

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

( Criminal Jurisdiction )

Date : 11/05/2020

PRESENT

**The Hon`ble Dr.Justice G.JAYACHANDRAN**

**CRL OP(MD) . No.5296 of 2020**

S.Kasi, ... Petitioner/Accused No.3

Vs

State through  
The Inspector of Police,  
Samaynallur Police Station,  
Madurai District.  
(Crime No.495 of 2020). ... Respondent/Complainant

For Petitioner : M/s.S.Mahendrapathy,  
Advocate.

For Respondent : Mr.S.Chandrasekar,  
Additional Public Prosecutor

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

PRAYER :-

For Bail in Crime No. 495 of 2020 on the file of the  
respondent Police.

ORDER : The Court made the following order :-

The petitioner herein was arrested by the respondent police on  
21.02.2020 for the alleged offence under Sections 457(2), 380(2), 411  
(2) and 414(2) of IPC.

2. The petitioner herein is now before this Court seeking bail.  
In view of the national wide lock down, to avoid physical contacts  
and to maintain social distancing courts are function through  
virtual mode. The petitioner has filed his petition petition  
through E-mail and same is heard through video conferencing.

3. The learned counsel for the petitioner would urge this Court for grant of bail on the ground that the petitioner is innocent and falsely implicated in this case. The respondent to give quitus to the long pending idol theft case under investigation without any progress for nearly 5 years have chosen this petitioner and others as scapegoats. According to the learned counsel for the petitioner the case of idol theft was registered by the respondent police on 31.12.2015 under Section 457(2), 382, 411(2) and 414(2) of IPC in Crime No.495 of 2015. After 4 years the petitioner was arrested on 21.02.2020. The petitioner is in custody for the past 92 days. The respondent police has not filed the final report. Hence the petitioner is entitled for bail by default as contemplated under Section 167(2) of Cr.P.C.

4. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that three idols of Hindu God and Goddess were stolen from the Srinivasa Perumal Temple within the jurisdiction of Samayanallur Police Station, Madurai District. The Case was registered on 31.12.2015. Investigation revealed that seven persons were involved in this case. After the arrest of A1, based on the confession given by A1 out of three idols stolen one was recovered from the relative of this petitioner who is arrayed as A3. Two more idols are yet to be recovered. Police could not be able to secure A-1 to A-4. Three more accused are still at large. In view of the lockdown clamped by the Government, the investigation could not be completed within the time prescribed under the statute. The investigating officer is handicapped with the restrictions imposed by the State which included free movement and access to witnesses for recording their statements. The learned Additional Public Prosecutor would further submit that the petitioner is carrying very bad antecedent. He is accused of idol theft in 3 more cases and still pending. If the petitioner is released on bail, there is possibility of absconding as well as recurrence of similar crime.

5. Heard the learned Counsels on either side. On considering the antecedent of the accused, crime alleged, abscondance of few more accused persons and non-recovery of the remaining stolen property this court finds that the petitioner does not deserve bail at this juncture.

6. However, in view of the covid-19 lockdown and the order passed by the Hon'ble Supreme court extending the limitation, a unique and peculiar legal issue stares at the Court whether the petitioner is entitled to avail the benefit of Section 167(2) of Cr.P.C?.

Taking note of the Covid-19 situation and realising the gravity of the pandemic, the Hon'ble Supreme Court on 23/03/2020 in a suomotu writ petition (SUO MOTU WRIT PETITION (CIVIL) No(s).3/2020 IN RE : COGNIZANCE FOR EXTENSION OF LIMITATION) passed order extending the period of limitation to obviate the difficulties faced by the persons who are supposed to personally come to the court and file

their petition/application/suits/in all other proceedings until further orders.

For the sake of proper appreciation, the relevant portion of the Supreme court order is extracted below:

*"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).*

*To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.*

*We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.*

*This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.*

*Issue notice to all the Registrars General of the High Courts, returnable in four weeks."*

7. No doubt in the above order the Honourable Supreme Court has not specifically mentioned that police investigation should also be covered by the said order. However, the Apex Court while invoking its extraordinary power conferred in Article 142 of the Constitution during an extraordinary circumstances has clearly expressed his intention and reason for passing such order. The order has been passed to obviate the difficulties faced by the litigants across the country in filing their petitions/applications/suits/appeals/ all other proceedings (emphasis added). Therefore it is appropriate for any prudent person to appreciate the order of the Honourable Apex Court in a holistic perspective. The pandemic situation, total nationwide lockdown, restrictions on movement, fear of death looming large paralysing the routine function of the administration including judiciary were the reason for issuing such order. The

Honourable Supreme Court to render complete justice has invoked Article 142 and passed this order. No courts below obliterate the intention of the Supreme Court by offering pedantic interpretation. Oblivious of the provisions of law and spirit behind such laws.

