



Crl.R.C.(MD)No.178 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 15.03.2024

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

CRL. R.C. (MD) NO.178 OF 2024

Ankit Tiwari

... Petitioner

Vs.

The State through
DSP of Police,
Vigilance and Anti Corruption,
Dindigul.

... Respondent

Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the order passed in Cr.M.P.No.1587 of 2024 on the file of the learned Chief Judicial Magistrate cum Special Judge for Prevention of Corruption Act Cases, Dindigul dated 06.02.2024.

For Petitioner : Mr.G.Karuppsamy Pandian

For Respondent : Mr.A.Thiruvadi Kumar, APP



Crl.R.C.(MD)No.178 of 2024

WEB COPY

ORDER

This Criminal Revision Case has been filed assailing the order passed in Cr.M.P.No.1587 of 2024 in and by which the learned Chief Judicial Magistrate cum Special Judge for Prevention of Corruption Act Cases, Dindigul dated 06.02.2024, has declined to grant statutory bail to the petitioner.

2. The case of the prosecution is that the petitioner herein is working as Enforcement Officer in Enforcement Department. It is alleged that on 29.10.2023, at about 08.00 pm., the petitioner had called the defacto complainant via Whatsapp call and had asked him to appear on 30.10.2023 at the ED Office with regard to the disproportionate asset case. Further, it is alleged that the petitioner demanded Rs.3 Crores from the defacto complainant in order to exonerate him from the said case. Again the petitioner called the defacto complainant on 01.11.2023 and reduced his demand of bribe to the tune of Rs.51 Lakhs and asked the defacto complainant to come to a particular place where the amount of Rs.20 Lakhs was to be handed over to the petitioner.



Crl.R.C.(MD)No.178 of 2024

WEB COPY 3. It is further alleged that on 01.11.2023, at about 08.50 am., again the petitioner called the defacto complainant to arrange the remaining amount of Rs.31 Lakhs. After arranging the said amount, on 14.11.2023, the defacto complainant sent a message to the whatsapp number of the petitioner, but there was no response from the petitioner. It is further alleged that thereafter, on 29.11.2023, the petitioner called the defacto complainant and asked him to come on 30.11.2023/01.12.2023 to hand over the remaining amount. Since the defacto complainant was not satisfied with the action of the petitioner, the defacto complainant lodged a complaint with the respondent, based on which, on 01.12.2023, a trap was arranged and the petitioner was caught with the amount of Rs.20 Lakhs. The petitioner was arrested on the same day and FIR was registered in Cr.No.6 of 2023 for the offence punishable under Section 7(a) of the Prevention of Corruption Act.

4. Learned counsel appearing for the petitioner submitted that the bail petition filed by the petitioner before the trial Court as well as before this Court were dismissed. In incarceration, the respondents having not filed the charge sheet within the time stipulated u/s 167 (2) Cr.P.C., the petitioner moved petition for default bail before the trial court which was dismissed by

3



Crl.R.C.(MD)No.178 of 2024

WEB COPY

the trial Court on the ground of an order of stay granted by the Supreme Court in subsistence. Challenging the said order, the present criminal revision case has been filed.

5. Learned counsel further submitted that pending this revision, the Enforcement Directorate filed W.P. (Crl.) No.23 of 2024 before the Apex Court seeking transfer of investigation, in which, the Supreme Court, granted stay of further investigation in Cr.No.6 of 2023, vide order dated 25.01.2024. Thereafter, the petitioner filed SLP.(Crl) Nos.3342 & 3343 of 2024 before the Apex Court and by order dated 11.03.2024, the Supreme Court directed this Court to decide the petition for default bail moved by the petitioner on merits notwithstanding the stay on investigation ordered by the Apex Court. Therefore, it is submitted by the learned counsel that in view of the order of the Apex Court, granting permission to this Court to decide the petition for default bail on merits, there would be no embargo for this Court to decide the petition for default bail.

6. In the aforestated circumstances, it is the submission of the learned counsel that the grant of permission by the Apex Court coupled with the non-
4



WEB COPY

filing of the charge sheet within the period of 60 days, the petitioner would be entitled for default bail, as personal liberty would come into play by the invocation of Article 21 of the Constitution.

7. In support of his contention, the learned counsel relied upon the decision of the Hon'ble Supreme Court in ***S.Kasi Vs. State through the Inspector of Police, Samayanallur Police Station, Madurai District (2020 AIR (SC) 2921***), wherein the Supreme Court held as under :-

“26.We, thus, are of the view that neither this Court in its order dated 23.03.2020 can be held to have eclipsed the time prescribed under Section 167(2) of Cr.P.C. nor the restrictions which have been imposed during the lockdown announced by the Government shall operate as any restriction on the rights of an accused as protected by Section 167(2) regarding his indefeasible right to get a default bail on non-submission of charge sheet within the time prescribed. The learned Single Judge committed serious error in reading such restriction in the order of this Court dated 23.03.2020.

