

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 06/08/2020

PRESENT

The Hon'ble Mr.Justice V.BHARATHIDASAN

CRL OP (MD) . No.8098 of 2020

V.Madhan

... Petitioner/Accused No.2

The State rep. by
 The Inspector of Police,
 Uthamapalayam Police Station,
 Theni District.

... Respondent/Complainant

For Petitioner : Mr.R.Anand
 Advocate.

For Respondent : Mr.K.Suyambulinga Bharathi,
 Government Advocate (Crl.Side)

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

PRAYER :-

For Bail in Cr.No.147 of 2020 on the file of the respondent police.

ORDER : The Court made the following order :-

The petitioner/ A2 herein was arrested and remanded to judicial custody on 09.03.2020 for the alleged offences under Sections 147, 148, 149, 302,120(B) and 109 of IPC.

2. There are totally 12 accused in this case. The petitioner herein is arrayed as A2. The occurrence is said to have taken place on 06.03.2020 and the petitioner was arrested on 08.03.2020 and remanded to judicial custody on 09.03.2020 and now he is jail for nearly five months. Hence he seeks bail.

3. The learned counsel for the petitioner would submit that the petitioner was arrested and remanded to judicial custody on 09.03.2020 and ninety days has been completed on 07.06.2020. However the respondent police has filed the final report before the concerned Court only on 18.06.2020. He would also submit that the petition filed by the petitioner under Section 167(2) has been dismissed by the learned Magistrate referring the order passed by

this Court in Crl.O.P(MD) No. 5296 of 2019 in case of **Kasi - Vs- The Inspector of Police, Samayanallur Police Station, Madurai District.** He would also submit that the Court cannot extend the period within which the investigation must be completed on any reason, in the absence of any provision empowering the Court to extend the period, as the detention of the petitioner exceeds 90 days and the Court has no power to extend the remand after that. The petitioner filed bail application after expiry of 90 days and before filing the final report by the respondent police, but the court below erroneously dismissed the bail petition.

4. Opposing the above, the learned Government Advocate (Crl.Side) would submit that the respondent police has completed the investigation and filed final report before the concerned Court on 18.06.2020. Hence he is not entitled for statutory bail.

5. I have considered the rival submissions.

6. The petitioner is seeking bail invoking the provision under Section 167(2) of the Code of Criminal Procedure, on the ground that even after expiry of 90 days, no final report has been filed by the respondent police. Section 57 of the Code of Criminal Procedure empowers the Police Officer to detain the accused in custody for 24 hours. However, Section 167 of the Code of Criminal Procedure, as amended, authorizes the Magistrate to detain the accused in custody for a term not exceeding fifteen days in the whole. Section 167 also empowers a Magistrate to detain a person in custody while the investigation is being conducted by the police and also prescribes the maximum period for which such detention could be ordered. However, the proviso to Section 167(2) stipulates the right of an accused to be released on bail after the expiry of maximum period of detention provided therein.

7. The Hon'ble Supreme Court, in number of its pronouncements, has clearly held that the Proviso to Sub-Section (2) of Section 167 is a beneficial provision for curing the mischief of prolonging the investigation indefinitely, which ultimately affects the liberty of a citizen. Right for bail under Section 167(2) is a indefeasible right and it cannot be frustrated by the prosecution. The Court cannot extend the period within which the investigation must be completed on any reason, in the absence of any provision empowering the Court to extend the period. After expiry of the statutory period prescribed under Section 167(2) of the Code of Criminal Procedure, the accused cannot be detained in custody.

8. The Hon'ble Supreme Court in **Achpal Alias Ramswaroop and Another versus State of Rajasthan** reported in (2019) 14 SCC 599 has held as follows:

"20. We now turn to the subsidiary issue, namely, whether the High Court could have extended

the period. The provisions of the Code do not empower anyone to extend the period within which the investigation must be completed nor does it admit of any such eventuality. There are enactments such as the Terrorist and Disruptive Activities (Prevention) Act, 1985 and the Maharashtra Control of Organised Crime Act, 1999 which clearly contemplate extension of period and to that extent those enactments have modified the provisions of the Code including Section 167. In the absence of any such similar provision empowering the Court to extend the period, no court could either directly or indirectly extend such period."

9. The Hon'ble Supreme Court, in another judgment in **Rakesh Kumar Paul versus State of Assam** reported in (2017)15 SCC 67, has held that if the charge sheet is not filed within the prescribed time, the right of the accused for 'default bail' has ripened into the status of indefeasible right and it cannot be frustrated. The relevant paragraph reads as follows:

"38. This Court also dealt with the decision rendered in Sanjay Dutt, (1994) 5 SCC 410 and noted that the principle laid down by the Constitution Bench is to the effect that if the charge sheet is not filed and the right for "default bail" has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The accused can avail his liberty by filing an application stating that the statutory period for filing the charge sheet or challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the accused is prepared to furnish the bail bond."

