

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 04.07.2019
Pronouncing orders on : 11.07.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.14320 of 2019

Palanivel

...Petitioner

vs.

The State, represented by
Inspector of Police,
Veeranam Police Station,
Salem District.
(Crime No.538 of 2003)

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records made in order dated 29.03.2019 passed in S.C.No.217 of 2009 on the file of First Additional Sessions Judge, Salem and set aside the same.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This Criminal Original petition has been filed challenging the order passed by the Court below cancelling the bail granted in favour of the petitioner.

2. This is a text book case of how the trial Courts are being hoodwinked and proceedings are virtually frustrated and stalled by a devious and wily practice adopted by accused persons, where multiple accused persons are involved in a single case and each of them keeps absconding in turns and thereby blunt and make the proceedings ineffective.

3. An FIR came to be registered in Crime No.538 of 2003 for a major offence under Section 302 of IPC, which consisted of nearly 23 accused persons and petitioner was ranked as A4. The investigation was completed and final report was filed and the case was taken on file in SC No.34 of 2005 by the 1st Additional Sessions Judge, Salem. Immediately after the FIR was registered, the petitioner herein surrendered before the Judicial Magistrate No.4, Salem on 25.08.2003 and he was remanded to judicial custody. Later, the petitioner filed the petition in CrI.O.P.No.44625 of 2003 seeking for bail before this Court and this Court by an order dated 06.01.2004 enlarged the petitioner on bail by imposing certain conditions.

4. It will be relevant to extract the Court proceedings that took place from 28.01.2005 to 25.06.2007, as follows:

28.01.05

Received by transfer from Principle District Court ,Salem. Issue Proceedings to the Committal Court for appearance of the accused by 10.2.2005

10.02.05

Letter sent in D.No 73/05 dated 31.1.05 for apparanace.A10 to A14 and A16 to 24 present.A15 produced.Mr.P.Perumal files MOA for A10 to A12,A14,A22.Mr.A.Murugesan filed MOA for A18 .Engaging dwfence counsel for A1 to A9,A13,A15 to A17,A19 to A21,A23 to A24 by 24.02.05.Remand extended till then for A15.

24.02.05

For engaging defence lawyer for A1 to A9,A13,A15to A17,A19 to A21 ,A23 and A24 .A1 absent.Mr.A.S.Anbu files MOA to A16,A19,A20.A2 to A14 , A16 to A24 present. A15 produced .Mr.A.Vanthamathatharam filed MOA to A15.Engage defence counsel for A2 to A9,A13,A17,,A21,A23 and A24. A1 absent.Issue NBW for A1.A15 to be produced on 9.3.05 if he is custody.

9.3.05

A2 to A14,A16 to A24 present.Mr.A. Vanthamathatharam files MOA for A9,A17.A15 not produced and not present.NBW pending against A1. Call on 24.3.05.For engaging defence counsel for A2 to A4,A13,A17,A2,A23 and A24.Addres central prison authorities.

24.3.05.

A2 to A24 present.Mr.A.S.Anbu files MOA for A13,A23.Engage defence counsel for A2 to A12,A14 to A22 and 24 by 7.4.05 .NBW pending against A1.

7.4.05

A2 to a24 present.Engaging defence counsel for A2 to A18 ,A15 to A24 by 27.4.05.NBW against A1 pending.

27.4.05

A2 to A24 present.For engaging defence counsel for A2 to A8,A15,A21,A24 by 12.5.05 NBW pending against A1.

12.5.05

A2 to A24 present.Mr.P.Chandra sekaran ,files MOA for A2 and A23. NBW pending against A1 Call on 26.5.05

26.5.05

A2 to A24 present. Mr.P.Chandra sekaran ,files MOA for A13 and A23. NBW pending against A1 Call on 8.6.05

8.6.05

A2 to A24 present.Call on 28.6.05

28.6.05

A2 to A24 present.Call on 12.07.05

12.7.05

A2 to A24 present. NBW pending against A1. Call on 2.8.05

2.8.05

A2 to A24 present. NBW pending against A1. Call on 24.8.05

24.8.05

A2 to A24 present. NBW pending against A1. Call on 15.9.05

15.9.05

A2 to A24 present. NBW pending against A1.29.9.05

29.9.05

A2 to A24 present. NBW pending against A1. Call on 20.10.05

20.10.05

A2 to A24 present. NBW pending against A1. Call on 15.11.05

15.11.05

A2 to A24 present. NBW pending against A1. Call on 29.11.05

29.11.05

A2 to A24 Present, NBW Pending against A1.Call on 20.12.05

20.12.05

A2 to a18 and A20 to A24 Present, A19 absent. Petition us 317CrPC filed and allowed NBW pending against A1 .Call on 10.01.06

10.01.06

A2 to a24 present, A1 NBW Pending and the Police not executed the NBW till today learned Addl PP files memo for split up the case.Address to PDJ for split up the case against A1, call on 31.1.16

31.01.06

NBW against A1 pending , A2 to A4 A5, A5 to A24 Present. Await orders from District Court. Called on 24.02.06

24.02.06

A2 to A24 Present. Await Await orders from District Court for split up by 15.3.06

15.03.06

A2 to A4 , A6 to A23 Present A5 and A24 Absent. Petition filed and allowed . Await District Court orders by 04.04.06

04.04.06

A2 to A24 Present. Framing of charges by 17.04.06

17.04.06

A2 to A24 Present. Framing of charges by 28.04.06

28.04.06

Suomoto hearing advanced. Asper the proceeding of the principal District Judge Salem in D.No. 3717, Dated : 28.04.06 Transferred to IADJ , Salem for disposal according to Law

01.06.06

Received by Transfer From FTC - I , Salem as per order of the principal sessions judge, Salem and posted to 7.06.06 For appearance of the accused

07.06.06

For appearance of the accused for consideration. A1 to A3 , A5, A6, A8 to A24 present. Case Against A1 have already been splitop and numbered in SC 109/06 and the remaining accused i.e A2 to A24 arranged as accused A1 to A23 in this case A1 to A, A15, A6, A8 to A23 present A4 and A7 absent. No representation. Issue NBW against a5 and A7. Case adjourned to 26.06.06 for further proceedings.

26.06.06

NBW pending A4, A7 , A1 to A3, A8 to A23 present NBW pending against A4 and A7. Call on 19.07.06 for excution of NBW.

30.06.06

Takenup today. A7 surrendered, accepted and recall NBW case adjourned to 19.07.06

19.07.06

NBW pending A4. A1 and A2 present . A5 to A13, A15 to A23 present. A3 absent. No representation for A3. Issue NBW, A14 absent petition u/s 317 Cr.P.C is filed allowed. NBW pending

against A4 . Case adjourend to 10.08.06

10.08.06

NBW pending A3 A4 , A1, A2, A5 and A23 present. A3 surrenderd. NBW pending against A3, A4 . Case adjourend to 07.09.06. For further proceedings petition to recall NBW filed and allowed.

07.09.06

NBW pendig against A4. A1 to A3 A5 to A23 Present. NBW pending against A4 . Case adjourend to 06.10.06. For execution of NBW.

06.10.06

NBW pendig against A4. Taken up today. A4 surrenderd. Petition re call NBW filed and allowed . Recall NBW. Case adjourend to 06.10.06

06.10.06

For clarification. Today declared as holiday. Reposted to 02.11.06

02.11.06

For consideration. A1 to A23 present and request of the council for the accused case adjourend to 01.12.06 for consideration.

