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**(2016) 03 MAD CK 0218**  
**In the Madras High Court**  
**Case No : Crl. R.C. No. 339 of 2016**

Vijay Pradap Singh

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision : 23-03-2016**

**Acts Referred:**

Constitution of India, 1950 — Article 21, Article 22  
Criminal Procedure Code, 1973 (CrPC) — Section 318, Section 328, Section 329,  
Section 330, Section 334, Section 397, Section 436, Section 437, Section 438, Section  
439  
Penal Code, 18

**Citation :** (2016) 2 MadWNCri 398 : (2016) 2 MLJCriminal 485

**Hon'ble Judges :** P. Devadass, J.

**Bench :** Single Bench

**Advocate :** R. Sankarappan, for the Appellant; P. Govindarajan, Additional Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

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## Judgement

P. Devadass, J.—1. This revision arises out of dismissal of bail petition in Crl.M.P. No.3962 of 2015 filed in P.R.C. No.1 of 2015 under Section 330 Cr.P.C.

2. Petitioner is a CISF [Central Industrial Security Force] Constable. He was carrying out his duties at the Atomic Energy Power Station in Kalpakkam. On 08.10.2014, with his service rifle he is alleged to have shot dead three persons and also wounded one person.

3. Respondent police registered a case in Crime No. 241 of 2014 under Section 307, 302 I.P.C. The case has been committed to the Court of Sessions. Now, it is pending in S.C. No.242 of 2015 before the learned II Additional Sessions Judge, Chengalput.

4. While the said case was pending in P.R.C. No. 1 of 2015 (Preliminary Register Case) before the learned Judicial Magistrate, Thirukalukundram, a petition in Crl.M.P. No.3962 of 2015 has been filed under Section 330 Cr.P.C. seeking his

release on bail.

5. The learned Magistrate conducted enquiry. A Medical officer attached to the Institute of Mental Health, Kilpauk submitted his report to the effect that the accused is a person of unsound mind, he is improving and he is found fit to stand the trial. In the circumstances, the learned Magistrate passed the impugned order dismissing his bail petition.

6. Aggrieved, this revision has been directed.

7. According to the learned counsel for the petitioner, petitioner has history of psychiatric ailment. Since 2007, in his home State in U.P., he was treated for paranoid Schizophrenia, a mental illness. Even the medical record would show that he has been under medication for mental illness. And some medication also has been prescribed for him. The Doctor also advised that if he is left in the company of his relatives it would be beneficial for his health. In such circumstances, denying him bail under Section 330 Cr.P.C is not in accordance with law. The impugned order suffers from legality.

8. On the other hand, the learned Additional Public Prosecutor would submit that the learned Magistrate conducted due enquiry under Section 329 Cr.P.C. As per the medical records, the accused has been treated for his mental illness and he is fit to understand the trial. In such circumstances, the learned Magistrate dismissed his bail petition, it is in accordance with law.

9. I have anxiously considered the rival submissions, perused the impugned order and the materials on record.

10. Now the question is whether the impugned order dated 20.10.2015 passed under Section 330 Cr.P.C. by the learned Magistrate suffers from any legality or propriety ?

11. Mere act, unaccompanied by any guilty mind, will not be an offence is a basis of Criminal Law. The "blameworthy conduct" of a person has to be deduced from his mental make up, his frame of mind. If it is good, no problem; when it is bad, problem arises. We call it "guilty mind". In legal term, it is mens rea; but at the same time, mere mens rea without any overt act will not be an offence. But, in law, under certain circumstances there may be overt act, but will not be an offence in view of absence of mens rea. In such cases, mens rea cannot be imputed to the accused.

12. Under the Indian Penal Code, for most of the offences, "Mensrea" has been made an essential ingredient. It has been expressed in different forms. It could also be gathered from Section 81 IPC. One of its exception is Section 84 IPC dealing with overt acts of persons of unsound mind.

13. The very Section 84 IPC is modelled on the celebrated English decision in R vs. Mc Maughten (1843) 10 CI & F 200 (T.A.C.). The crux of the principle is that the mind of the person is such that at the time of committing the offence he did

not know what he was doing is contrary to law or wrong. He is incapable of knowing the nature of the act committed by him. (Also see Chapter XXV Cr.P.C. and KENNY'S Outlines of Criminal Law (19th Edn. Page 83).

14. At the time of offence, the accused is not the Master of his mind. "Insanity" can be raised as a defence in a Criminal case. It is "Plea of insanity".

15. The case of a sane person, unable to understand the Court proceedings is dealt with under Section 318 Cr.P.C., while the case of a insane (non compos mentis) incapable of understanding the Court proceedings is dealt with under Section 329 Cr.P.C.

16. A part of Section 334 Cr.P.C. is in pari materia with Section 84 I.P.C. when a non compos mentis is alleged to have committed an offence, "his mind at the time of offence" is a matter to be considered "at the time of trial". But when a non compos mentis seeks his release on bail on account of his unsound mind, his mental condition at the time of such enquiry in otherwords, his present mental condition shall be seen. He shall be medically examined for the purpose of granting him bail under Section 330 Cr.P.C.

17. Section 330 Cr.P.C. runs as under:

""330 Release of lunatic pending investigation or trial:

(1) Whenever a person is found, under section 328 or section 329, to be of unsound mind and incapable of making his defence, the Magistrate or court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or court or such officer as the Magistrate or court appoints in this behalf.