8. Section 167 of Cr.P.C envisages completion of investigation within the period of 60 days or 90 days, as the case may be, depending upon the gravity of the offence and the extent of punishment. If the investigation not completed within period prescribed, the person accused of the offence is entitled for bail as if he has committed bailable offence. Thereafter the Provisions of Chapter XXXIII of the Code will apply. In other words, Section 167 of the Code of Criminal Procedure mandates the investigating agency to complete the investigation within the time prescribed. If they fail to complete the investigation, statutory right blossom to the person in custody to seek release from prison on bail as matter of right.

9. This provision in common parlance among the respected members of the bar and bench aptly called as 'default bail'. The reason, when there is default on the part of investigation right of bail gets accrues to the person detained. Now with this understanding of Section 167(2) of Cr.P.C, and in the light of the order passed by the Apex Court extending limitation to render complete justice to the litigants the submission of the learned counsel for the petitioner has to be examined.

10. Currently, the State has restricted free movement of the Public. The Law Enforcing Agencies are directed to ensure complete lock down. Access to places restricted either partially or absolutely. Government mechaneries has almost come to stand still. Courts gates are locked. Public access is prohibited. All judicial proceedings are conducted through video conference. Administration wings of the Court yet to resume the physical functioning. In such a circumstances, the wings of the investigating agency are clipped; their legs are tied. They are unable to conduct the investigation and complete the same. Even if they complete the investigation, courts are not open to receive it. This is not their fault. Covid-19 situation is the cause for not completing the investigation within the time fixed under the Statute.

11. Therefore taking note of the situation The Hon'ble Supreme Court has passed the order dated 23.03.2020 extracted above. The order came to be passed to do complete justice to the litigants who face difficulty in presenting their documents related to the proceedings. Any attempt to misread the order or to interpret the order contrary to the spirit of this order will cause injustice. In spite of the Apex Court order extending the period of limitation in all proceedings where litigants face difficulties to be present physically, if one say it is not applicable to filing of final

report on completion of investigation, he just mock the Apex Court order and nothing less.

12. Violators of law cannot take undue advantage of the extraordinary situation and enjoy the liberty while the entire nation is under lock down and crippled from carrying on their normal activities.

13. The lockdown announced by the Government is akin to proclamation of emergency. Under Article 352 of the Constitution, in case of external aggression National Emergency can be proclaimed by the President. Presently we face aggression not by human agencies, but by micro-organs. Like wise when the nation face threat to the credit or financial stability under Article 360 Financial emergency can be declared. If emergency is declared, under Article 358 the rights under Article 19 gets suspended. The right to live guaranteed under Article 21 is subject restriction. Presently, though the state is not passing through emergency duly proclaimed, whole nation has accepted the restrictions for well being of mankind. At this juncture, myopic reading of Section 167 of Cr.P.C conveniently ignoring the spirit behind the order by the Apex Court invoking its power under Article 142 of the constitution will amount to judicial indiscipline.

14. The spirit behind the order of the Apex Court is to do complete justice. Conscious to the fact that there are several legislations prescribing limitation, the Honourable Supreme Court has generally stated the period of limitation prescribed under general law of limitation or under special laws shall be extended until further order. Therefore it is needless to mention that the limitation under Section 167 for investigation also get extended.

15. The learned counsel for the petitioner relying upon the order passed by this Court in **Crl.O.P(MD) No. 5291 of 2020** in **Settu -vs- The State rep. by the Inspector of Police, Vallam Police Station, Thanjavur District**, dated 08.05.2020 insisted that the extension of period envisaged in the Apex court order will not apply to Section 167 Cr.P.C.

16. This Court had the privilege of reading the said order. It is hight of ignorance to expect the investigation agency to complete the investigation and file final report in the Court within time prescribed after closing down the gates and prohibiting the access. After imposing restrictions on their movements and chiding them, "executive must exhibit nimble footwork and not hide behind judicial order. Only little children hide behind the saree end (paalu) of their mothers" is uncharitable.

17. The learned judge has mis-interpreted the Apex Court Order dated 23/03/2020. The clarification order dated 06/05/2020 no way

dilute or restrict the scope and extend of the earlier order. Since the order relied by the learned counsel for the petitioner is contrary to the spirit of the Honourable Supreme Court order issued in exercise to the power of Article 142 it is non-est and has no binding force.