1.12.06

A1 to A23 present. Adjourned to 16.12.06

16.12.06

For consideration. A1 to A23 present. At request of the counsel case adjourned to 21.12.06 for consideration.

21.12.06

For consideration. A1 to A7 and A9 to A23 present. A8 absent. Petition u/s.317 CrPC is filed and allowed. Case adjourned to 5.1.07 for futher proceedings.

05.1.07

Connected SC.109/06 NBW pending. For Consideration A1 to A4,A6 to A23 present. A5 absent. Petition u/s.317 CrPC filed and allowed. Case adjourned to 5.2.07 for consideration.

5.2.07

A1 to A5,A7 to A23 present. A6 absent. Petition u/s.317 CrPC is filed and allowed. Case adjourned to 27.2.07 for further proceedings.

27.2.07

For consideration. A1 to A23 present. Case adjourned to 6.3.07 for consideration.

6.3.07

A1 to A22 present. A23 absent. Petition u/s.317 CrPC is filed and allowed. Thiru A.S.Anbu filed MOA for A10,A11,A12,A14 and A22 and Thiru.Vathematharam filed MOA for A19. Case adjourned to 15.3.07 for consideration.

15.3.07

For consideration. A1 to A23 present. Connected SC.109/06 accused present. He is main and 1st accused as per charge sheet connected to SC.109/06 as clubbed in this case. Accused rearranged as per charge sheet. Now the case against A1 to A24 in this case. Heard both sides. Records perused. On a perusal of case records it is seen that there is a prima facie case there are grounds to proceed the case. Hence charge u/s.148 IPC against A5,A6,A7,A9,A16,A17,A19 and A20 ; u/s.147 IPC against A21 to A23; u/s.302 IPC against A6,A7,A16 and A17; u/s.302 r/w.149 IPC against A1 to A5,A8 to A15, and A18 and A20; u/s.302 IPC against A5,A9 and A20; u/s.302 r/w.149 IPC against A1 to A4,A6

to A8,A10 to A18; u/s.302 r/w.114 IPC against A21 to A23; and u/s.120(b) r/w. 302 IPC against A1 to A4,A9,A20 and A24 framed against the A1 to A24 and read over to them and they denied them wants to try the case. Hence case adjourned to 12.4.07 for fixing trial date.

12.4.07

A1 custody. A1 produced. A2,A4 to A24 present. A3 absent. No representation for A3. Issue NBW. Case adjourned to 25.4.07 for fixing trial date. Remand extended till then for A1.

25.4.07

A1 produced. A2,A4 to A24 present. NBW pending against A3. Case adjourned to 14.6.07 for execution of NBW for further proceedings. Remand extended till then.

14.6.07

A1 produced. A24 absent. All other present. Issue NBW for A24. Adjourned to 28.6.07. Send letter to DGP by 14.6.07 at request of PP. Remand extended till then.

25.6.07

Taken up today. A24 surrendered. Accepted and recalled NBW. Adjourned to 28.6.07 for further proceedings.

5. The petitioner was arrested in another case by Periyakulam Police Station, Theni District in Crime No.232 of 2007 and was remanded and lodged at Madurai prison on 26.06.2007. The petitioner was transferred from Madurai prison to Trichy prison on administrative grounds on 12.08.2007. Subsequently, the petitioner was enlarged on bail in Crime No.232 of 2007, by an order dated 25.09.2007.

6. It will be relevant to extract the Court proceedings from 28.06.2007 to 19.12.2007 hereunder:

28.6.07

A1 produced. A4 NBW pending. A6 absent. 317 petition filed and allowed. All others present. Adjourned to 4.7.07. On requisition issue PT warrant to A4. Remand extended till then.

4.7.07

A4 under Police custody in connection with other case. All others present. Adjourned to 18.7.07

18.7.07

A1 produced. All others present, adjourned to 24.7.07. Remand extended till then for A1. Palanivelu/A4 produced at 3.55 pm on PT warrant. Accused questioned. Advocate on boycott. Accused not meet his counsel, wants time adjourned to 24.7.07. Accused sent back to jail.

24.7.07

A4 produced under PT warrant. A4 submitted that he has engaged Mr.Haribaskar as his counsel and he has gone to Madras to attend other cases, he wants time. APP filed petition APP filed petition regarding to remand the accused in this case for which the petitioner wants to submit his reply after consulting his lawyer. Hence case adjourned to 7.8.07. A1 produced. All others present. A4 sent back to jail. A1 remaned to custody till then.

7.8.07

*A4 produced under PT warrant. Filed petition seeking legal aid lawyer. A1 to
A8,13,15,21,23 and 24 were also submitted that pray time*

seeking for legal aid lawyer Address Seretary, Legal aid, adjourned to 21.8.07. A1 remand extended till then. A4 sent back to jail.

21.8.07

A4 not produced. Address jail authority. A4 produced under PT warrant. All others present. Mr.K.Thirumurugan filed memo of appearance for A13,A15,21,23,24 mR.Senthilkumar filed memo of appearance for A1 to A4. Out of which A4 is not willing to face trail submitted by his council. He filed petition to that effect send letter to Legal Aid Services Authority Salem. Mr.R.Venkatasubramaniyan filed memo for A5, A15, A8. Adjourned to 6.9.2007. Passed over for prisoners. A4, A11 filed petitions seeking for appointment of Advocate and of their own choice (2 petitions filed seperately). Both petitions are forwarded to the Legal Aid Secretary. Additional petition of A4 asking for food etc. Is also forwarded to Superientendent of Central Priso Trichy. Adjourned to 6.9.2007.

4.9.2007

Taken up today.

6.9.2007

A1 produced. A4 produced under PT warrant. Others present. Await report from Legal Aid Services. Adjourned to 20.9.2007. A1 submitted petition. Forwarded to legal Aid.

20.9.2007

A6 Absent. A1 produced. A4 produced under PT warrant. All other accused present. Reply received from Legal Aid that they can not spare advocates from other places. Passed over. A4 filed petition for appointment of Advocate and of their own choice.

The counsel for accused No 10, 11, 12, 14, 16, 18, 23 filed petition to split up the case. Notice to APP adjourned to 4.10.07. P.Damayanthi files MOA, along with 317 petition, accused admitted in the Erode hospital. Petition allowed. A1 remand extended till then. A4 sent back to prison. Petition of A1 filed and pending.

4.10.2007

A1 produced. A4 produced under PT warrant. Mr Vanthematharam filed MOA for A9, A17, A20. He filed petition to split the case against the above said three accused. A18 filed separate petition to split up the case against him. Council for A10, A11, 12,14,16,19 AND 22 filed petition to split up the case against them. All split up petitions are allowed. Case against them are split up and assigned separate SC number today and posted 23.10.2007 for further proceedings. Accused No 1 to A18, A13, 15,21,23 and 24 filed petition to appointment of counsel by their own choice with regarding with requisition forwarded to legal aid Salem for further action. Other accused are party to the main case. Hence call on 23.10.07. A1 remand extended. A4 sent back to prison.

