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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 17TH DAY OF FEBRUARY 2023 / 28TH MAGHA, 1944

CRL.MC NO. 9523 OF 2022

AGAINST THE ORDER IN CRMC 2638/2022 OF I ADDITIONAL
SESSIONS COURT, ERNAKULAM

PETITIONER/S:

- 1 VIMAL K MOHANAN
AGED 26 YEARS
S/O MOHANAN KANJIRAKKUZHI VEETI, PULIMALA
BHAGATHU, AAYAKKAD KARA, THRIKKARIYOOR VILLAGE,
ERNAKULAM DISTRICT, PIN - 686692
- 2 GOKUL
AGED 24 YEARS
S/O DEVADAS KALARIKKAL VEETIL, AYITHRIPPAD,
AAYAKKAD KARA, THRIKKARIYOOR VILLAGE, ERNAKULAM
DISTRICT, PIN - 686692
BY ADVS.
D.FEROZE
C.J.JIYAS
T.S.KRISHNENDU
PREETI S.

RESPONDENT/S:

- 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM (CRIME
NO.1915/2021 OF PERUMBAVOOR POLICE STATION,
ERNAKULAM DISTRICT), PIN - 682031
- 2 STATION HOUSE OFFICER
PERUMBAVOOR POLICE STATION, ERNAKULAM DISTRICT
(CRIME NO.1915/2021 OF PERUMBAVOOR POLICE
STATION, ERNAKULAM DISTRICT, PIN - 683542

OTHER PRESENT:

PP M.C.ASHI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
14.02.2023, THE COURT ON 17.02.2023 PASSED THE FOLLOWING:

ORDER

Dated this the 17th day of February, 2023

The petitioners are accused Nos.6 and 7 in Crime No.1915 of 2021 of Perumbavur Police Station, registered for offences punishable under Sections 20(b)(ii)C, 27A and 29 of the NDPS Act. The crime was registered on the allegation that the accused conspired together and secured possession of 30.200 kg of Ganja by sending the contraband through courier from Andhra Pradesh. The first and second accused were caught while receiving the courier. Based on their statement, the petitioners were implicated and arrested on 18.03.2022. As the investigation was not completed within the statutory time limit of 180 days, the petitioners moved an application for bail under Section 167(2) of the Code of Criminal

Procedure. Pending that application, the investigation was completed and the final report filed on 12.09.2022, the 179th day. Thereupon, the petitioners' application for bail was rejected as per Annexure II order. Aggrieved, this Crl.M.C is filed.

2. Learned Counsel for the petitioners submitted that the final report filed on 12.09.2022 was defective and was kept pending in the Special Court for verification up to 09.11.2022. In the meanwhile, the petitioners had filed an application on 04.11.2022 for obtaining certified copy of the final report. That application was returned on 15.11.2022 stating that the final report is not available in court. Therefore, as on the 180th day only a defective final report was on record, which is not sufficient to curtail the petitioners' right to be enlarged on bail on the 181st day. It was only upon receiving the copy application that the

Sessions Judge got alerted about the pendency of the final report without verification. Immediately, the final report was verified and finding it to be defective an order was passed on 09.11.2022, directing the investigating officer to cure the defects and re-submit the final report within 15 days. Accordingly, the investigating officer took back the final report on 14.11.2022 and, after rectifying the defects, re-submitted it on 18.11.2022.

3. It is argued that, unless a proper final report is filed in court, after completing investigation, the requirement of Section 167 (2) of the Code will not be satisfied. A truncated or defective report cannot result in the accused's valuable right to bail being defeated. In support of this contention, reliance is placed on the Apex Court decision in **Achpal @ Ramswaroop and another v State of Rajasthan [(2019) 14 SCC 599]**.

Attention is also drawn to Annexure III Circular of the State Police Chief, highlighting the relevancy of filing time bound and defect free final reports for preventing grant of default bail to the accused.

4. Learned Public Prosecutor contended that, inasmuch as the final report was filed before 180 days of petitioners' custody, their right to default bail is lost. The investigating officer's duty is to complete the investigation and file the final report within the statutory time limit. Delay in verification of the final report within the statutory time limit cannot result in default bail being granted to the accused.

5. From the arguments advanced the question arising for consideration is whether, in cases where final report is filed within the statutory time limit of 180 days, the accused's entitlement for bail under Section 167(2) would subsist, if the charge sheet is found to contain defects and

returned for curing the defects after the statutory time limit is over. For answering this question, it is essential to read the relevant portion of Section 167 Cr.P.C extracted below;

"167. Procedure when investigation cannot be completed in twenty-four hours.-

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(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 as 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 it 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 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 or 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 so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(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 I.—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 II.—If any question arises whether an accused person was produced before the

Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

Provided further that in case of woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution."