(2) If the case is one which, in the opinion of the Magistrate or court, bail should not be taken, or if sufficient security is not given, the Magistrate or court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the State Government:

Provided that no order for the detention of the accused in a lunatic asylum shall be made otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912)"".

18. The essential requirements for granting relief under Section 330 Cr.P.C are:

(i) The accused must be a person of unsound mind and

(ii) He is incapable of making his defence in otherwords, he is not able to understand the Court proceedings.

19. There is a popular saying that everyone is a psyche because each one has some unique individualistic characteristic features but when it becomes

abnormal, he becomes a mad. In such circumstances, he will not be Master of his mind. His mind will go astray. In such circumstances, mens rea cannot be imputed as against him because he is a "non compos mentis".

20. There are cases of idiots, lunatics and mad persons. Madness has different kinds. Schizophrenia is one of its kind. Paranoid is also a kind of it. In Paranoid cases, they will have some "hallucination". The hallucination will make them to exhibit some "weird behaviour".

21. The legal proceedings are always complicated to a layman. While so, it will be understandable to a person of unsound mind. He will not be fit to stand the trial. Trial of such a person is not a "fair trial". He can be tried only when he is sane. Otherwise, it will be violative of Article 21, 22, Constitution of India and the principles laid down in Maneka Gandhi case (, A.I.R. 1978 SC 597). If the accused is a person of unsound mind and he is unable to understand the Court proceedings then under Section 330 Cr.P.C., he has to be released on bail entrusting him to the custody of his relatives prescribing conditions with a view that he shall not cause harm to himself or to others and also ensure his constant medical care.

22. Now, in this case, the learned Magistrate conducted enquiry in accordance with Section 329 Cr.P.C. Further, the Civil Assistant Surgeon attached to the Institute of Mental Health, Kilpauk, Chennai has conducted the medical examination and furnished his report. The learned Magistrate also questioned the petitioner so as to satisfy himself, as to whether really the accused is a person of unsound mind and also to satisfy himself whether he is fit to stand the trial so as to consider his plea for bail under Section 330 Cr.P.C.

23. In this case, in his answers to Court questions and also in his discharge summary the Doctor had categorically stated that there is improvement in the mental illness of the accused and now he is fit to stand the trial. In such circumstances, the trial court had declined to grant him bail under Section 330 Cr.P.C.

24. The learned counsel for the petitioner would also submit that the accused is a person of known history of psychiatric ailments. His relatives revealed that he was under medication for his mental illness. If he is given treatment by his family members his condition will improve. In his report, the Doctor also prescribed certain medicines for him.

25. The learned counsel for the petitioner would further submit that Section 439 Cr.P.C empowers the Court to grant bail to a person, who is suffering out of sickness. Mental illness is also a form of sickness. His continued incarceration whether in jail or in a jail like situation in a Mental Health Hospital keeping him away from his near and dear ones will aggravate his mental illness. In such circumstances, the Court can grant him bail under Section 330 Cr.P.C and hand over him to his relatives, who are ready to take care of him.

26. The learned counsel for the petitioner also emphasised that in the facts and circumstances of this case, at this juncture, the Court need not look into the nature of the offence he is alleged to have committed and now it shall consider the nature of the accused.

27. The learned Additional Public Prosecutor replied that the argument of the petitioner is outside the scope of jurisdiction of this Court under Section 397 Cr.PC.

28. As rightly contended by the learned Additional Public Prosecutor those arguments will be relevant in the bail petition filed under Section 439 Cr.P.C. Under Section 439 Cr.P.C., Sessions Court and High Court exercises original jurisdiction. They are Original orders. No question of canvassing the correctness of bail dismissal order passed by a Subordinate Courts, to be put forth before a Superior Court.

29. Bail jurisdiction of the Court under Chapter XXXV of Code of Criminal Procedure, 1973 is wide and vast. Consideration of period of incarceration, stage of investigation, availability of the accused for trial, offering of sureties by acceptable persons, consideration of his health condition are within the domain of the Court under its bail jurisdiction under Section 439 Cr.P.C. But under Section 397 Cr.P.C, this Court is doing post mortem work over the orders passed by the Subordinate Criminal Courts with a view to see that whether they suffers from any legality or propriety. Court cannot interchange Section 439 Cr.P.C for Section 397 Cr.P.C.

30. It is relevant here to note that the scope of this Court under Section 397 Cr.P.C. is very narrow but under Section 439 Cr.P.C, it is vast. Sections 436, 437 and 439 Cr.P.C are intended to release persons on bail and restore their liberty. Section 438 Cr.P.C. also has similar objective. They have to be viewed from the bedrock of Article 21, Constitution of India as they are very much concerned with securing the liberty of the individual. Section 330 Cr.P.C is also concerned with the personal liberty of the individual, but it is not as wide as Section 439 Cr.P.C. as the Court can exercise its jurisdiction under Section 330 Cr.P.C only under two parameters, namely; (i) the accused is a person of unsound mind and (ii) he is not fit to understand the Court proceedings, he is incapable of making his defence. And they are not relevant factors in granting bail under Section 439 Cr.P.C.

31. Now reverting to our case, in view of the position of law and the report of the Medical Officer, I am unable to accept the arguments of the learned counsel for the petitioner that the impugned order passed by the learned Judicial Magistrate, Thirukalukundram is faulty. It did not suffer from any legality.

32. In view of the foregoing, this revision fails and it is dismissed.