27.There is one more reason due to which the impugned judgment of the learned Single Judge deserves to be set aside. A learned Single Judge of Madras High Court in Crl.OP(MD)No. 5291 of 2020, Settu versus the State, had already considered the judgment of this Court dated 23.03.2020 passed in Suo Moto W.P(C)No.3 of 2020 and its



WEB COPY

effect on Section 167(2) Cr.P.C. The above was also a case of a bail where the accused was praying for grant of default bail due to non-submission of charge sheet.”

8. Countering the aforesaid arguments, learned Addl, Public Prosecutor appearing for the respondent, though in sum and substance accepted the facts as has been narrated by the petitioner, however, submits that the charge sheet was ready for being filed even on the 55th day, but for the order of stay of investigation granted by the Apex Court, the hands of the respondent was tied, wherein they could not file the charge sheet. When the order of stay granted by the Supreme Court is in operation, the time would stand frozen and the period of 60 days cannot be enforced as provided for u/s 167 (2) Cr.P.C. It is further submitted by the learned Addl. Public Prosecutor that without a clarification from the Supreme Court with regard to the filing of the charge sheet by the respondent, it would not be in the interest of justice to decide the default bail of the petitioner, when all along the respondent was ready with the charge sheet.

9. It is the further submission of the learned Additional Public Prosecutor further that the entitlement of the petitioner for default bail would



WEB COPY

stand enured only if the respondent fails to file the charge sheet within the period of 60 days prescribed u/s 167 (2) Cr.P.C. However, the respondent having completed the investigation and are ready with the charge sheet, but could not file the same in view of the order of stay granted by the Apex Court, without the Apex Court clarifying the said order, the petitioner cannot be released on default bail.

10. In support of his contention, the learned Additional Public Prosecutor relied upon the decision of the Hon'ble Supreme Court in Kosanapu Ramreddy Vs State of Anthra Pradesh reported in AIR 1994 SC 1447, in which, the Hon'ble Supreme Court held as follows:

"3. It is not disputed that the impugned order dated 3-6-1992 made by the Designated Court was well within the period of 60 days --Section 20 of the Terrorists and Disruptive Activities (Prevention) Act, 1987 enlarges the period of 15 days referred to in Sub-section (2) of Section 167 of the Criminal Procedure Code, into 60 days - had not expired. The circumstances that the operation of the order was subsequently stayed by this Court in these proceedings and that during the period of such stay the sixty days period has run out does not affect the validity and efficacy of the order dated 3-6-1992 if the challenge thereto fails."



Crl.R.C.(MD)No.178 of 2024

WEB COPY 11. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record, as also the decision relied on by the parties, the relevant portion of which has been extracted supra.

12. There is no quarrel with the fact that an allegation has been made against the petitioner by the respondent with regard to receipt of illegal gratification and in the course of a trap, the petitioner is alleged to have been caught while receiving the illegal gratification, which is disputed by the petitioner. The bail petition preferred by the petitioner, initially before the trial court and upon dismissal, before this Court, ended in dismissal. Investigation was taken up by the respondent at which point of time, the Enforcement Directorate moved the Supreme Court in W.P. (Crl.) No.23 of 2024, seeking transfer of investigation, in which, the Supreme Court, granted stay of further investigation in Cr.No.6 of 2023, vide order dated 25.01.2024. Thereafter, in the SLP.(Crl) Nos.3342 & 3343 of 2024 filed by the petitioner, the Supreme Court and by order dated 11.03.2024, directed this Court to decide the petition for default bail, which is presently under consideration before this Court.



Crl.R.C.(MD)No.178 of 2024

WEB COPY 13. To appreciate the contention and counter contention, it is just and necessary to have a look at the order passed by the Apex Court on 11.03.2024, which is quoted hereunder :-

“3. Meanwhile, we request the Madurai Bench of the High Court of Judicature at Madras to decide the application for default bail moved by the petitioner on merits notwithstanding the stay on investigation is ordered by this Court vide order dated 25.01.2024.”

14. There could be no quarrel with the proposition that personal liberty of an individual in respect of the right protected under Article 21 has been dealt with by the Apex Court in the case of **ADM, Jabalpur – Vs – Shivakant Shulka (AIR 1976 SC 1207)**, wherein H.R.Khanna, J., (as His Lordship then was) pronouncing the minority decision on the Bench, has clearly held that the State has no power to deprive the person of his life or liberty with the authority of law. Though the majority view in the said decision was contrary to the minority view, however, the minority view was approved to be the correct view by a Seven Judges Constitution Bench in **K.S.Puttaswamy & Anr. – Vs – Union of India & Ors. (2017 (10) SCC 1)**. Therefore, without the authority of law, the State has no power to detain an individual by robbing his life and liberty.



