

(1995) 01 MAD CK 0065

In the Madras High Court

Case No : Criminal O.P. No's. 6552 and 6553 of 1994

Intelligence Officer, Narcotics Control Bureau

APPELLANT

Vs

Arif U. Patel

RESPONDENT

Date of Decision : 19-01-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 397, 439, 482
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 23, 29, 37

Citation : (1995) 76 ELT 28

Hon'ble Judges : Rangasamy, J

Bench : Single Bench

Advocate : Shri P. Rajamanickam, Central Govt. Public Prosecutor, for the Appellant; Shri G. Ramaswamy, for the Respondent

Judgement

Rangasamy, J.—Crl. O.P. No. 6552/94 is filed u/s 439 read with Section 482 of the Code of Criminal Procedure for cancellation of the bail

granted to the respondent. The respondent was arrested and remanded before the Special Judge dealing with narcotic drugs and psychotropic

substance cases (VIII Additional Judge, City Civil Court, Madras) for the alleged offence under Sections 21 and 23 read with Section 29 of the

Narcotic Drugs and Psychotropic Substances Act (hereinafter to be referred to as N.D.P.S. Act).

2. The prosecution alleges that this respondent, who is of Indian origin but settled in England, alongwith the other accused, had caused export of

huge quantity of Hashis to Port Ashdode, Israel, concealed in cartons of vacuum flasks, consigned from Madras under the names of V.J. Exports,

K.J. Exports and Viswa Jothi Exim Corporation, which are bogus companies, for taking to Dubai in the trafficking of drugs in connivance with one

Dubai based trafficker by name Khalid Bhai. It is also alleged that when the Port Authorities of Ashdode, Israel, were able to detect the

concealment of the Hashish, information was given to the Narcotic Control Bureau in India, whose searches had revealed the participation of this

respondent alongwith others in consigning the abovesaid containers and therefore this respondent was arrested and remanded on 27-6-1994. The

learned Special Judge (VIII Additional Judge), City Civil Court, who is dealing with the N.D.P.S. Cases, released the respondent on bail on 25-7-

1994. Challenging this order of the learned Special Judge, granting bail to the respondent herein, this petition has been filed to cancel the order of

bail granted to the respondent.

3. Both sides argued at length in support of their contention for and against. The learned Special Public Prosecutor Mr. P. Rajamanickam, would

argue with regard to the seriousness of the offence, the incriminating documents connecting the respondent accused with the commission of the

offence, his domicile in Britain as a British Citizen, and the likelihood of his escape to his country making it impossible to try him before the courts

in India. On these grounds he assailed the order of bail granted by the learned Special Judge.

4. On the other hand, the learned Senior Counsel Mr. G. Ramaswamy, appearing for the respondent, argued at length with regard to the

maintainability of this petition for cancellation of the bail on the ground that the cancellation of the bail u/s 439(2) of the Code can be only under the

original Jurisdiction of the High Court, that too on the supervening circumstances, which is not alleged in this case, that as there cannot be a revision

against the interim order as prohibited u/s 397(2) of the Code, the order of bail, which is an interim order, cannot be challenged in the High Court

u/s 439 of the Code, that the intention of this Section cannot be thwarted by filing the petition u/s 482 Code of Criminal Procedure and therefore

the petition itself is not maintainable.

5. Both sides have cited series of decisions in support of their arguments. In the meanwhile the Division Bench of this court in Tamizharasi & 2

Others v. Asstt. Director, Narcotics Control Bureau (H.C.P. Nos. 1675, 1676 and 1692 of 1944 - decided on 14-12-1994) has considered the

applicability of Section 167(2) of the Code of Criminal Procedure for the remand

prisoners of the narcotic offences and has held that Section 37 of the N.D.P.S. Act is subject to the limitations of Section 167(2) of the Code and therefore, a remand prisoner, during the investigation, cannot be detained for more than 60 days and 90 days as the case may be. In view of this decision, the submissions of both sides on the points referred to above, have become secondary and relegated to the background, as the respondent herein is said to be in custody for more than 90 days.

