
(2000) 07 MAD CK 0050

In the Madras High Court

Case No : Criminal M.P. No. 2923 of 2000 in Criminal R.C. No. 370 of 2000

Hakkim (a) Pavadai Hakkitn

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 05-07-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2), 437(1), 437(5), 439(2)
Explosive Substances Act, 1908 — Section 4(2)(b), 4(a)

Citation : (2000) 2 LW(Cri) 941

Hon'ble Judges : B. Akbar Basha Khadiri, J

Bench : Single Bench

Advocate : S.N. Amarnath, for the Appellant;

Final Decision : Dismissed

Judgement

Akbar Basha Khadiri, J.—This Criminal Miscellaneous Petition has arisen in this way:-

There had been series of bomb blasts in Coimbatore on 14.02.1998 which resulted in loss of several lives and destruction of properties running to

several crores. The bomb blast also made an indelible stain on a serene religious community. As a sequence of the bomb blasts, one box bomb

was found planted at the police quarters under construction at Variety Hall Road, Coimbatore, regarding which a case was registered in Crime

No. 1163 of 1999 and in the course of the investigation, the investigating officer arrested the accused on 04.06.1999 for alleged commission of

offence u/s 4(a), which was later altered to Section 4(2)(b) of the Explosive Substances Act. The police report was not filed within the statutory

period and therefore, the trial Court granted bail under the benevolent provision of Section 167(2) of the Code of Criminal Procedure on

13.08.1999. Meanwhile detention order was passed against the petitioner under the National Security Act, on 04.08.1999. Subsequent to the

order of granting bail to the petitioner, final report was filed on 15.05.1999. By virtue of the bail granted u/s 167(2) Cr.P.C., the petitioner was to

execute necessary bonds and has the bail order executed.

2. On 16.09.1999, the respondent-police filed petition in Cr.M.P. No.1 1898 of 1999 before the trial Court for cancellation of bail. In the affidavit

filed along with petition, the investigating officer had stated that (i) the petitioner herein and two other accused have no faith for human values; (ii) if

they come out on bail, they will abscond; (iii) they may indulge in extremists activities by joining with the remaining absconding accused; (iv) they

may jeopardize the harmony and peace prevailing now; and (v) they may also intimidate and tamper the witnesses.

3. The petitioner herein, as respondent in that petition filed objections, but the trial Judge allowed the petition and cancelled the bail granted.

Aggrieved by the orders passed by the trial Judge, the petitioner herein has come forward with the main CrI.R_C.No.370 of 2000. Along with the

main CrI.P.C. he has come forward with the instant petition to enlarge him on bail pending the Criminal R.C.

4. Heard both the sides. Section 167(2) Cr.P.C. recites as under: -

167.Procedures when investigation cannot be completed in twenty-four hours. - (1).....

(2)The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from

time to time, authorise the detention of the accused in such custody to such Magistrate thinks fit, for a term not exceeding fifteen days in the whole,

and if he has no jurisdiction to try the case or commit for trial, and considers further detention unnecessary, he may order the accused to be

forwarded to a Magistrate having such jurisdiction:

Provided that--

(a)the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days,

if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this

paragraph for a total period exceeding: -

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life, imprisonment for a term of not less than

ten years;

(ii) sixty days, where the investigation relates to any other offence, and on the expiry of the said period of ninety days, or sixty days, as the case

may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-

section shall be deemed to be released under the provisions of Chapter XXXIII for the purpose of Uiat Chapter:

(b) no Magistrate shall, authorise detention in any custody under this section unless the accused is produced before him:

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the

police.

Explanation 1. For the avoidance of doubts, it is hereby declared that notwithstanding the expiry of the period specified in paragraph (a), the

accused shall be detained in custody so long as he does not furnish bail.

Explanation 2. If any question arises where an accused person was produced before the Magistrate as required under paragraph (b), the

production of the accused person may be proved by his signature on the order authorising detention.

5. It would be useful to recall the provisions of Section 437(5) Cr.P.C. which recites as under:

(5) Any Court which has released a person on bail under sub-section (1) sub-section (2), may, if it considers it necessary so to do, direct that such

person be arrested and commit him to custody.

6. The mandatory provision in Proviso (a) to S. 167(2) is not controlled by S.437(1). The provision in the proviso ""every person released on bail

under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purpose of that Chapter"", that if a person

is released on bail, under S. 167 other relevant provisions regarding the bail bonds as laid down in Chapter XXXIII will be applicable.

