120(b) of IPC along with Sections 3(1) (q) and 3(2)(vii) of SC/ST (POA) Act, 1989 as the funds allotted for the welfare of the Adi-Dravidar students were misappropriated by them. He further submitted that the bail application filed by them were dismissed by the Court below on the ground that the investigation is still pending and if they were enlarged on bail, they will tamper the material evidence.

6. In furtherance of his arguments, he contended that the Court below ought to have considered the fact that the charge sheet has not been filed within the prescribed time limit. It also miserably failed to analyse and appreciate the scope of Section 167(2) of Cr.P.C. The Court below erred in dismissing the statutory bail petitions by citing the order of the Hon'ble Apex Court passed in CrI.A.No.391 of 2024 dated 24.01.2024, which is not at all



applicable to the facts of the case on hand. No charge sheet has been laid even beyond the statutory period. In view of the same, the appellants are mandatorily entitled to be released on statutory bail as contemplated under Section 167(2) of Cr.P.C. Hence, the learned counsel prays for allowing the appeals.

7. The learned Additional Public Prosecutor submitted that during investigation, it was found that the third respondent/defacto complainant is also involved in the said offence and he has been arrayed as third accused in this case. He further submitted that the delay of non filing of charge sheet within the prescribed time in the present case is due to the following reasons namely, the case pertains to treasury; misappropriation of funds from treasury accounts to individual bank accounts; requisition letter dated 16.04.2024 was sent to the District Collector, Sivagangai for prior approval from the appointing authority and the same was not received by the Investigating Officer and scanning of documents which is of 5000 pages. In view of the aforesaid reasons, they have also filed a petition for extension of time for investigation on 15.02.2024 and the same was ordered by the Court below till 16.03.2024.



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8. Moreover, the learned Additional Public Prosecutor submitted that since in the case on hand, several grounds have been raised for the delay in completing the investigation and hence, the official respondents have been granted extension of time for investigation till 16.03.2024 by the Special Court. In view of the above, the statutory bail cannot precede before the expiry of time extended for filing the final report and as the time has been extended for filing of final report by the learned Judge vide its order dated 15.02.2024 in Cr.No.18 of 2023 till 16.03.2024. He also contended that if the accused are released on bail, there is every possibility of indulging in tampering the witnesses.

9. In support of his contentions, he relied upon the following decisions:

9.1. In the case of ***Rambeer Shokeen Vs. State (NCT of Delhi)*** reported in ***2018 (4) SCC 405*** wherein it has observed as under:

*"24.As held by the Constitution Bench
of this Court, the consideration of application*



for grant of statutory bail in a situation, as in the present case, was dependent on rejection of prayer of the Additional Public Prosecutor for extension of time. When such prayer is made, it is the duty of the Court to consider the report/application for extension of period for filing of the charge-sheet in the first instance; only if it was to be rejected could the prayer for grant of statutory bail be taken forward. In no case, the hearing on statutory bail application precede the consideration of prayer for extension of the period for filing of the charge-sheet made by the Additional Public Prosecutor.”

9.2. In the case of **Sunjay Dutt Vs. State** reported in **1994 (5) SCC 410** wherein it has held as follows:

“48. ... It is obvious that no bail can be given of the even in such a case unless the prayer for extension of the period is rejected. In short, the grant of bail in such a situation is also subject to refusal of the prayer for extension of time, if such a prayer is made.

53. ... If the accused applies for bail under this provisions on expiry of the period of 180 days or the



extended period, as the case may be, then he has to be released on bail forthwith.”

10. The appellants in the application filed under Section 167(2) Cr.P.C., has specifically averred that they were arrested on 18.11.2023, inspite of the same, the police have not filed the charge sheet within the stipulated time i.e., within 90 days from the date of their arrest and therefore, the appellants/accused are entitled to be released on statutory bail.