23.10.07

The case against the following accused 1.Sadaiyan(A9), 2. Karuppannan(10), 3.Selvam(A11), 4.Thiyagarajan(A12), 5.Dharmalingam(A14), 6.Selvam(A16), 7.Murugesan(A17), 8.Kumaresan(A18), 9.Manickam(A19), 10.Kalaivanan(A20), 11.Krishnammal(A22) are split up from this case and assigned new sessions case No.184/2007 as per proceedings of the Principle Sessions Judge, Salem in Roc.No.9298 dated

10.10.2007. The remaining accused rearranged as follows:

- 1. Natesan, S/o. Nallagounder*
- 2. Jagan @ Jaganathan, S/o. Srithar*
- 3. Kumaravel, S/o. Subramani*
- 4. Palanivel, S/o. Sankar*
- 5. Annamalai, S/o.Sankar*
- 6. Sekar, S/o. Sankar*
- 7. Kutti @ Selvam, S/o. Subramani*
- 8. Poosari @ Arunachalam, S/o.Arumugam*
- 9. Selvaraj, S/o. Kolanthai gounder*
- 10. Nila, S/o. Annaigounder*
- 11. Vijaya, W/o.Natesan*
- 12. Madhu, W/o. Selvaraj*
- 13. Manimaran, S/o. Chinnaiyan*

Jagan @ Jaganathan, Selvaraj, Natesan and Madhu - 4 alone have filed petition to split up them from SC.34/2005. No Objection endorsed by APP. Petition allowed. Case against said 4 accused are splitted. Address to PDJ for assigning SC.No.to the above said 4 accused. A1 produced. A4 produced under PT warrant. 11 others present. Counter of APP filed in CMP.51/07. Reply received from legal aid, Salem that they address to state legal aid, Madras. CMP also pending. Adjourned to 20.11.07. A1 remanded extended till then. A4 sent back to jail.

20.11.07

Case against A2,A13,A15 and A23 are split up and numbered as SC.225/07 remaining accused arranged as follows;

- 1. Natesan(A1)*

2. Kumaravel(A3), 3. Palanivel (A4), 4. Annamalai (A5)

5.Sekar (A6)

6.Kutti @ Selvam (A7)

7.Poosari @ Arunachalam (A8)

8.Vijaya (A21)

9.Mani,aran(A24)

Reply not received from State Legal authority,Chennai.Produced A3 under PT warrant.C.M.P. 51/07 ordered.CMP .62/07 ordered. Adjourned to 5.12.07 for further proceedings.Since legal authority request has not been received by this court..A3 sent back to jail.

5.12.07

A3 under custody not produced under Video conference.All other produced .Letter received from Legal aid.Inform the accused.Adjourned to19.12.07.

19.12.07

As the presiding Officer is on leave reposted to 22.1.08

7. The petitioner came to be arrested in another case registered at Orissa and he was transferred from Trichy to Orrisa prison in the strength of PT warrant issued by the Sub Divisional Judicial Magistrate, Koraput, Orrisa, on 24.01.2008.

8. It will be relevant to extract the Court proceedings from 22.01.2008 to 05.10.2009 hereunder:

22.1.08

A5 absent. 317 petition filed and allowed.Thiru.Nagarathinam filed MOA for A5.All others present except A3.Passed over.Adjourned to 18.2.08.Letter received from Central prison, Trichy for want of production of the accused through video conference since he was produced in a case at Orissa state.Adjourned to 18.2.08.Accused shall be made available in video conference on that date.

18.2.08

A1,A2,A5,A9 present. A4 absent.No representation .Issus NBW against A4.A2,A8 enaged counsel from legal aid..Letter received from Legal Aid..A5 Mr.Nagsrathinam filed memo of appearance .A1,A3,A4,A6,A7 filed memo --- .A3 not prodiced through video confetence.Letter received from prison in 5071/08 dated 18.2.08.Accused shall be made available on 7.3.08 through video conference.

7.3.08

A4 pending NBW.A1 A2,A9 present.Tr. P.Mayavan advocate filed memo ofa appearence for A9.Await reply from Legal AiD fpr counse for Some of the accused.Letter received from Jail.A3 not yet returned for from Orissa Anjourned ti 31.3.08. Sent intimation to jail fir A3.

31.3.08

A1,A2,A5,A9 present. A4 NBW pending.Memo of appearence for A2 Mr.Haribabu. filed and Miss.P.Damayanthi filed memo of apparance fpr A8 .A3 not produced through conference.Letter received from Central Prison,Trichy for engaging counsel for A1,A3,A6and A7 at request adjourned to 28.4.08.

28.4.08

Except A3,A4 all others present at request of counsel adjourned to 3.6.08.

Letter not received from Legal Aid.PT warrant for A3 received from

Central Prison, Trichy A4 NBW pending. Addressed to SP. A3 to be produced on 3.6.08.through video conference if available.

3.6.08

Mr.B.Mohan filed memo appearance for A1,A3,A7.Mr.A.Nagarathinam , filed memo of appearance for A6.A2 absent.317 filed and allowed.A4 absent, issue NBW.A3 not produced.Others present.APP is directed to ascertain the nature of the case under which the accused detailed etc particulars for the hearing date 26.6.08.

26.6.08

A3 not produced. A4 already NBW .Others present.Adjourned to 21.7.08.

21.7.08

A3 not produced. A4 under NBW .A9 absent. Petition u/s 317filed and allowed. Others present.Notice to the surity of A4 for the hearing 14.8.08.

14.8.08.

A3 not produced. Others present.Adjourned to 29.8.08 .

18.8.08

Taken up today.Letter received from Central Prison, Trichy.Accused not produced .Accused order to the produced on 29.8.08. through Video conference.

29.08.08

CMP 43/08 is pending Call on 2.9.08

1.9.08

Taken up today. Since PT warrant and letter in Dis. No 5070/சு.1/07 dated 30.8.08. Letter in Dis. No 5070/சு.1/07 dated 30.8.08. are produced. Letter returned with direction to produce particulars of the accused. Accused under PT warrant, Adjourned to 15.9.08 to Call On 2.09.08.

02.09.08

A4 under NBW A3 absent. All others present. Adjourned to 15.09.08

15.09.08

CMP .43/08 is pending . Today declared as Holiday due to 100th birthday of Annadurai.

16.09.08

CMP.43/08 is pending. Except Ex, A3 and A4 all other accused are present. Adjourned to 29.09.08.

29.09.08

A3 at Orisa central jail A4 NBW pending. All others present. Adjourned to 20.10.08

20.10.08

A3 at Orisa. A4 NBW pending. Others present. Adjourned to 20.11.08

20.11.08

A3 absent A4 NBW pending A1 absent. 317 petition filed and allowed other accused present adjourned to 28.11.08.

21.11.08

A4 NBW. Remainder to S.P A3 absent NBW pending CMP is pending. Call on 10.12.08

10.12.08

A3 at Orissa. A4 absent NBW all other present. At request of PP adjourned to 30.12.08

30.12.08

S.I present. Repermented that they are tokking steps to produce A3, A4 in custody. Others present. A2 produced. Remand extended till 20.01.09

20.01.09

A3 at Orissa A4 produced. All others present. SI present repermented that steps being taken and requested adjourn to 06.02.09. remand extended till then.

06.02.209

A3 at Orissa A4 Produced. Others present case adjourned to 25.02.09. remand extended till then for A4

25.02.09

A3 absent. A4 not produced. A1, A2 ,A5 to A9 present. Call on 18.03.09

18.03.09

A3 absent. A4 not produced. All others present. APP present. Police absent for steps at request adjourned to 03.04.09

03.04.09

A4 custody produced. A3 at Orissa prison and all other accused are present. SC 84/07 all the accused are ordered to be clubbed along with other accused. For rearranging the accused asper

charge sheet adjourned to 13.04.09 after split up the accused No .3 (Palanivel) in veiw of the order passed in CMP .53/08 in SC 184/07 Dated : 24.03.07 remand extended till then for A4 address to PDJ assign New Number to be splited accused 12.00 noon – APP filed petition to issue PT warrent against A3 Palanivel, He is at Orissa center jail P.T Warren issued . No need to split up the case against A3 Palanivel

13.04.09

A24 absent. 317 petition filed and allowed. A4 absent. Police absent. A5 produced . All others present. P.O. 3.00 PM. Police present. Await PT Warrent letter from Orissa adjourned to 24.04.09. remand extended till then.