10. Very recently, the Hon'ble Supreme Court in **CRIMINAL APPEAL No.452 OF 2020 (ARISING OUT OF SLP (CRL.) NO.2433/2020) [S.KASI VERSUS STATE THROUGH THE INSPECTOR OF POLICE, SAMAYNALLUR POLICE STATION, MADURAI DISTRICT]**, decided on 19.06.2020, after considering the various other judgments, has held that an accused cannot be detained by the police beyond the maximum period prescribed under Section 167 of the Code of Criminal Procedure. It is relevant to extract the relevant paragraph of the said judgment, which reads thus:

"14. The scheme of Code of Criminal Procedure as noticed above clearly delineates that provisions of Section 167 of Code of Criminal Procedure gives due regard to the personal liberty of a person. Without

submission of charge sheet within 60 days or 90 days as may be applicable, an accused cannot be detained by the Police. The provision gives due recognition to the personal liberty."

11. Following the above principles laid down by the Hon'ble Supreme Court, this Court is of the considered view that in the case at hand, the petitioner was arrested on 09.03.2020 and the final report has been filed only on 18.06.2020 after lapse of 90 days and even before the final report filed, the petitioner moved the Court seeking bail and hence, the petitioner is entitled to be released on bail.

12. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Uthamapalayam, Theni District.

i) 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;

ii) the petitioner shall report before the respondent police as and when required for interrogation.

iii) the petitioner shall not tamper with evidence or witness;

iv) the petitioner shall not abscond during trial;

v) On breach of any of the aforesaid conditions, the learned Magistrate/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]**;

vi) If the petitioner thereafter abscond, a fresh FIR can be registered under Section 229A IPC.

sd/-
06/08/2020

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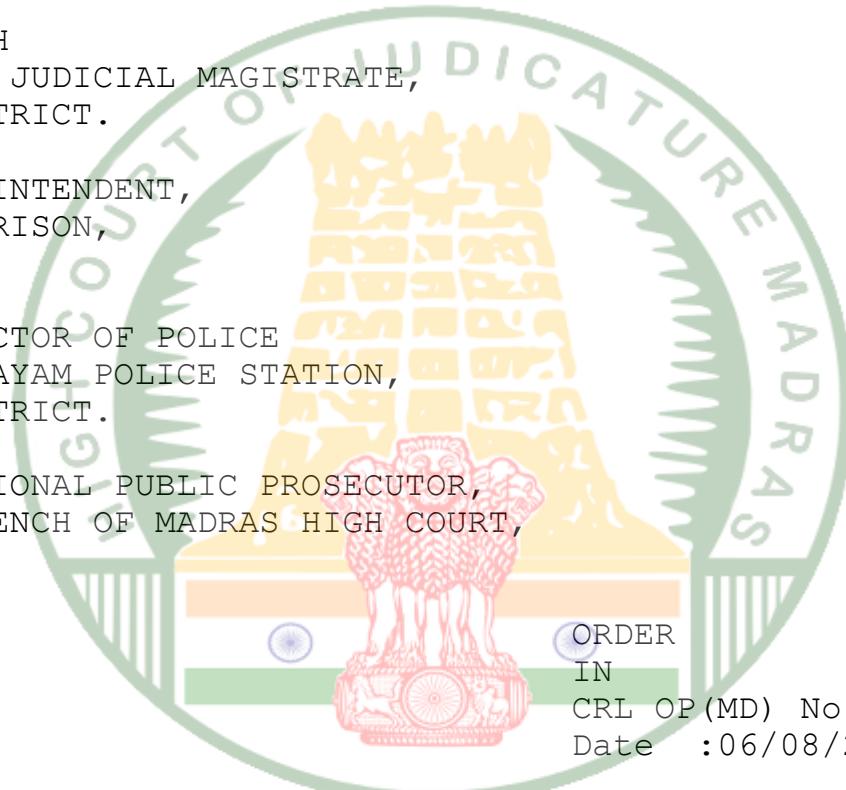
/ /2020

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

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. THE JUDICIAL MAGISTRATE,
UTHAMAPALAYAM,
THENI DISTRICT.
2. DO THROUGH
THE CHIEF JUDICIAL MAGISTRATE,
THENI DISTRICT.
3. THE SUPERINTENDENT,
CENTRAL PRISON,
SALEM.
4. THE INSPECTOR OF POLICE
UTHAMAPALAYAM POLICE STATION,
THENI DISTRICT.
5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



AAV

SRS/ VR/ SAR-II/ 07.08.2020/ 5P/6C

मानव जयते

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