IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 08.08.2023

PRONOUNCING ORDERS ON : 16.08.2023

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Criminal Original Petition No.16024 of 2023

Gnanasekaran Thiyagaraj, M/44 Y
S/o.Thiyagarajan .. Petitioner /Accused No.20

..Vs..

State Rep.by
The Deputy Superintendent of Police
Economic Offences Wing (EOW-II)
Police Training College
Ashok Nagar
Chennai 600 083. .. Respondent/Complainant
(Crime No.16 of 2022)

Prayer: Criminal Original petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 28.06.2023 passed in Crl.MP.No.2402 of 2023 in C.C.No.07 of 2022, on the file of Special Court under TNPID Act, 1997, Chennai and to release the petitioner on bail pending investigation.

For Petitioner : Mr.R.Murali
for Mr.M.Raja

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

O R D E R

This petition has been filed challenging the order passed by the Special Judge under Tamil Nadu Protection of Interest of Depositors (in Financial Establishments) Act, 1997 (for brevity referred to as 'Special Judge') in Criminal M.P.No.2402 of 2023, dated 28.06.2023, dismissing the application filed by the petitioner under Section 167(2) of Cr.P.C. seeking for statutory bail.

2.The respondent conducted an investigation in Crime No.16 of 2022 for various offences under the IPC, TANPID Act and Banning of Unregulated Deposit Schemes Act, 2019 (for brevity referred to as 'BUDS Act'). The investigation was completed and the final report was filed on 29.12.2022 against 19 named accused persons and the final report was taken on file by the Special Judge in C.C.No.7 of 2022 as against 19 accused persons for various offences under IPC, TANPID Act and BUDS Act.

3.The respondent proceeded to conduct further investigation under Section 173(8) of Cr.P.C. It is to be noted that the petitioner was neither an accused in the FIR or in the final report. In the course of further investigation, the petitioner was arrested and remanded to judicial custody on 23.03.2023. Thus, the petitioner was made as an accused in the case for the first time in the course of further investigation and was remanded to judicial custody.

4.The petitioner continued to remain in detention for more than 90 days from the

date of remand and the respondent did not file any further report / supplementary report and hence, the petitioner filed an application seeking for statutory bail under Section 167(2) of Cr.P.C., before the Court below.

5.The Special Judge dismissed the application by order dated 28.06.2023 on the ground that the final report has already been taken cognizance and the petitioner was arrested only in the course of further investigation and therefore, the petitioner cannot claim statutory bail under Section 167(2) of Cr.P.C and at the best, the petitioner can only file a regular bail application which will be considered on the merits of the case. Aggrieved by the same, the present Criminal O.P., has been filed under Section 482 of Cr.P.C.

6.When the matter came up for hearing on 01.08.2023, this Court heard the submissions of either side and passed the following order.

> "*Heard the learned Counsel appearing on either side and also carefully perused the judgments that were placed before this Court.*
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> *2. There are two main issues that emerged based on the submissions made on either side and they are :-*
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> *a) The dismissal order passed by the Court below while dismissing the application filed under Section 167(2) of Cr.P.C., cannot be construed as an interlocutory order and it should be taken to be a final order and hence only a Criminal Revision under Section 397 of Cr.P.C., is maintainable and the Criminal Original Petition under Section 482 of Cr.P.C., is not maintainable. This submission was*

made on the ground that Section 167(2) of Cr.P.C., gives an indefeasible right for an accused to be released on bail and if such an indefeasible right is taken away by virtue of the dismissal of the application, it substantially effects the rights of the accused and hence such an order cannot be construed to be an interlocutory order. In such a case, the order will not fall within the mischief of Section 397(2) of Cr.P.C. Hence a petition under Section 482 of Cr.P.C., is not maintainable.

(b)The Final Report was filed by the respondent Police before the concerned Court as against nineteen accused persons and the same was taken cognizance. Thereafter, a further investigation was taken up by the respondent Police under Section 173(8) of Cr.P.C. In the course of further investigation, the petitioner and six other accused persons were arrested and remanded to judicial custody. On the side of the petitioner, it was contended that Section 167(2) of Cr.P.C., will apply to the petitioner since insofar as the petitioner is concerned, it can only be considered as a stage of investigation till the supplementary charge sheet or the additional charge sheet is filed before the Court below and the same is taken cognizance. In short, it was contended that "the accused if in custody" found under Section 309(2) of Cr.P.C., cannot include the accused who is arrested in the course of further investigation before the supplementary / additional charge sheet is filed before the concerned Court. To substantiate the same, the judgment of the Hon'ble Apex Court in ***Dinesh Dalmia Vs. C.B.I*** *reported in* ***(2007) 8 SCC 770*** *was pressed into operation. The judgment of the Hon'ble Apex Court in* ***C.B.I Vs. Rathin Dandapat and Ors.*** *reported in* ***(2016) 1 SCC 507*** *was also relied upon and specific reference was made to the paragraph Nos.12 and 13 of the said judgment. By*