24.04.09

A4 absent. At Orissa , A15 absent. 317 petition filed and allowed.A5 Not produced others present adjourned to 05.06.09

05.06.09

Thiru DSP Rajendran filed MOA by the district level services athority. A4 under P.T warrent A1 absent 317 petition filed and allowed. A4 others present adjourned to 26.06.09

26.06.09

Judge is on OD. Reposted to 09.07.09

09.07.09

A3 at Orissa. A8 absent 317 petition filed and allowed. Others present at request of APP adjourned to 14.07.09.

14.07.09

A4 at Orissa. A3 abent 317 petition filed and allowed. APP filed petiton to splitup the case against A4 Palanivel is pending . Call on 22.07.09

22.7.2009

A4 at Orissa jail as per APP representation. A1 and A16 absent. 317 petition filed and allowed. CMP is allowed. Split the case against A4. Call for FP 3.8.09. Sent letter to PDJ.

3.8.09

A2 absent. others present. split up order for a4 not yet received in the court from PDJ, Salem. Adjourned to 14.8.09.

14.8.09

A1, A2, A12, A20 absent. 317 petition filed and allowed. A4 reported to be at Orissa. All others present. Await split up order from PDJ, call on 1.9.09.

1.9.09

A6, A8, A16, A20 absent. 317 petition filed and allowed. All others present. Adjourned to 9.9.09 for appearance of accused.

9.9.09

A1 absent. 317 petition filed and allowed. At request of accused council to file the hearing date of the completing their council at request adjourned to 14.09.09.

14.9.09

A8, A11, A20, A23 absent. 317 petition filed and allowed. All others present. Trail date fixed with consultation of all council on record and hearing date 5.10.09 to 8.10.09. Issue proceedings.

5.10.09

The case against A4 namely Palanivel, s/o Sankar split up from this case and numbered as SC 217/09 remaining accused 23 as arranged in this case for altering the charge and Trail. 15 witnesses present. For A18 Thiru Muthusamy filed memo of

appearance. Pased over. All other present. A1 absent. Issue NBW. Call on 15.10.09.

9. It is seen from the above extract of proceedings that the case was split up insofar as the petitioner is concerned and was assigned SC.No.217 of 2009. The Trial Court was repeatedly communicating with the Additional Sessions Court, FTC, Jaipur, Korakupt, Orissa, to produce the petitioner at the Salem Court. This communication was going on from 05.10.2009 onwards. However, the petitioner was not produced before the Court. Ultimately a message was received on 10.01.2011 from the Superintendent of District Jail, Korakput to the effect that the petitioner has been acquitted in the Orissa case by judgment dated 06.01.2011. The accused was produced under PT warrant on 21.02.2011 before the Salem Court and ultimately the PT warrant was returned since the petitioner was already acquitted in the Orissa case and the petitioner was already on bail in the present case. Thereafter, the petitioner started appearing in the present case from 07.04.2011 onwards. The petitioner again absented himself from 29.11.2011 and a non-bailable warrant came to be issued against the petitioner by the Court below on 29.11.2011. The non-bailable warrant was pending without being executed from 29.11.2011 till 08.11.2016 for nearly five years.

11. The petitioner came to be arrested by the Salem Q Branch in another case in Crime No.01 of 2016 and was remanded to judicial custody on 01.10.2016. This was brought to the notice of the Court below and the Court below issued a PT warrant on 03.10.2016 directing the petitioner to be produce before the Court and the petitioner was brought before the Court on 08.11.2016.

12. It will be relevant to extract the proceedings from 26.10.2016 till 10.08.2018 hereunder:

26.10.2016 NBW Pending. Reminder sent to the Commissioner of police Salem. D.No 7209/16 Dt:27.09.2016 As per requisition of I/O Dt:03.10.2016 PTW issued in D.No.7382/16 Dt: 03.10.2016. Accused produced through PTW. Produced the accused before this court on 08.11.2016 The Inspector of Police Veeranam PS is directed to file a detailed report to this accused by 09.11.2016

23.11.2016 Accused Produced through PTW. Produced the accused by 07.12.2016 for engaging Council.

07.12.2016 Accused not produced. Produce the accused through PTW on 21.12.2016 for engaging council.

21.12.2016 Accused Produced through PTW to engaging the council on 03.01.2017

03.01.2017 Accused produced through PTW Mr.P.Chandrasekaran filled memo for the accused.

10.01.2017 Accused Produced through PTW produce the accused by 24/1

24.01.2017 Accused not Produced through PTW. To produced accused by

07.02.2017

07.02.2017 Accused Produced through PTW. To produced the accused by 14.02.2017

14.02.2017 Accused Produced through PTW. For Clarification and perusal of F/P accused to be produce by 20.02.2017.

20.02.2017 Accused Produced through PTW. Since the accused has produced by 23.02.2017

23.02.2017 For Clarification and Perusal F/P. PO is on Leave.

27.02.2017 Accused Produced through PTW. Directed to produced on 08.03.2017

08.03.2017 Accused Produced through PTW. Notice given to the accused.

16.03.2017 Memo filled by the council of accused. Accused not produced.

21.03.2017 Accused Produced through PTW. Reply filled.

01.04.2017 Holiday

03.04.2017 Accused not produced.

10.04.2017 Accused not produced. Intimation received.

24.04.2017 Accused Produced through PTW for perusal and reply and ordered by 29.04.2017

29.04.2017 Accused not produced.

29.06.2017 Accused not produced.

27.07.2017 Accused Produced through PTW. To perusal the reply by the accused by 10/08/7

10.08.2017 Accused not produced. Intimation received.

11.09.2017

10.10.2017

24.10.2017 Accused Prouduced through PTW.

- 02.11.2017 Accused Proududed through PTW. For perusal and reply by 06/11*
- 06.11.2017 Accused Proududed through PTW. For perusal and reply by 07/11*
- 07.11.2017 Accused Proududed through PTW.*
- 24.11.2017 Accused Proududed through PTW.*
- 11.12.2017 Accused Proududed through PTW.*
- 18.12.2017 Accused not produced.*
- 08.01.2018 Accused Proududed through PTW.*
- 22.01.2018*
- 29.01.2018 Accused not produced.*
- 07.02.2018 Accused Proududed through PTW.*
- 16.02.2018 Accused not produced. Intimation received.*
- 01.03.2018 Copy Communication received from DISA that Thiru.P.Chandrasekaran Advocate is appointed for the accused through legal Aid as per the requisition given by the accused Dt on 16.02.2015. for filling memo of appearance by Thiru.P.Chandrasekaran.Accused Proududed through PTW*
- 08.03.2018 Accused not produced. Intimation received.*
- 22.03.2018*
- 02.04.2018*
- 10.04.2018*
- 12.04.2018*
- 12.06.2018 Accused Proududed through PTW.*
- 19.06.2018 Accused Proududed through PTW. Thiru.P.Chandrasekaran appeared.*
- 21.06.2018 Accused Proududed through PTW. Issue summon to the witness as per the defence council by 28.06.2018, 29.06.2018.*

28.06.2018 Accused Produced through PTW. Petition filled by accused appointment of legal Aid Council by 12.07.2018

12.07.2018 Report received from DSLA as Thiru S.D.Manickavasagam appointed through legal Aid to the accused. For filling memo of appearance by Thiru.S.D. Manickavasagam. DSLA has appointed Mr.S.D Manickavasagam Advocate for the accused. Accused filled a petition. Ordered on the petition by 19.07.2018

19.07.2018 Petition pending. Accused not produced.

25.07.2018 Accused produced. Accused petition pending.

30.07.2018

03.08.2018

10.08.2018 Accused Produced. CMP Pending. (CMP No.237/2018 - Accused filled petition to appoint P.Mohan Advocate for him through DSLA.)