11. The learned Sessions Judge, after referring to the factual aspects of the case, had considered the objections filed by the Investigating Officer which was reiterated by the learned Special Public Prosecutor to the effect that the first appellant herein/A1 is a Government employee in Adi Dravidar Welfare Department and there was no previous case against the appellants herein but however, A1 using her official capacity along with other accused persons have swindled a huge amount of Rs.2,43,37,647/- and only Rs.5 lakhs has been recovered from her. The learned Sessions Judge quoted the order of the Hon'ble Supreme Court in CrI.A.P.No. 391 of 2024 dated 24.01.2024 in which it is stated that, the



respondents could not have claimed the statutory right of default bail under Section 167(2) on the ground that the investigation against other accused was pending.

12. The learned Sessions Judge has thereafter recorded his observations that the amount involved is huge in this case and the investigation is pending and 8 Tahsildars have to be impleaded and co-accused were to be arrested and if the appellants/accused are released on bail, they might abscond and also may tamper with the material witnesses, thereby hampering the investigation. The learned Sessions Judge has thereafter proceeded to dismiss the applications.

13. As rightly contended by the learned Counsel for the appellants, a perusal of the impugned orders would only reveal that the learned Sessions Judge has passed the impugned orders as if the petitions were filed for regular bails and he has not dealt with the bail applications under Section 167(2) Cr.P.C., At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in ***M. Ravindran Vs The Intelligence Officer, Directorate of Revenue Intelligence. Reported in (2021)2 SCC 485***, wherein



the principles laid down by the Hon'ble Supreme Court in **Uday Mohanlal Acharya vs State Of Maharashtra** reported in **(2001)5 SCC 453**, were extracted and the same are read as follows:

" The Principles Laid Down in Uday Mohanlal Acharya

10. Upon perusal of the relevant jurisprudence, we are unable to agree with Mr. Lekhi's submissions. Rather, we find that both points (a) and (b) mentioned supra have been answered by the majority opinion of a three Judge Bench of this Court in the case of Uday Mohanlal Acharya (supra) by observing thus:

"13...It is also further clear that that indefeasible right does not survive or remain enforceable on the challan being filed, if already not availed of, as has been held by the Constitution Bench in Sanjay Dutt's case (supra). The crucial question that arises for consideration, therefore, is what is the true meaning of the expression 'if already not availed of'? Does it mean that an accused files an application for bail and offers his willingness for being released on bail or does it mean that a bail order must be passed, the accused must furnish the bail and get him released on bail? In our considered



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opinion it would be more in consonance with the legislative mandate to hold that an accused must be held to have availed of his indefeasible right, the moment he files an application for being released on bail and offers to abide by the terms and conditions of bail. To interpret the expression "availed of" to mean actually being released on bail after furnishing the necessary bail required would cause great injustice to the accused and would defeat the very purpose of the proviso to [Section 167\(2\)](#) of the Criminal Procedure Code and further would make an illegal custody to be legal, inasmuch as after the expiry of the stipulated period the Magistrate had no further jurisdiction to remand and such custody of the accused is without any valid order of remand. That apart, when an accused files an application for bail indicating his right to be released as no challan had been filed within the specified period, there is no discretion left in the Magistrate and the only thing he is required to find out is whether the specified period under the statute has elapsed or not, and whether a challan has been filed or not. If the expression "availed of" is interpreted to mean that the accused must factually be released on bail, then in a given case where the Magistrate illegally refuses to pass an



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order notwithstanding the maximum period stipulated in [Section 167](#) had expired, and yet no challan had been filed then the accused could only move to the higher forum and while the matter remains pending in the higher forum for consideration, if the prosecution files a charge sheet then also the so called right accruing to the accused because of inaction on the part of the investigating agency would get frustrated. Since the legislature has given its mandate it would be the bounden duty of the court to enforce the same and it would not be in the interest of justice to negate the same by interpreting the expression "if not availed of" in a manner which is capable of being abused by the prosecution....

10.1 We also find it relevant for the present purpose to quote the following conclusions of the Court in the said judgment:

"13.3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and



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furnishes the bail as directed by the Magistrate.