CrI.R.C.(MD)No.178 of 2024

WEB COPY

15. This Court, while in respectful agreement and is bound by the ratio laid down by the Apex Court, however, feels that its hands are tied from deciding the present case on merits for a single reason.

16. An order of stay was granted by the Supreme Court on 25.01.2024 with regard to further investigation by the respondent, thereby, the hands of the respondent was tied from doing anything pending the consideration of the issue relating to transfer of investigation on the petition filed by the Enforcement Directorate. However, vide order 11.3.2024, the Apex Court had permitted this Court to decide the issue on merits notwithstanding the fact that there is an order of stay of investigation granted by the Supreme Court.

17. From the above, what transpires is the fact that this Court is clothed with powers to decide the default bail petition by the Apex Court, irrespective of the order of stay. The stage for default bail arises when the investigating agency is not filing the charge sheet within the time stipulated u/s 167 (2) Cr.P.C., viz., 60 days. At the present point of time, the period stipulated u/s 167 (2) Cr.P.C. has crossed and, therefore, the entitlement of the petitioner

10



WEB COPY

for default bail fructifies. However, what is standing between this Court from granting default bail is the order of the Apex Court granting stay, wherein stay of investigation has been ordered. In this backdrop, the respondent preface their argument that they are ready with the charge sheet, which is ready to be filed even as early as the 55th day and the order of the Apex Court granting stay has tied its hands and, they were prevented from filing the charge sheet and the petition for stay being at the behest of the Enforcement Directorate and the petitioner herein, unless they get a clarification from the Apex Court with regard to the manner in which the stay is to be looked into, the default bail cannot be granted, as the time stood freezed between the day when the interim stay was granted till it is lifted.

18. Though the personal liberty of the petitioner is of paramount importance, equally the order of the Supreme Court also has to be followed in which case, this Court is put in a catch-22 situation, where applying Article 21 and granting default bail to the petitioner would prejudice the rights of the respondent as the order of the Supreme Court had prevented them from filing the charge sheet, but for which the present situation of default bail would not have arisen.

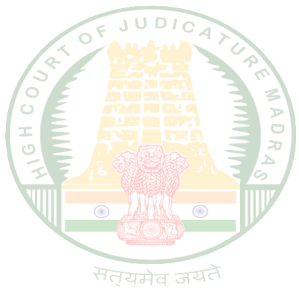


WEB COPY

19. With great respect, it is to be stressed that when a blanket order of interim stay has been granted by the Apex Court, interpreting the order in any other way than the one in which it is couched would be not only an act of disrespect to the Supreme Court, but would also be a contemptuous act to which this Court should not be a party.

20. The petitioner as well as the respondent have utilised the opportunity to their advantage but are now at loggerheads and without the Apex Court clarifying the position with regard to the order passed by it, it would be very much against judicial etiquette to give any order by interpreting the order of the Apex Court in favour of one or the other party. Further, without the Apex Court clarifying its order, it would not be in the interest of justice for this Court to deal on merits of the petition for default bail, as it be prejudicial to the other party, who would be at the receiving end when the Court decides the petition. Therefore, interest of justice warrants that the parties to the present *lis* have to get the order clarified from the Apex Court with regard to the contours within which this Court could traverse on the basis of the order of stay granted by the Apex Court only at which point, it would be

12



Crl.R.C.(MD)No.178 of 2024

WEB COPY just and reasonable for this Court to enter into the realm of deciding the petition for default bail.

21. Further, it is to be pointed out that the authorities on the subject, more especially from the Apex Court sways in both ways, but for the order of interim stay granted, this Court could have very well decided the ratio which would be applicable to the present case. In view of the order of stay, applying the ratio one way or the other in favour of one or the other party would be against the order of stay and, therefore, this Court is refraining for applying any of the ratio brought to its notice.

22. In view of the discussion made above, this Court is inclined to dismiss the present petition by granting liberty to the parties to approach the Apex Court to have the order dated 11.03.2024 clarified so that the interests of both sides is safeguarded. Accordingly, this criminal revision petition is dismissed with the aforesaid observations and directions.

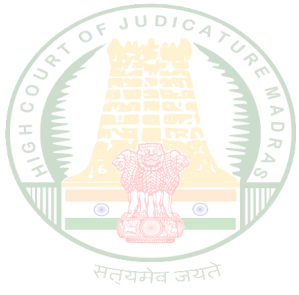
15.03.2024

NCC : Yes / No

Index : Yes / No

Gns/GLN

13



WEB COPY



Crl.R.C.(MD)No.178 of 2024

M.DHANDAPANI,J.

gns

To

- 1.The Chief Judicial Magistrate cum
Special Judge for Prevention of Corruption Act Cases,
Dindigul.
- 2.Dy. Superintendent of Police
Vigilance and Anti Corruption,
Dindigul.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.R.C.(MD)No.178 of 2024

15.03.2024