13. In the meantime, the trial went on insofar as other accused persons are concerned in SC No.34 of 2005 and by judgment dated 12.04.2018 five accused persons were acquitted and fifteen accused persons were convicted and three of the accused persons died during the proceedings and the proceedings abated insofar as they are concerned.

14. From the proceedings extracted hereunder above, it can be seen that the petitioner was produced before the Court on PT warrant from 08.11.2016 onwards and it is not clear as to why the case of the petitioner which was split up in SC No.217 of 2009 was not merged along with the main case and the petitioner was also made to face the trial in the main case itself along with the other accused persons. There was no meaning in repeatedly

producing the petitioner before the Court from 08.11.2016 till 12.04.2018, when the final judgment was passed in SC No.34 of 2005, without making him face the trial during this period. It was a wasteful exercise which was going on for nearly one and half years and no useful purpose was served by repeatedly producing the petitioner before the trial Court on PT warrant when the co-accused were facing trial for the same case. The trial Court had an easy option of making the petitioner face the trial along with the co-accused and unfortunately that chance was missed by the trial Court.

15. From 10.08.2018 onwards, the *status quo* continued up to 29.03.2019. On 29.03.2019, the Investigation Officer gave a requisition before the Court below to cancel the PT warrant and to issue a regular warrant. It is not known under what provision of law, this requisition was made, since admittedly the petitioner was on bail in the present case.

16. On 29.03.2019 the Court below *suo moto* initiated proceedings for cancellation of bail and put the petitioner on notice. The petitioner represented before the Court that he was not able to be present before the Court due to circumstances beyond his control and he was arrested in two other cases. However, the Court below on the very same day proceeded further to cancel the bail granted in favour of the petitioner on the ground of

breach of bail condition and the petitioner was again remanded to judicial custody. This order has now been put to challenge before this Court in the present Criminal Original Petition.

17. Mr.R.Sankarasubbu, the learned counsel appearing on behalf of the petitioner submitted that the procedure adopted by the Court below is illegal. He attacked the order of the Court below on the following grounds:

- Bail was granted by this Court and therefore the Court below did not have the power to cancel it.
- The PT warrant cannot be converted into a regular warrant and it is alien to the provisions contained under the code of criminal procedure.
- The petitioners ought to have been tried along with the other co-accused persons, when he was produced before the Court from the year 2016 onwards for every hearing through PT warrant and the Court below should not have kept the split up case of the petitioner pending and made him attend the Court proceedings for more than one and a half years.
- The detention of the petitioner for such a long time and the cancellation of the bail granted in favour of the petitioner, is illegal

and violates the right of liberty guaranteed under Article 21 of the Constitution of India.

- The bail granted to the petitioner cannot be cancelled by producing the petitioner through PT warrant when the petitioner has been arrested in another case.

18. Mr.M.Mohamed Riyaz, the learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the petitioner is a habitual offender who is involved in various cases. He further submitted that the petitioner was dragging on the proceedings for a very long time and it is to be borne in mind that the sessions case was pending from the year 2005 onwards. The learned Additional Public Prosecutor submitted that the non appearance of the petitioner before the trial Court on 29.11.2011 was willful and wanton and the non-bailable warrant was pending against the petitioner from 29.11.2011 till 08.11.2016, for nearly five years, when the petitioner was produced through PT warrant after he was arrested by the Q Branch in another case and thereafter the petitioner had violated the bail conditions and the Court below had the power to cancel the bail bond which had the effect of automatic cancellation of the bail under Section 446-A of Cr.P.C. and therefore the order passed by the Court below is perfectly in accordance with law. In order to substantiate his arguments, the learned Additional Public Prosecutor relied upon the judgment by this Court in the case of ***Pillappan @***

Ravikumar vs. State reported in ***2018 (3) CTC 156***.

19. This Court has carefully considered the submissions made on either side and the materials available on record.

20. Three important questions that arises for consideration in this case are;

(a) When an accused person is on bail and he fails to appear before the trial Court resulting in a non-bailable warrant issued against him and the accused gets arrested in another case and he is produced before the trial Court through the PT warrant, in execution of the non-bailable warrant, whether the PT warrant can be converted into a regular warrant and the accused person can be remanded to custody?

(b) Whether the bail granted by this Court can be cancelled by a Subordinate Court on the ground of violation of bail conditions?
and

(c) When the accused person is produced before the Court through PT warrant, in execution of non-bailable warrant, and at that point of time the trial is going on for the co-accused, will it not be appropriate for the trial Court to have merged the split up case of the petitioner along with the main case and made the petitioner also face trial along with the co-accused and by not adopting this procedure, whether the petitioner has been put to prejudice and thereby the proceedings against him stands vitiated?

21. It will be relevant to extract Section 267 of Cr.P.C. as follows:

267. Power to require attendance of prisoners -

(1) Wherever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court.—

(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or

(b) that it is necessary for the ends of justice to examine such person as a witness, the Court may make an order requiring the officer in charge of the prison to produce such person before the Court for

answering to the charge or for the purpose of such proceeding or as the case may be, for giving evidence.

(2) Where an order under sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

22. This Section empowers the Court to direct the Officer In-charge of the prison to produce the detenu before it, if the Court is of the opinion that his presence is necessary.

- I. For answering to a charge of an offence (or)
- II. For the purpose of any proceedings against him (or)
- III. If it is necessary for the ends of justice to examine such person as a witness.

23. This Court had an occasion to deal with the scope of PT warrant and it will be a relevant to take note of those judgments.

24. In the case of ***Appu alias Santhakumar and other vs. State*** reported in ***2004 MLJ (CrI) 440***, this Court has held as follows:

11. The point arises for consideration in these petitions is that when a person (who was granted bail by the competent Court and released after furnishing sureties, but was subsequently arrested and remanded in connection with another offence) is produced before the Court in the first case under a P.T.Warrant, whether that Court can remand him again in the first case till the next hearing date.

12. In view of the importance of the question involved, the Court requested the learned Public Prosecutor to clarify the position of law and he appeared and submitted his arguments.

13. Mr.I.Subramanian, learned Public Prosecutor, submitted that a person commits an offence and he is arrested and remanded to judicial custody; he obtains bail and produces sureties and is let on bail; the very same accused commits another offence and for that offence he is arrested and remanded to judicial custody; therefore, the accused was unable to attend the Court, in the case in he was granted bail; under the circumstances a P.T.Warrant, as contemplated under Sec.267,

Crl.P.C, is issued and the accused is so produced; subsequently, if he is granted bail and released on producing sureties in the second case as well, the Court of first instance before which he was produced under a P.T.Warrant cannot remand him till the next hearing date before it. He further submitted that the bail granted by the Court pursuant to which sureties were produced and bonds were executed, can be cancelled only in the manner known to law. Such a cancellation is provided under Secs.437(5) and 439(2), Crl.P.C. The circumstances under which a bail can be cancelled has been set out in Sanjay Gandhi's case and subsequent pronouncements by the Supreme Court. Therefore, the order passed under Sec.272, Crl.P.C. pursuant to which a P.T. Warrant is issued can, by no stretch of imagination, supersede an order of bail granted to the accused. That is not the intent and purpose of a P.T.Warrant, which is purely a temporary order (directing the production of an accused to answer a charge or to give evidence, etc. as contemplated under Sec.267, Crl.P.C). Therefore, merely because the accused is remanded to custody, when produced under a P.T.Warrant, that he should again seek bail in the Court of first instance, is against the provisions of law.