18. In any given situation, a person accused of the offence and the investigation agency has to be treated at par under law. Order passed by the Supreme Court invoking Article 142 of the constitution is an equitable order. After putting fetters on the investigating agency upon their right of movement causing delay in completing investigation, the person accused of the offence cannot take undue advantage of the situation and seek default bail. The liberty enshrined under Article 21 is subject to restrictions. The order of the Apex Court is Law binding on all courts. The petitioner's life and liberty is restricted only by due process of law and procedure established under law. Neither Section 167(2) nor Article 21 give unfettered right to the person accused of an offence. In an extraordinary situation, the Apex Court has passed the order invoking its extraordinary power under Article 142 extending the period of limitation prescribed in the general law of limitation and other special laws. The Supreme Court order eclipses all provisions prescribing period of limitation until further orders. Undoubtedly, it eclipses the time prescribed under Section 167(2) of the code of Criminal Procedure also.

19. In this case, the petitioner is arrested for the theft of three idols in the temple. One idol has been recovered based on the confession of the co-accused and two idols are yet to be recovered. Out of seven accused four have been arrested and three more are at large. In view of the order passed by the Honourable Supreme Court extending the limitation, the time prescribed for completing investigation under Section 167(2) gets eclipsed. The petitioner cannot harp on the limitation prescribed under Section 167(2) of Cr.P.C and pray release on bail.

20. Hence the bail petition is dismissed.

sd/-  
11/05/2020

/ TRUE COPY /

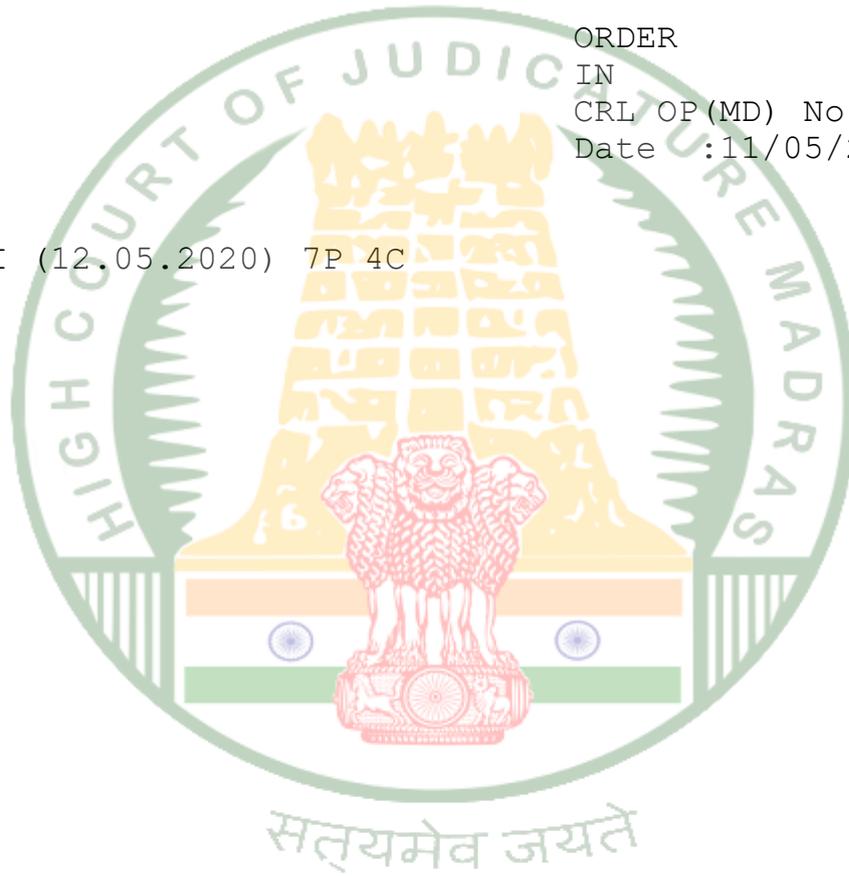
/ /2020  
Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

TO

1. THE INSPECTOR OF POLICE,  
SAMAYNALLUR POLICE STATION,  
MADURAI DISTRICT.
2. THE SUPERINTENDENT,  
CENTRAL PRISON, TRICHY.
3. THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER  
IN  
CRL OP(MD) No.5296 of 2020  
Date :11/05/2020

AAV  
AE/PN/SAR-III (12.05.2020) 7P 4C



WEB COPY