relying upon this judgment, it was contended that if a person is arrested in the course of enquiry or trial, Section 309(2) of Cr.P.C., will come into play. However, if a person is arrested and remanded to custody in the course of further investigation, Section 167 of Cr.P.C., will come into operation so long as the further investigation continues.

3. It was submitted by both sides that the above issues have not been considered by this Court till now and hence some time was requested to make further research and to make further submissions.

4. Post this case under the caption "Part heard cases" on 07.08.2023 at 2.15 P.M."

7.Heard Mr.R.Murali, learned counsel for the petitioner and Mr.N.Damodaran, learned Additional Public Prosecutor for the respondent.

8.This Court carefully considered the submissions made on either side and the materials available on record.

9.There is no dispute with regard to the fact that the petitioner was neither shown as an accused in the FIR or in the final report that was taken on file in C.C.No.7 of 2022. The final report was filed against 19 named accused persons. Thereafter, a further investigation was taken up by the respondent police and in the course of further investigation under Section 173(8) of Cr.P.C, the petitioner was arrested and remanded to judicial custody on 23.03.2023. In other words, the petitioner was brought in as an accused in this case on and from 23.03.2023.

10.The petitioner has taken a stand that since he was arrested only during the course of further investigation and was made as an accused only in the course of further investigation, he is entitled for statutory bail under Section 167(2) of Cr.P.C., since the further report / supplementary report has not been filed and the petitioner has suffered detention for more than 90 days.

11.Per contra, the contention raised on the side of the respondent is that, the remand of the petitioner is relatable to a remand under Section 309(2) of Cr.P.C., which is post cognizance of the final report and in such a scenario, the provisions of Section 167(2) of Cr.P.C., will have no application. On a demurrer, even assuming without admitting that the petitioner is entitled for statutory bail under Section 167(2) of Cr.P.C., the dismissal of such a bail application is in the nature of a final order and hence only a Criminal Revision is maintainable and the order cannot be challenged by filing a petition under Section 482 of Cr.P.C.

12.The learned counsel appearing on either side relied upon various judgments to substantiate their contentions. Insofar as the issue of maintainability of a petition under Section 482 of Cr.P.C., is concerned, the following judgments were relied upon.

(a) Madhu Limaye -vs- State (1997) 4 SCC 551

(b) Raj Kapoor and Others -Vs- State and Others (1980) 1 SCC 43

(c) Prabhu Chawla -vs- State of Rajasthan and Another (2016) 16 SCC 30

(d) Ratan Mandal -vs- State of Jharkhand (2005) SCC Online Jharkhand 460

(e) Anantha Sathya Udaya Bhaskara Rao -vs- State of Andhra Pradesh (2022) SCC Online Andhra Pradesh 2166

(f) Raja Bhaiya Singh -vs- State of Madhya Pradesh (2021) SCC Online Madhya Pradesh 27

(g) Ashok Munilal Jain and Another -vs- Assistant Director, Directorate of Enforcement, Chennai in Crl.R.C.No.387 of 2017 dated 14.03.2017.

13.Insofar as the issue of maintainability of an application under Section 167(2) Cr.P.C., post cognizance of a final report, the following judgments were relied upon.

(a) State -vs- Dawood Ibrahim Kaskar and Others (2000) 10 SCC 438

(b) CBI -vs- Rathin Dandapat and Others (2016) 1 SCC 507

(c) Achpal @ Ram Swaroop and Another -vs- State of Rajasthan (2019) 14 SCC 599

(d) Dinesh Dalmiya -vs- CBI (2007) 8 SCC 770

(e) CBI -vs- Kapil Wadhawan and Another (2023) SCC Online Delhi 3283

14.This Court will now consider the issue of maintainability raised by the learned Additional Public Prosecutor. It is contended that an order dismissing an application under Section 167(2) of Cr.P.C., substantially affects an important right that has been given or in other words indefeasible right that has been given to an accused person to be released on bail and such an order cannot be said to be an interlocutory order and

hence, only a revision petition is maintainable, and the inherent jurisdiction of the High Court under Section 482 of Cr.P.C., cannot be invoked in view of an alternative provision that is available in the Code to challenge such an order.