14. The learned Public Prosecutor wanted certain remedial measures be taken and suggested the following remedies:13. Mr.I.Subramanian, learned Public Prosecutor, submitted that a person commits an offence and he is arrested and remanded to judicial custody; he obtains bail and produces sureties and is let on bail; the very same accused commits another offence and for that offence he is arrested and remanded to judicial custody; therefore, the accused was unable to attend the Court, in the

case in he was granted bail; under the circumstances a P.T.Warrant, as contemplated under Sec.267, CrI.P.C, is issued and the accused is so produced; subsequently, if he is granted bail and released on producing sureties in the second case as well, the Court of first instance before which he was produced under a P.T.Warrant cannot remand him till the next hearing date before it. He further submitted that the bail granted by the Court pursuant to which sureties were produced and bonds were executed, can be cancelled only in the manner known to law. Such a cancellation is provided under Secs.437(5) and 439(2), CrI.P.C. The circumstances under which a bail can be cancelled has been set out in Sanjay Gandhi's case and subsequent pronouncements by the Supreme Court. Therefore, the order passed under Sec.272, CrI.P.C. pursuant to which a P.T. Warrant is issued can, by no stretch of imagination, supersede an order of bail granted to the accused. That is not the intent and purpose of a P.T.Warrant, which is purely a temporary order (directing the production of an accused to answer a charge or to give evidence, etc. as contemplated under Sec.267, CrI.P.C). Therefore, merely because the accused is remanded to custody, when produced under a P.T.Warrant, that he should again seek bail in the Court of first instance, is against the provisions of law.

14. The learned Public Prosecutor wanted certain remedial measures be taken and suggested the following remedies:

(1) A general direction may be issued to Magistrates in such cases to issue a P.T. Warrant by the Court of

first instance only if the case is posted for trial.

(2) Under no circumstances, a remand order issued pursuant to a P.T.Warrant, be treated on par with a regular order of remand under Sec. 167, CrI.P.C. or 309, CrI.P.C. as the case may be.

(3) The decision in Anupam Kulkarni's case, A.I.R. 1992 S.C. 1768 has relevance only when during the course of investigation, the accused, who is already in judicial custody, is found to have been involved in an earlier case, under such circumstances a formal arrest can be made by the officer concerned for the purpose of investigation of the case, so that, police custody could be taken within the first 15 days as contemplated under Sec. 167, CrI.P.C.

15. The learned Public Prosecutor also pointed out that in Kattan alias Subramani v. State, represented by Inspector of Police, Avadi Police Station (1992)1 M. W.N. (CrI.) 3 (Mad.), Pratap Singh, J, has directed that the P.T.Warrant be recalled. In Shanmughiah Pandian v. State by Sub-Inspector of Police, Ramanathapuratn Bazar Police Station, Ramanathapuratn (1999)1 M.W.N.(CrI.) 21, B.Akbar Basha Khadiri, J., has granted bail in a case where application for recalling warrant was filed.,

16. In common parlance a warrant issued under Sec.267, CrI.P.C. is called as "P.T. Warrant". The format is proved in the

Second Schedule of the Code of Criminal Procedure, as follows:

FORM NO.36

ORDER REQUIRING PRODUCTION IN COURT OF PERSON IN PRISON FOR ANSWERING TO CHARGE OF OFFENCE.

(See Section 267)

To

The Officer in charge of the jail at.....

WHEREAS the attendance of name of prisoner) at present confined/detained in the above mentioned prison, is required in this Court to answer to a charge of (state shortly the offence charged) or for the purposes of a proceeding (State shortly the particulars of the proceeding); You are hereby required to produce the said.....under safe and sure conduct before this Court on the.....day of19, by.....A.M. there to answer to the said charge, or for the purpose of the said proceeding, and after this Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the said prison. And you are further required to inform the said of the contents of this order and deliver to him the attached copy thereof.

Dated, this.....day of.....19

(Seal of the Court)

(Signature)

Countersigned.

(Signature)

(Seal).

As per Sec.267, CrI.P.C. - Whenever, in the course of an enquiry, trial or other proceeding under this Code, it appears to a Criminal Court, that a person detained in a prison should be brought before the Court "for answering to a charge of an offence", or "for the purpose of any proceedings against him", or "to examine such a person as a witness", the Court may make an order requiring the officer in charge of the prison to produce such person before the Court.

17. For the above purpose, exercising the power conferred under Sec.267, CrI.P.C, the P.T. Warrant is issued. Reading Sec.267, CrI.P.C. with Form 36, it is clear that a person shall be produced before a Court when a P.T.Warrant is issued and that he must be conveyed back to the prison. It appears that, the words "after this Court has dispensed with his further attendance", found in Form 36, are taken by the Court below as if it confers the power on the Court to remand such person for a further period. These words must be read along with the provisions of Sec.267, CrI.P.C. When so read, it could be seen that the purpose of issuing such warrant is to produce the person before the Court "for answering to a charge" or "for any proceedings" or "for giving evidence". When a person has already been granted bail by a competent Court, that can be cancelled only as provided under Sec.437(5) or 439(2), CrI.P.C. Unless and until the bail is so cancelled, the person produced under a P.T.Warrant, cannot be

"remanded".

18. That is, if a person is granted bail by a competent Court he has to execute a bail bond as directed; and then he is released from the prison. Such a person when produced under a P.T.Warrant, (in some proceedings in a case in which he was already granted bail) cannot be "remanded". Such person can only be "conveyed" back to the prison. It is for the prison authority to see whether he was remanded in any other case. If he is not validly remanded in any other case, the prison authorities cannot continue to keep that person in custody. Under those circumstances, when the person is granted bail in the second case in which he was remanded, then, in view of the fact that he was already granted bail for the earlier offence, there would be no valid remand to continue to keep him in jail.

19. The Code of Criminal Procedure does not contemplate "remanding" a person produced under P.T.Warrant. The person produced under P.T.Warrant is only to be "conveyed" to the prison. If the bail granted to such person is not cancelled, there is no necessity to grant bail again. Bail cannot be granted for a second time, merely because he was produced under P.T.Warrant and the Court remanded him again. Issuance of P.T.Warrant is not tantamount to cancellation of the bail.

20. If a person released on bail does not appear before the Court and a non-bailable warrant was issued by the Court against that person, as and when he is arrested and produced before the

Court, the Court which issued non-bailable warrant has to pass an order specifically whether the bail bond executed by him was forfeited. If the Court passes an order forfeiting the bonds executed by the sureties as well as by the accused, it can seek for fresh sureties. Unless and until the bail is cancelled by the same Court or by a superior Court as per Sec.437(5) or 439(2), CrI.P.C. or the bail bonds were cancelled for valid reasons, a person already granted bail but produced under a P.T.Warrant (under Sec.267, CrI.P.C.) cannot be "remanded" by the Court before which he was so produced. Such a person shall only be "conveyed" to prison.

21. A P.T.Warrant is issued as a temporary measure for the production of a person confined in prison before the Court. Such person shall be sent back to prison at the end of the day unless the Court sets him at liberty. A person produced under P.T.Warrant cannot be "remanded" in a case he was granted bail by a competent Court, to be produced on a subsequent date when neither the bail nor the bail bonds were cancelled.