6. The learned Counsel for the respondent submitted that the respondent, who was remanded on 27-6-1994, was released on bail on 25-7-1994

but this court has ordered for the interim cancellation of the bail on 14-9-1994 and as on today, he is in custody for more than 3 months even after

the interim cancellation of the bail and therefore applying Section 167(2) of the Code of Criminal Procedure, which the respondent is entitled to

invoke according to the abovesaid Bench decision, the respondent shall be released on bail. But this argument was repelled by the learned Special

Public Prosecutor contending that Section 167 of the Code of Criminal Procedure can be invoked for the prisoner who is in custody continuously,

but in this case as he was released on bail by the Special Judge on 25-7-1994 and even though there is interim cancellation of the bail by this court

on 14-9-1994, the sureties are not cancelled, that as he has been detained under P.I.T. N.D.P.S. Act, 1988 from 29-7-1984 onwards, his

custody now is only on account of the detention under the P.I.T. N.D.P.S. Act and so far as this offence is concerned, he is deemed to be not in

custody as the sureties are not cancelled till now and hence he is not entitled to invoke Section 167 of Criminal Procedure.

7. Soon after the release of the respondent on bail on 25-7-1994, he was detained by the order under P.I.T. N.D.P.S. Act, 1988, with effect from

27-9-1994. It appears that though this court has set aside that order, the Supreme Court had stayed that order and therefore the detention still

continues under the said Act. While the detention under P.I.T. N.D.P.S. Act continued, the petitioner filed the petition for cancellation of bail and

they also moved for interim cancellation. Taking into consideration of the representation made by the petitioner, the interim cancellation of bail was

ordered on 14-9-1994 by this court. The learned Special Public Prosecutor Mr. P. Rajamanikam would submit that Section 167(1) Code refers

to the person in custody and therefore Section 167(2) of the Code would be applicable only to such person who is in custody, whereas in this case

as the respondent herein was granted bail and released on 25-7-1994, he was enjoying the freedom of liberty till he was detained on 29-7-1994

under the P.I.T. N.D.P.S. Act and though the bail granted by the Special Judge on 25-7-1994 was cancelled on 14-9-1994, the Section 167(2)

of the Code is not applicable to a person, who was once released on bail and therefore the decision of the Bench of this court in the above

mentioned case cannot be extended to the respondent. I find the argument of the learned Special Public Prosecutor lacks in substance. The

detention under the P.I.T. N.D.P.S. Act cannot be mixed up with this case as it is under a different enactment. The caption for Section 167 of the

Code starts with the words ""Procedure when investigation cannot be completed in 24 hours"". Therefore, this provision is applicable to the accused

when investigation is pending and not completed. Admittedly, in this case, the charge-sheet is not yet filed and the investigation is said to be in

progress. Therefore, the only question now to be considered is whether the accused is detained in custody for more than 90 days, as the

punishment for the offence alleged, is more than 10 years. Even though the respondent was released on bail on 25-7-1994, this order was

cancelled by the interim order of this court dated 14-9-1994. After cancellation of trial, it became unnecessary to re-arrest this petitioner because

already he is in detention under the P.I.T. N.D.P.S. Act. When once the bail granted by the Special Judge is cancelled and the accused also is in

detention, certainly the accused is restored to the original position as remand prisoner from the date of the cancellation of the bail. The records

reveal that the respondent was produced before the learned Special Judge subsequently for the purpose of remand also. But the learned Special

Public Prosecutor would argue that extension of remand is illegal because the sureties are not cancelled and his detention is only under the P.I.T.

N.D.P.S. Act. For the reason that the sureties are not cancelled, it cannot be stated that the respondent is at large. The moment the order of bail

was cancelled by an interim order of this court and the accused also is detained, the order of bail comes to an end and his detention will be for the

offence for which he was arrested. Therefore, his detention will be for the offence for which he was arrested. Therefore, his detention under the

Narcotics Drugs and Psychotropic Substances Act is revived from 14-9-1994 onwards. The object of Section 167 of the Code is to complete the

investigation quickly within the time fixed under sub-section (2) and if that was not complied with by the investigating agency, the person in custody

is automatically entitled to be released. For the reason that at one point of time he was released on bail for a few days, it will not be sane to deny

the benefit of this Section though he is in detention for more than 90 days without completing the investigation. As I find no force in the argument of

the learned Special Public Prosecutor to negative the applicability of Section 167(2) of the Code of Criminal Procedure, the respondent cannot be

incarcerated further, in which case, the order of bail granted by the Special Judge gets revive, resulting in the dismissal of this petition.

8. In the result, the petition Crl. O.P. No. 6552 of 1994 is dismissed, which will restore the order of the learned Special Judge (VIII Additional

Sessions Judge, City Civil Court, Madras), subject to the detention of the respondent under any other statute. In view of the order passed in Crl.

O.P. No. 6552 of 1994, Crl. O.P. No. 6553 of 1994 becomes unnecessary and accordingly dismissed.