15.Where an order is purely interlocutory in nature, the bar under Section 397(2) of Cr.P.C., operates. An accused person who is aggrieved by such an order generally invokes the inherent jurisdiction of this Court under Section 482 of Cr.P.C. It is now too well settled as to what is the nature of an interlocutory order. The judgments that were cited on either side makes it clear that there are broadly three types of orders that are taken into consideration. One is called the final order, where the order virtually brings the entire proceedings to an end. The other is called as a interlocutory order which is almost a converse of the term final order and such type of order does not bring the entire proceedings to an end. These orders are passed during the pendency of the main proceedings. There is a third category of order called as intermediate order. These are orders which are not in the nature of an interlocutory order and these orders also do not bring the entire proceedings to an end. However, such orders brings to an end a substantial issue that is involved in that particular application which is filed during the pendency of the main proceedings. For instance, a question of jurisdiction is raised during the pendency of the main proceedings or a discharge petition is filed during the pendency of the main proceedings on the ground that the final report does not make out an offence against the accused person. Any order that is passed in these types of applications will not bring the main proceedings to an end, but it certainly brings to an

end that particular issue that has been raised, and it is finally decided by virtue of that order. These types of orders can be brought within the category of intermediate orders and not interlocutory orders. For such intermediate orders, the bar under Section 397(2) of Cr.P.C., will not apply.

16.Justice V.R.Krishna Iyer in his inimitable style makes this very clear in **Raj Kapoor** case referred supra and Para 10 of the judgment is extracted hereunder.

> ***10.*** *The first question is as to whether the inherent power of the High Court under Section 482 stands repelled when the revisional power under Section 397 overlaps. The opening words of Section 482 contradict this contention because nothing of the Code, not even Section 397, can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made: easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code. In Madhu Limaye case [Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 : 1978 SCC (Cri) 10 : AIR 1978 SC 47] this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that Section 482 is pervasive it should not subvert legal interdicts written into the same Code, such, for instance, in Section 397(2). Apparent conflict may arise in some situations between the two provisions and a happy solution*
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> *" would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principles enunciated*

above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction" [(1977) 4 SCC 551, 556, para 10 : AIR 1978 SC 47, 51] .

In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is a tertium quid, as Untwalia, J. has pointed out as for example, where it is more than a purely interlocutory order and less than a final disposal. The present case falls under that category where the accused complain of harassment through the court's process. Can we state that in this third category the inherent power can be exercised? In the words of Untwalia, J.: (SCC p. 556, para 10)

" The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with

Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible."

I am, therefore clear in my mind that the inherent power is not rebuffed in the case situation before us. Counsel on both sides, sensitively responding to our allergy for legalistics, rightly agreed that the fanatical insistence on the formal filing of a copy of the order under cessation need not take up this court's time. Our conclusion concurs with the concession of counsel on both sides that merely because a copy of the order has not been produced, despite its presence in the records in the court, it is not possible for me to hold that the entire revisory power stands frustrated and the inherent power stultified.

17.In the case in hand, an application has been filed by the petitioner under Section 167(2) of Cr.P.C., seeking for statutory bail. It is trite law that while considering the statutory bail, the Court does not go into the merits of the case and the Court merely takes into consideration the fact as to whether the accused is in detention for 60 days or 90 days, as the case may be, and the final report has not been filed, and the Court recognizes the indefeasible right given to the accused person and release him on bail if the accused person is prepared to and does furnish bail. The Court does not get into any of the other issues while considering a statutory bail application.

18.If a statutory bail application is dismissed, it certainly involves the determination of an indefeasible right given to the accused person and such an order cannot be considered to be an interlocutory order and such order is more than a purely interlocutory order and less than a final disposal. The reason for rendering such a finding is that the accused person loses his right of being let out on a statutory bail and

that right is lost by virtue of the dismissal of the application. However, that does not mean that the accused person is going to be kept under detention forever. The accused person can always file an application seeking for a regular bail and the same will be considered on merits and the Court may be satisfied that the accused can be enlarged on bail pending the main case. In such a scenario, the dismissal of the statutory bail application does not completely bring to an end the right of an accused person to be enlarged on bail, but such enlargement on bail at a later point of time happens on consideration of the merits of the case. Therefore, the dismissal of a statutory bail application under Section 167(2) of Cr.P.C., can be considered only as an intermediate order and not as an interlocutory order. Such order can be challenged by way of filing a revision petition and the bar under Section 397(2) of Cr.P.C., will not apply to such an order. In view of the same, this Court is in agreement with the judgment of the High Courts of Madhya Pradesh, Jharkhand and Andhra Pradesh on this issue.