22. In view of the importance of the matter, the following directions are issued to Magistrates and Sessions Judges:

(i) The Courts shall not issue P.T.Warrant unless it is absolutely necessary that such person shall be present on a day for any proceedings before the Court, such as for framing of the charges, or when the trial is on and the witnesses are being examined,

and his presence is necessary, or for questioning the accused under Sec.313, CrI.P.C, or if such person is to be examined as witness in any case.

(ii) After the day's proceedings are over, that person shall be sent back or "conveyed" to prison.

(iii) In case the presence of that person is necessary on any other day a fresh P.T.Warrant shall be issued.

25. In the case of ***Jaleel Ramjan Sha vs. State*** reported in **2008 1 CTC 619**, this Court has held as follows:

4. The respondent filed a report before the Chief Judicial Magistrate, Krishnagiri, stating that since the petitioner was lodged in Kalamba Central Jail, Kolhapur, a P.T.Warrant might be issued to cause production of the accused, namely, the petitioner, before the Court.

5. Acting upon it, on 07.04.2006, the said Court issued an Official Memo to the Superintendent of Central Prison, Kalamba, for production of the petitioner, stating that in spite of issuance of P.T.Warrant, the petitioner was not produced, thereby requesting to cause his production on 17.04.2006. The respondent also requested the Superintendent of Central Prison for production of the accused. Since the said Official Memo did not yield any result, the Chief Judicial Magistrate, Krishnagiri, issued another Official

Memo on 11.05.2006, addressing the Superintendent of Central Prison, Kolhapur, directing him to cause production of the petitioner on 25.05.2006. As the petitioner was not produced on the said date also, the said Court again issued another Official Memo on 25.05.2006 to the said Superintendent of Central Prison, to produce the accused on 06.06.2006. Ultimately, on 06.06.2006, the petitioner was produced before the Chief Judicial Magistrate, Krishnagiri, who remanded him till 12.06.2006, and from the said date, the petitioner has been in jail.

6. Learned counsel for the petitioner would argue in vehemence that the committal Court had erred in remanding the petitioner to custody on 06.06.2006, though he was on bail. It is the backbone of his contention that when the bail granted to him was not cancelled by a judicial order, remanding him to custody on other circumstance is alien to law.

7. The matter with reference to the subsequent involvement of the petitioner in another case in Crime No.4 of 2005 on the file of Kolhapur Police Station was intimated to the Chief Judicial Magistrate, who, in turn, directed for production of the petitioner before the Court, by issuing a P.T.Warrant, on the strength of which the petitioner was produced before the said Court and remanded. Hence, it is to be seen, whether the order of remand by the Chief Judicial Magistrate is legally valid ?

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10. After hearing both sides, the I Additional Sessions Judge dismissed the petition on 14.08.2007. He observed in his order that when the accused was produced before the committal Court and the said Court remanded him to judicial custody, automatically, the P.T.Warrant ceased to exist and once an NBW was issued and subsequently the accused was arrested and remanded, the bail already granted stood cancelled automatically, because he committed breach of his undertaking executed at the time of his being released on bail. The Additional Sessions Judge also touched the merits of the case and the nativity of the petitioner i.e. to say, he hailed from Madhya Pradesh and opined that if the prayer was granted and he was released on bail, there was every possibility for him to abscond and as per the directions of the Supreme Court and the Madras High Court, the trial could not be completed expeditiously.

11. Adverting to the above said factual scenario, learned counsel for the petitioner contends that the Chief Judicial Magistrate was not at all empowered to remand the petitioner nor had he got any authority to extend the remand. In support of his contention, he placed much reliance upon a decision of the Apex Court in *Simranjit Singh Mann v. State of Bihar*, 1988 L.W. (Crl.) 304, wherein it was observed as follows :

"20.....The argument of the learned counsel for the State of Bihar was that the order for release on bail stood extinguished on the remand of the accused to custody under S.309(2) of the Code of Criminal Procedure. There is no substance whatever in this submission. S.309(2) merely enables the Court to remand the

accused if in custody. It does not empower the Court to remand the accused if he is on bail. It does not enable the Court to 'cancel bail' as it were. That can only be done under S.437 (5) and 439 (2). When an accused person is granted bail, whether under the proviso to S.167(2) or under the provisions of Chapter 33 the only way the bail may be cancelled is to proceed under S.437 (5) or S.439 (2)."

12. Learned counsel for the petitioner also garnered support from a decision of this Court in Appu @ Santhanakumar and others v. State and others, 2004 (1) T.N.L.R.599 (Mad), in which it was held as under:

"13....The circumstances under which a bail can be cancelled have been set out in Sanjay Gandhi's case and subsequent pronouncement by the Supreme Court. Therefore, the order passed under Section 272 Cr.P.C. pursuant to which a P.T.Warrant is issued can, by no stretch of imagination, supersede an order of bail granted to the accused. That is not the intent and purpose of a P.T.Warrant, which is purely a temporary order (directing the production of an accused to answer a charge or to give evidence etc. as contemplated under Section 267 Cr.P.C.). Therefore, merely because the accused is remanded to custody, when produced under a P.T.Warrant, that he should again seek bail in the Court of first instance, is against the provisions of law."

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15. *As a mater of fact, the bail granted to the petitioner has not been cancelled by any means. The then Chief Judicial Magistrate, Krishnagiri, has miserably failed to notice that the NBW should not have been allowed to continue after 09.02.2006. On the hearings following 09.02.2006, the Court should have mentioned about the pendency of P.T.Warrant, instead of NBW. When it was brought to the knowledge of the Court that the petitioner/accused was unable to attend the Court on the date of hearing, not on account of his inability but due to the reason of his being arrested and lodged in prison for some other case, it should have either recalled the Non Bailable Warrant or made a direction to the police not to execute it. Without doing so, the Court acted in such a way, which has caused prejudice to the petitioner. The fact of issuance of P.T.Warrant on 09.02.2006 should have been taken into consideration by the Court during the hearings on relevant dates in the month of February,2006. After issuance of P.T.Warrant, the continuance of NBW could not be justified. As laid down in the above said decision of the Supreme Court, when the bail granted to the accused was in existence, remanding him while he was produced on P.T.Warrant is not legally sustainable.*

26. In the case of ***K.S.Muthuramalingam vs. State*** reported in ***2010 4 MLJ CrI 161***, this Court has held as follows:

5. *It is the contention of the learned counsel for the petitioner that the very purpose of issuing a P.T. Warrant is to produce a person who is lawfully confined in a prison to answer a*

charge or to be examined as a witness before a Criminal Court and the mere fact that P.T.Warrants have been issued shall not authorise the Prison Authorities to keep the prisoner in continued custody unless his custody is otherwise legally authorised.

6. Section 267 Cr.P.C reads as follows:-

"267. Power to require attendance of prisoners. - (1) Whenever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court,-

(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him, or

(b) that it is necessary for the ends of justice to examine such person as a witness, the Court may make an order requiring the officer in charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence.

(2) Where an order under sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order."