13.4. When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.

14. In ***M. Ravindran's case***, after referring to ***Uday Mohanlal Acharya's case*** and other decisions of the Hon'ble Apex Court, the Hon'ble Supreme Court has held as follows:

12.7 We agree with the view expressed in Rakesh Kumar Paul (supra) that as a cautionary measure, the counsel for the accused as well as the magistrate ought



to inform the accused of the availability of the indefeasible right under [Section 167\(2\)](#) once it accrues to him, without any delay. This is especially where the accused is from an underprivileged section of society and is unlikely to have access to information about his legal rights. Such knowledge sharing by magistrates will thwart any dilatory tactics by the prosecution and also ensure that the obligations spelled out under [Article 21](#) of the Constitution and the Statement of Objects and Reasons of the [CrPC](#) are upheld. IV. The Import of Explanation I to [Section 167\(2\), CrPC](#)"

15. This Court in ***K.Muthuirul Vs. The Inspector of Police, Samayanallur*** Police Station reported in **(2022)1 MWN(CrI) 196**, has specifically held that the bail Court while considering the bail under Section 167(2) Cr.P.C., is having no power or jurisdiction to go into the merits of the case and to see as to whether the ingredients necessary for granting regular bail are available or not and the relevant passages are extracted hereunder:

"5.At the outset, as rightly contended by the learned counsel for the petitioner, the trial Court in its order has dealt with the merits of the case and came to the conclusion that the petitioner cannot be enlarged on



statutory bail. It is necessary to refer the relevant paragraph of the order passed by the trial Court here under :

"Considering the seriousness, gravity of the offence, serious objections on prosecution side and huge quantity of the contraband, this Court is not inclined to grant statutory bail to the petitioner and therefore, this petition is liable to be dismissed."

6.The Bail Court, while considering the application under Section 167(2) Cr.P.C, is duty bound to decide the application forthwith without any unnecessary delay, after getting necessary information from the concerned Public Prosecutor and to consider as to whether the ingredients necessary for releasing the accused on default bail are existing and that if the Court is satisfied with the existence of such ingredients, then the Court has to release the accused on bail forthwith.

7.Moreover, the Bail Court, while dealing with the petition for statutory bail, is having no power or jurisdiction to go into the merits of the case and to see as to whether the ingredients necessary for granting regular bail are available or not."



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16. As already pointed out, in the case on hand also, the learned Sessions Judge has only dealt with the merits of the case and passed the impugned orders dismissing the petitions. Moreover, the learned Sessions Judge has not even referred to the points or aspects required to be considered in an application filed under Section 167(2) Cr.P.C., seeking statutory bail.

17. In the present case, admittedly the appellants have been arrested on 18.11.2023 and the 90 days period for laying the final report expired on 18.01.2024. As already pointed out, the appellants have filed their application for statutory bail only on 21.02.2024 and the learned Sessions Judge has passed the impugned orders on 21.02.2024. It is pertinent to note that even according to the prosecution, no charge sheet was filed till 21.02.2024, but the learned Additional Public Prosecutor would submit that they have sought for extension of time for investigation and the same was granted till 16.03.2024 by the learned Judge, Special Court, Sivagangai by order dated 15.02.2024.



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18. As rightly contended by the learned Counsel for the appellants, since the respondent police has not filed any charge sheet till 18.01.2024 and even thereafter till 21.02.2024 and also the fact that 90 days period already got expired, the learned Sessions Judge has no other option, but to grant statutory bail. It is pertinent to mention that personal liberty is an important aspect of our Constitutional mandate. The Hon'ble Supreme Court in the catena of decisions has been reiterating the position that the personal liberty of an accused cannot be taken lightly. The Hon'ble Supreme Court in ***Rakesh Kumar Paul Vs. State of Assam*** (in Crl.A.Nos.2009 and 2176 of 2017, dated 16.08.2017) reported in ***(2017)15 SCC 67***, has held that in matters of personal liberty, we cannot and should not be too technical and must lean in favour of the personal liberty and that in matters of personal liberty under Article 21 of Constitution of India, it is not always advisable to be formalistic or technical and the relevant paragraphs are extracted hereunder:

"40. In the present case, it was also argued by learned counsel for the State (1996) 1



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SCC 722 that the petitioner did not apply for 'default bail' on or after 4th January, 2017 till 24th January, 2017 on which date his indefeasible right got extinguished on the filing of the charge sheet. Strictly speaking this is correct since the petitioner applied for regular bail on 11th January, 2017 in the Gauhati High Court – he made no specific application for grant of 'default bail'. However, the application for regular bail filed by the accused on 11th January, 2017 did advert to the statutory period for filing a charge sheet having expired and that perhaps no charge sheet had in fact being filed. In any event, this issue was argued by learned counsel for the petitioner in the High Court and it was considered but not accepted by the High Court. The High Court did not reject the submission on the ground of maintainability but on merits. Therefore it is not as if the petitioner did not make any application for default bail – such an application was definitely made (if not in writing) then at least orally before the High Court. In our opinion, in matters of personal liberty, we cannot and should not be too technical and must lean in favour of personal



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liberty. Consequently, whether the accused makes a written application for 'default bail' or an oral application for 'default bail' is of no consequence. The concerned court must deal with such an application by considering the statutory requirements namely, whether the statutory period for filing a charge sheet or challan has expired, whether the charge sheet or challan has been filed and whether the accused is prepared to and does furnish bail.

41. We take this view keeping in mind that in matters of personal liberty and [Article 21](#) of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court."

19. In the above decision, the Hon'ble Supreme Court went to the extent of saying that whether the accused makes a written application for default bail or an oral application for default bail is of



no consequence and that the concerned Court must deal with such an application for default bail by considering the statutory requirements namely, whether the statutory period for filing a charge sheet or challan has expired, whether the charge sheet or challan has been filed and whether the accused is prepared to and does furnish bail.

20. Considering the above, this Court has no hesitation to hold that the impugned orders are not good in law and the same is liable to be set aside. Consequently, the appellants are certainly entitled to be released on bail statutorily. This Court is at loss to understand that the learned Sessions Judge has over looked the legal provisions and the legal dictum laid down by the Hon'ble Apex Court as stated supra, which is unsustainable in the eye of law. Hence, the Criminal Appeal deserves to be allowed.

21. In the result, the Criminal Appeals stand allowed and the appellants herein/accused are released on statutory bail on the following conditions:

(i) The appellants are ordered to be released on bail on each of them executing a bond for a sum of Rs.25,000/- (Rupees Twenty



five thousand only) with two sureties each for a like sum to the satisfaction of the learned the learned Sessions Judge, Special Court for Exclusive trial of Cases under SC/ST (POA) Act, 1989, Sivagangai, within a week from the date of receipt of a copy of this order;

(ii)The sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity;

(iii)The appellants shall appear before the second respondent police daily at 10.30 a.m., until further orders;

(iv)the appellants shall not tamper with evidence or witness;

(v)the appellants shall not abscond during trial;

(vi)On breach of any of the aforesaid conditions, the learned Judge concerned is entitled to take appropriate action against the appellants herein in accordance with law as if the conditions have



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been imposed and the appellants released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]***.

(vii) If the accused / appellants thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

27.03.2024

Internet: Yes/No

NCC : Yes/No

Order : Speaking/Non Speaking

DP

To

1. The Special Court for Exclusive Trial of Cases under SC/ST (POA) Act, 1989, Sivagangai.
2. The Deputy Superintendent of Police, Sivagangai Sub Division, Sivagangai.
3. The Inspector of Police, DCB Police Station, Sivagangai.
4. The Additional Public Prosecutor, Madras High Court.



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VIVEK KUMAR SINGH,J.

DP

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