7. The proviso (a) to sub-section (2) to Section 167 Cr.P.C. does not contemplate the cancellation of bail on the furnishing of charge-sheet. The

proviso makes it clear that a person released u/s 167(2) Cr.P.C. shall be deemed

to be released on bail under the provisions of Chapter XXXIII, of the Code. Chapter XXXIII is the Chapter which deals with the grant of bail. The bail granted u/s 167(2) Cr.P.C. has thus the same incidents as bail granted under Chapter XXXIII, and is accordingly to remain valid till it is cancelled and the cancellation of bail can be only on the grounds known to law. The receipt of charge-sheet in Court can by itself be no ground for cancellation of the bail.

8. The learned Counsel for the petitioner argued that the petitioner is in person and the reasons offered for cancellation of bail already granted are only imaginary and fringed reasons, in that without the petitioner being released on bail, it cannot be said that the petitioner herein and two other accused have no faith for human values; if they come out on bail, they will abscond: they may indulge in extremists activities by joining with the remaining absconding accused: they may jeopardize the harmony and peace prevailing now: or they may also intimidate and tamper the witnesses.

9. It has been laid down in *Dolat Ram v. State of Haryana* (1995 SCC (Cri) 237) that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are; interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.

10. In *Aslam Babalal Desai Vs. State of Maharashtra*, Their Lordships of the apex Court have pointed out that once when bail is granted for not completing the investigation within the prescribed time, unless special reasons germane to cancellation of bail u/s 437(5) and Section 439(2) Cr.P.C.

are made out, cancellation of bail on the ground of subsequent filing of chargesheet is not permissible. Their Lordships have observed that once an accused is released on bail u/s 167(2) Cr.P.C. he cannot be taken back in custody merely on the filing of a chargesheet.

11. In *Rajnikant Jivanlal and Another Vs. Intelligence Officer, Narcotic Control Bureau, New Delhi*, the Apex Court has observed as under:-

An order for release on bail under proviso (a) to S. 167(2) may appropriately be termed as an order-on-default of the prosecution in filing charge-

sheet within the prescribed period. The right to bail under S.167(2) Proviso (a) thereto is absolute. It is a legislative command and not court's

discretion. If the investigating agency fails to file chargesheet before the expiry of 90/60 days, as the case may be, the accused in custody should be

released on bail. But at that stage, merits of the case are not to be examined. Not at all. In fact, the Magistrate has no power to remand a person

beyond the stipulated period of 90/60 days. He must pass an order of bail and communicate the same to the accused to furnish the requisite bail

bonds. The accused cannot therefore, claim any special right to remain on bail. If the investigation reveals that the accused has committed a serious

offence and charge-sheet is filed, the bail granted under proviso (a) to S. 167(2) could be cancelled.

12. In *Surendra Singh Vs. State of Bihar and Others*, , a single Judge of the Patna High Court has held that when the offence so committed by the

accused had created serious law and order problem in the society and the accused had become a hazard on the peaceful living of the people, bail

can be cancelled.

13. Considering the facts and circumstances of the instant case, it is evident that there had been series of bomb blasts, in continuation of which the

accused was arrested for planting a box bomb. Some of the accused are in prison and some are absconding. Considering the gravity of the acts

alleged to have been committed, as rightly pointed out by the trial Judge, I feel social security cannot take the back seat giving priority to the

personal right of the petitioner.

14. Under an identical circumstance, in *Abdul Nasser Madani Vs. State of Tamil Nadu*, where, in the bomb blast case, when an accused was

granted bail u/s 167(2) Cr.P.C. and before he could furnish the security to come

out on the bail, the prosecution subsequently filed chargesheet

and sought for cancellation bail and the trial Court allowed the petition for cancellation of the bail granted, my learned brother A. Ramamurthi, J.

has agreed with the findings of the trial Court and held that cancellation was proper, because there is possibility of the petitioner indulging in similar offence, if released on bail.

15. What has been stated with respect to that petitioner in the Abdul Nasser Madani's case cited supra, equally applies to the instant petitioner

also. I feel, this is not a fit case where this Court can interfere with the orders passed by the trial Judge. This Crl.M.P. is therefore dismissed.