19.The next question is that whether there is a complete bar for this Court to exercise its jurisdiction under Section 482 of Cr.P.C., against the order passed by the Court below dismissing the application under Section 167(2) of Cr.P.C. It is too well settled that there is no total bar on the exercise of inherent power where abuse of process of the Court or other extraordinary situation arises for the Court to exercise such a jurisdiction. The so-called limitation in the exercise of jurisdiction under Section 482 of Cr.P.C., is more in the nature of self restraint and nothing more. It will be useful to take note of the judgment of the Apex Court in this regard in **Raj Kapoor's** case and **Prabhu**

Chawla's case referred supra. The availability of an alternative remedy of Criminal Revision under Section 397 Cr.P.C., by itself cannot be a ground to dismiss a petition under Section 482 of Cr.P.C. The Apex Court in **Prabhu Chawla**'s case has held that if the jurisdiction under Section 482 of Cr.P.C., is exercised only for petty interlocutory orders and all the orders can only be challenged by filing a revision under Section 397 Cr.P.C., it will have an unwarranted and undesirable result.

20.The instant case involves the indefeasible right given to the petitioner to be released on statutory bail and the same has been rejected by the Court below on an unsustainable ground which will be discussed herein below and it directly touches upon the right of liberty guaranteed under Article 21 of the Constitution and hence this Court is inclined to exercise its jurisdiction under Section 482 of Cr.P.C. The self restraint that is exercised by this Court under Section 482 of Cr.P.C., need not be extended to the facts of the present case and this case certainly warrants the exercise of jurisdiction under Section 482 of Cr.P.C. In other words, this Court is not inclined to reject this petition merely on the ground that the petitioner also has an alternative remedy under Section 397(2) of Cr.P.C. Thus, the issue of maintainability is answered in favour of the petitioner.

21.The second issue that is taken up for consideration is as to whether the petitioner is entitled to be released on statutory bail since his detention continues for more than 90 days and the additional report / supplementary report is yet to be filed

before the Court below pursuant to the further investigation undertaken under Section 173(8) of Cr.P.C.

22.The Court below has come to a conclusion that the final report has been taken cognizance and hence Section 167 of Cr.P.C., which falls under Chapter XII will have no application since it confines itself only to the stage of investigation.

23.The accused person arrested in the course of investigation is governed by the rights provided under Section 167 of Cr.P.C., with respect to his custody / detention and his release / enlargement on bail relatable to Chapter XXXIII of the Code. If such an accused person is remanded after the Court takes cognizance of the offence on the filing of the final report, Section 309(2) of Cr.P.C., will come into play. In such a scenario, Section 167 which relates to pre-cognizance stage will have no applicability. To put it simple, where a charge sheet has not been filed and investigation is kept pending, the benefit under the proviso to Section 167(2) would be available to the accused person. Once, however, a charge sheet is filed, the said right ceases. Such a right does not revive only because a further investigation is pending within the meaning of Section 173(8) of Cr.P.C. The power of the Court to direct remand of an accused person either in terms of Section 167(2) of Cr.P.C or Section 309(2) of Cr.P.C. will depend upon the stage of the case. Section 167(2) would be attracted in a case where cognizance has not been taken. Section 309(2) would be attracted only after the cognizance is taken.

24.The key words which brings in the difference in the exercise of jurisdiction is "accused if in custody", that appears under Section 309(2) of Cr.P.C. The term "accused if in custody" which appears under Section 309(2) of Cr.P.C., will apply only to those accused persons who were before the Court when the cognizance was taken or when the enquiry or trial was held in respect of such accused persons. Let us take the facts of this case to understand the scope of Section 309(2) of Cr.P.C. There were named accused persons in the FIR and the final report was filed against the 19 named accused persons. At the time of taking cognizance of the final report, if any of these accused persons is taken in custody and brought before the Court when the cognizance is taken, or when the enquiry or trial is held against those accused persons, Section 309(2) of Cr.P.C., will come into operation. Just because further investigation was undertaken by the respondent, that cannot be taken advantage of and such accused persons who are remanded by the trial Court cannot be allowed to take advantage of Section 167(2) of Cr.P.C., since insofar as they are concerned, it is at the post cognizance stage. However, if an accused person is subsequently arrested in the course of further investigation and such accused person was not shown as an accused either in the FIR or in the final report that was filed, insofar as he is concerned, it must be construed as a stage of investigation under Chapter XII of the Code and as a consequence, Section 167(2) of Cr.P.C., can be made applicable.