6. A close reading of the provision shows that the focus is on completing the investigation at the earliest. Ideally, the investigation should be completed within the first 24 hours fixed by Section 57. If not, the officer concerned should transmit the entries in the diary relating to the case to the jurisdictional Magistrate and simultaneously forward the accused to such Magistrate. Thereupon, the Magistrate should consider the materials available and decide whether the accused should be remanded to

custody or not. If the Magistrate decides to remand the accused, that can only be for a maximum period of 15 days at a time. As per Sub-section (2) of 167, the period of custody, even if extended from time to time, cannot exceed 60 days or 90 days as the case may be. On expiry of the period of 60 or 90 days, the accused shall be released on bail, if the investigation is not completed and the final report submitted in court by then. Although, filing of final report would indicate completion of investigation, the thrust of 167 (2) is on the investigation having been completed. This is also for the reason that as per the scheme of the Code, once a charge sheet is filed after completion of investigation, the court proceeds to the next stage, which is taking cognizance and trial.

7. As per Section 36A(c) of the NDPS Act, the Special Court can exercise the same power which a Magistrate having jurisdiction to try a

case may exercise under Section 167 of the Code. By virtue of sub-section 4 of Section 36A, in respect of persons accused of offences punishable under Sections 19, 24, or 27A, or offences involving commercial quantity, the reference in sub-section 2 of Section 167 shall be construed as 180 days. Thus, the right to default bail of an accused in custody for the offences mentioned in Section 36A(4) of the Act would arise only if the investigation is not concluded and final report filed within 180 days. Unlike the Code, which does not contain a provision for extending the statutory time limit of 60 or 90 days, the proviso to Section 36A(4) confers the Special Court with the power to extend the period of 180 days up to one year. For granting such extension, the Public Prosecutor should make an application, indicating the progress of the investigation and specifying the reasons for seeking detention of the accused beyond 180 days.

8. As discussed earlier, the criteria for deciding the entitlement for default bail is completion of the investigation and not filing of the final report. The word 'final report' is not mentioned in Section 167. Therefore, when faced with the Public Prosecutor's application seeking extension, or that of the accused demanding statutory bail, the court's consideration should be whether the final report was filed after completing the investigation. If the final report is found to have been filed after completing the investigation in all respects, minor defects in the report, by itself, will not confer the accused with any right to be enlarged on default bail. On the other hand, if the final report is filed without completing the investigation, in order to stultify the mandate of Section 167(2) and later returned to the investigating officer for completing the investigation, that would definitely entitle the accused to demand that he

be released on default bail, if the final report, after completing the investigation and curing the defects, is not re-submitted in court before the 180th day. In **Saharath v. State of Kerala [2021(4) KLT 621]**, this Court has held that if the charge sheet was returned as defective, it implies permission to cure defects. Once the defects are cured and the charge sheet represented, it cannot be said that the proviso to Section 167(2) Cr.P.C would get attracted.

9. In **Achpal @ Ramswaroop** (*supra*) cited by the petitioner, the final report was filed by an officer who was not competent to conduct the investigation in view of an order passed by the High Court, which required an officer in the rank of Assistant Superintendent of Police to conduct the investigation. Hence, the report was returned for due compliance. As a result, on expiry of the 90th day, no report under Section 173 of the Code

was on record with the Magistrate. Even then, the accused's prayer for benefit under Section 167 of the Code was rejected. Ultimately when the case reached the Supreme Court, it was held that the investigation, which led to the filing of the report initially, being not in conformity with the direction of the High Court, there was no charge sheet in terms of Section 173 of the Code, for the concerned magistrate to assess the situation, whether on merits, the accused was required to be remanded to further custody. It was in such circumstances that the Apex Court found the accused in that case to be entitled for default bail.

10. In the case at hand, the final report was filed on 12.09.2022, before completion of 180 days of petitioner's custody. Indisputably, the final report was filed after completing the investigation. True, the final report was returned on 09.11.2022 for curing the defects and

re-submitted on 18.11.2022. But, no investigation had to be conducted after the final report was returned, since the defects noted as follows;

- "1) Specimen Signature of A10 instead of Specimen Handwriting of A10,*
- 2) Date is noted in Form 15 as 03.08.2022 instead of 04.08.2022,*
- 3) Clarification in Form 15 regarding the Screenshot of a Mobile Phone."*

As such, the challenge on the premise that a proper final report was not available in court as on the 180th day can only be rejected.

In the result, the Crl.M.C is dismissed.

Sd/-

V.G.ARUN

JUDGE

Scl/

APPENDIX OF CRL.MC 9523/2022

PETITIONER ANNEXURES

Annexure I	A TRUE COPY OF THE REMAND REPORT AGAINST THE PETITIONERS IN CRIME 1915/2022 OF PERUMBAVOOR POLICE STATION
Annexure II	A CERTIFIED COPY OF THE COMMON ORDER DATED 25.11.2022 IN CRL MC 2638/2022 AND CRL MC 2666/2022
Annexure III	TRUE COPY OF THE CIRCULAR DATED 2/02/2021 VIDE CIRCULAR NO 03/2021 PASSED BY THE DIRECTOR GENERAL OF POLICE & STATE POLICE CHIEF