25.Useful reference can be made to the judgment of the Apex Court in State -Vs-

Dawood Ibrahim Kaskar's case referred supra. The relevant portions are extracted hereunder:

> ***7.****In view of the provisions of Chapter XII and those of Section 309(2) of the Code we are constrained to say that the above-quoted observations have been made too sweepingly. Chapter XII relates to information to the police and their powers to investigate. Under Section 154 thereof whenever an Officer-in-charge of a police station receives an information relating to the commission of a cognizable offence he is required to reduce the same in writing and enter the substance thereof in a prescribed book. Section 156 invests the Officer-in-charge of a police station with the power to investigate into cognizable offences without the order of a Magistrate and Section 157 lays down the procedure for such investigation. In respect of an information given of the commission of a non-cognizable offence, the Officer-in-charge is required under Section 155(1) to enter the substance thereof in the book so prescribed but he has no power to investigate into the same without an order of the competent Magistrate. Armed with such an order the Officer-in-charge can however exercise all the powers of investigation he has in respect of a cognizable offence except that he cannot arrest without a warrant. The manner in which a person arrested during investigation has to be dealt with by the Investigating Agency, and by the Magistrate on his production before him, is provided in Section 167 of the Code. The said section contemplates that when the investigation cannot be completed within 24 hours fixed by Section 57 and there are grounds to believe that the charge levelled against the person arrested is well founded it is obligatory on the part of the Investigation Officer to produce the accused before the nearest Magistrate. On such production the Magistrate may authorise the detention of the accused initially for a term not exceeding 15 days either in police custody, or in judicial custody. On expiry of the said period of 15 days the Magistrate may also authorise his further detention otherwise than in police custody if he is satisfied that adequate grounds exist for such detention. However, the total period of detention during investigation cannot be more than 90*

days or 60 days, depending upon the nature of offences mentioned in the said section. Under sub-section (1) of Section 173 the Officer-in-charge is to complete the investigation without unnecessary delay and as soon as it is completed to forward, under sub-section (2) thereof, to the competent Magistrate a report in the form prescribed setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case. Sub-section (8) entitles the Officer-in-charge to make further investigation and it reads as under:

> *" 173. (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, whereupon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-section (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."*

***10.** In keeping with the provisions of Section 173(8) and the above-quoted observations, it has now to be seen whether Section 309(2) of the Code stands in the way of a Court, which has taken cognizance of an offence, to authorise the detention of a person, who is subsequently brought before it by the police under arrest during further investigation, in police custody in exercise of its power under Section 167 of the Code. Section 309 relates to the power of the Court to postpone the commencement of or adjournme*nt of any inquiry or trial and sub-section (2) thereof reads as follows:

> *" 309. (2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:*
>
> *Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:"*

***11.** There cannot be any manner of doubt that the remand and the custody*

referred to in the first proviso to the above sub-section are different from detention in custody under Section 167. While remand under the former relates to a stage after cognizance and can only be to judicial custody, detention under the latter relates to the stage of investigation and can initially be either in police custody or judicial custody. Since, however, even after cognizance is taken of an offence the police has a power to investigate into it further, which can be exercised only in accordance with Chapter XII, we see no reason whatsoever why the provisions of Section 167 thereof would not apply to a person who comes to be later arrested by the police in course of such investigation. If Section 309(2) is to be interpreted — as has been interpreted by the Bombay High Court in Mansuri [From the Judgment and Order dated 1-8-1996 of the Designated Court for Bomb Blast Cases, Brihat Mumbai in Misc. Applications Nos. 201, 210 and 211 of 1996] — to mean that after the Court takes cognizance of an offence it cannot exercise its power of detention in police custody under Section 167 of the Code, the Investigating Agency would be deprived of an opportunity to interrogate a person arrested during further investigation, even if it can on production of sufficient materials, convince the Court that his detention in its (police) custody was essential for that purpose. We are, therefore, of the opinion that the words "accused if in custody" appearing in Section 309(2) refer and relate to an accused who was before the Court when cognizance was taken or when enquiry or trial was being held in respect of him and not to an accused who is subsequently arrested in course of further investigation. So far as the accused in the first category is concerned he can be remanded to judicial custody only in view of Section 309(2), but he who comes under the second category will be governed by Section 167 so long as further investigation continues. That necessarily means that in respect of the latter the Court which had taken cognizance of the offence may exercise its power to detain him in police custody, subject to the fulfilment of the requirements and the limitation of Section 167.

26.The judgment in CBI -Vs- Rattin Dandapat's case referred supra can also be relied upon and the relevant portions are extracted hereunder.

> ***12.*** *The case of Dinesh Dalmia v. CBI [(2007) 8 SCC 770 : (2008) 1 SCC (Cri) 36] , which is relied upon by the High Court, relates to granting of bail under Section 167(2) CrPC. In the said case, the absconder-accused (Dinesh Dalmia) after his arrest was produced before the Magistrate, and on the request of CBI, police custody was granted on 14-2-2006 till 24-2-2006, whereafter on another application further police custody was granted till 8-3-2006. The said accused was remanded to judicial custody, and the accused sought statutory bail under sub-section (2) of Section 167 CrPC as no charge-sheet was filed against him by CBI within sixty days of his arrest. The Magistrate rejected the application for statutory bail on the ground that it was a case of further investigation after filing of the charge-sheet, and the remand of the accused to judicial custody was under Section 309 CrPC, after police remand came to an end, granted under Section 167(2) CrPC. The High Court upheld the said order and this Court also affirmed the view taken by the High Court.*
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> ***13.*** *In view of the above facts, in the present case, in our opinion, the High Court is not justified on the basis of Dinesh Dalmia [(2007) 8 SCC 770 : (2008) 1 SCC (Cri) 36] in upholding the refusal of remand in police custody by the Magistrate, on the ground that the accused stood in custody after his arrest under Section 309 CrPC. We have already noted above the principle of law laid down by the three-Judge Bench of this Court in State v. Dawood Ibrahim Kaskar [(2000) 10 SCC 438 : 1997 SCC (Cri) 636] that police remand can be sought under Section 167(2) CrPC in respect of an accused arrested at the stage of further investigation, if the interrogation is needed by the investigating agency. This Court has further clarified in the said case that the expression "accused if in custody" in Section 309(2) CrPC does not include the accused who is arrested on further investigation before supplementary charge-sheet is filed.*

27.It is pellucid from the above judgments that the expression "accused if in custody" in Section 309(2) of Cr.P.C., does not include the accused who is arrested on further investigation before supplementary charge sheet is filed. In the light of the settled law, the Court below was not right in rejecting the statutory bail application filed by the petitioner under Section 167(2) of Cr.P.C., since the petitioner was not an accused before the Court when the final report was filed and the cognizance was taken and the petitioner is now being added as an accused and arrested in the course of further investigation under Section 173(8) of Cr.P.C., before the supplementary charge sheet is filed. In view of the fact that the detention of the petitioner is continuing beyond 90 days and the supplementary charges sheet has not been filed, the petitioner is certainly entitled for the indefeasible right provided under Section 167(2) of Cr.P.C., and the petitioner must be enlarged on statutory bail if he is prepared to and does furnish bail. The second issue that was taken up for consideration is also answered in favour of the petitioner.

28.In the light of the above discussion, the order passed by the Court below in Crl.M.P.No.2402 of 2023 in C.C.No.7 of 2022 dated 28.06.2023, is hereby set aside. Accordingly, this Criminal Original Petition is allowed in the following terms.

(a) The petitioner shall be enlarged on bail on executing a bond for a sum

of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties for a like sum to the satisfaction of the Court of Special Judge, Under Tamil Nadu Protection of Interest of Depositors (in financial Establishment) Act, 1997, Chennai-104.

(b) One such surety shall be a blood relative of the petitioner.

(c) The petitioner shall report before the respondent police daily at 10.30 a.m., until the supplementary charge sheet is filed by the respondent police.

(d) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

(e) The petitioner shall not abscond either during investigation or trial.

(f) The petitioner shall not tamper with evidence or witness either during investigation or trial.

(g) On breach of any of the aforesaid conditions, the learned Special Judge/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner 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].

(h) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

16.08.2023

Index : Yes
Internet : Yes
KST/Kp

To

1.The Deputy Superintendent of Police
Economic Offences Wing (EOW-II)
Police Training College
Ashok Nagar

Chennai 600 083.

2.Special Judge
Special Court under TNPID Act, 1997
Chennai.

3.Public Prosecutor,
High Court
Madras.

N.ANAND VENKATESH,J.
KST/kp

Pre-Delivery Order in
Crl.O.P.No.16024 of 2023

16.08.2023