7. Section 267 of the Code of Criminal Procedure, 1973 deals with P.T. Warrant. It says, whenever it appears to a Criminal Court dealing with an inquiry, trial or other proceeding, in the course of such inquiry, trial or other proceeding under the Criminal Procedure Code that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceeding against him or it is necessary to examine such person as a witness, such Court may make an order requiring the officer in charge of the prison to produce such person before the Court for answering to the charge or for the purpose of such proceeding or, as the case may be, for giving evidence. A reading of the said section itself suggests that such an order of a Criminal Court for production of the person detained in prison shall be executable only if the person is detained on the date on which, production is to be made. This position is further amplified by sub-section (c) of Section 269 of Criminal Procedure Code. For better appreciation, the entire Section 269 of the Code of Criminal Procedure is re-produced hereunder:

"269. Officer in charge of prison to abstain from carrying out order in certain contingencies.- Where the person in respect of

whom an order is made under section 267-

(a) is by reason of sickness or infirmity unfit to be removed from the prison; or

(b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or

(c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or

(d) is a person to whom an order made by the State Government under section 268 applies, the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining;

Provided that where the attendance of such person is required for giving evidence at a place not more than twenty-five kilometres distance from the prison, the officer in charge of the prison shall not so abstain for the reason mentioned in clause (b)."

8. Section 269 of Cr.P.C prescribes the circumstances under which a jail authority has to abstain from carrying out the order passed under Section 267 Cr.P.C. The contingencies under which the person in-charge of the prison has to abstain from producing the prisoner on P.T. warrant are: a) unfitness of the prisoner to be removed from the prison by reason of his sickness or infirmity making the prisoner unfit to be removed from the prison; b) the prisoner being under orders of committal for trial or under remand pending trial or pending preliminary investigation; c) the

period of authorised custody would expire before the prisoner could be produced in compliance with the P.T. warrant before the court which issued the order and brought back to the prison in which he is confined or detained and d) The State Government has passed an order under Section 268 Cr.P.C that the person should not be removed from the prison and such order remains in force. The proviso to Section 269 Cr.P.C provides an exception and prescribes the circumstances under which a jail authority shall not abstain from carrying out the order passed under Section 267 Cr.P.C.

9. Clause (c) of section 269 Cr.P.C specifically provides that the officer in-charge of the prison shall abstain from carrying out the production order, if the person sought to be produced is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined. A reading of clause (c) shall make it clear that unless there is sufficient time for taking prisoner to the court which issued the production warrant and to take him back to the prison before expiry of the authorised period of detention, an order passed by the court under Section 267 Cr.P.C for production of the prisoner shall not be complied with.

10. As per the proviso, when a prisoner is required to be produced before a criminal court situated at a place not more than 25 miles away from the prison for giving evidence, then the officer in-charge of the prison shall not so abstain for the reason

mentioned in clause (b), namely 'the prisoner is under committal for trial or under remand pending trial or pending a preliminary investigation'. The conjunction used for the four exceptions (a) to (d) in Section 269 Cr.P.C is 'OR' and not 'AND'. If any one of the four contingencies is proved to exist, then the prison authority has to abstain from carrying out the order in the form of P.T. warrant. However, the proviso provides an exemption to sub clause (b) alone, provided the conditions found in the proviso are satisfied.

11. A conjoint reading of sections 267 and 269 Cr.P.C will make it clear that the purpose of P.T. warrant is to direct the production of a person who is confined or detained in prison by a lawful order. It cannot be interpreted to mean that the P.T. warrant shall be an authorisation to curtail the liberty of the person and keep him in custody till the date on which his production is sought for. The mere pendency of a P.T. warrant shall not be enough to keep a prisoner in the prison beyond the date of expiry of the sentence, if he is a convict or beyond the date on which the remand expires unless the remand is extended by a competent court. The pendency of a P.T. warrant cannot be equated with a remand and the same cannot be construed to be an authorisation for detaining a person beyond the period for which he was remanded or committed to undergo punishment.

12. In this regard, the judgment of this court in Kattan @ Subramani vs. State by Inspector of Police, Avadi P.S. & Another reported in 1992(1) MWN (Cri)/Mad 68 shall have bearing, though not directly applicable. In the said case it has been

observed that the issue of a P.T. warrant when the person is not confined or detained in a prison in respect of any other case is not justifiable and when such a fact is brought to the notice of the court which had issued P.T. warrant, the same should be recalled. The judgment went further to state that the recalling of the P.T. warrant will not bar the subsequent arrest of the person in execution of an NBW.

13. From the above, it is quite obvious that the scope of the P.T. warrant cannot be enlarged by assuming the same to be an authorisation for detaining the prisoner beyond the period of detention. It will be effective only if his detention is otherwise authorised as on the date on which he is supposed to be produced before the court issuing P.T. Warrant.

14. The decision of the Apex court in Ram Dass Ram v. State of Bihar and another reported in AIR 1987 SUPREME COURT 1333 will make it abundantly clear that the issuance of P.T. warrant cannot be construed to be an order of remand. A person, who has been acquitted or granted bail in the cases in which he was remanded to judicial custody, cannot be detained further on the sole ground that a P.T. warrant has been issued by another court. In the said case decided by the Supreme Court, the accused was acquitted in two Sessions cases in which he had been remanded and even after the acquittal in those cases he was continued to be detained in the prison on the basis of a P.T. warrant issued for his trial in another case. Such a detention was held to be unjustified. The facts of the case before the Supreme

Court reveal that there was no warrant (remand order) for detaining the detenu in jail in the third case in which P.T. warrant was issued or in any other case after the detenu had been acquitted in the two cases in which he had been remanded.

15. P.T. Warrants can be classified into two categories:

1) directing production of the person confined in the prison on the date of hearing specified in the order, and

3) directing production without specifying a date for production.

In either case, the P.T.Warrant cannot be construed to be an authorisation to detain the person in jail beyond the period of remand or beyond the date of expiry of the sentence of imprisonment, as the case may be. Legal custody on the date on which he is directed to be produced in the sine qua non for such production. Therefore, the first category of P.T. Warrant, namely specifying a particular date on which production is to be made, shall be issued in cases when production is sought for for being examined as a witness or for answering a charge or facing other proceedings in which he has already been granted bail. In such cases, the prisoner shall be released if, before the date fixed for his production, his period of sentence expires or the period of remand comes to an end. Second type of P.T. Warrants viz. without specifying the date for production can be issued, in cases wherein the prisoner has to answer the charge or face a proceeding when he was not granted bail or bail granted was cancelled. In such cases, the prison authority is bound to produce such person on receipt of P.T. Warrant. Even in such cases, he cannot be detained for being produced in the court in compliance

with the P.T. Warrant if the sentence or remand period expires before the receipt of P.T.Warrant.

27. In the case of **R.Muthumari vs. State** reported in **2010 4 MLJ Crl 295**, this Court has held as follows:

7. As submitted by the learned counsel for the petitioner even in case where an accused was arrested in another case and thereafter he was produced on P.T. warrant he cannot be remanded but he can only be conveyed to prison. In the present case on hand it is not in dispute that the petitioner has been granted bail. Therefore the Court below has committed an error in remanding the petitioner. It is further to be seen that the said order of remand would amount to cancellation of bail. If it is a cancellation of bail, the trial court will have to exercise the said power by issuing notice to the petitioner before doing so. The said exercise is also not required in the present case since admittedly the petitioner was on remand and that is the reason why he was not present before the Court. Therefore the order passed by the court below is totally incorrect and illegal.

8. It is no doubt true that a Magistrate of competent jurisdiction has got the power to cancel the Bail by exercising the power under Section 437(5) Cr.P.C. However such a power can only be exercised after affording sufficient opportunity to the accused, record his satisfaction before proceeding to pass the final order. Hence in the absence of the same the action of the

Court below in remanding the petitioner cannot be sustained.

In the judgment rendered in Cri.O.P.No.1439 of 2010 dated 25.01.2010 (Prabakaran Vs. The State rep. by Inspector of Police, Kavindapadi Police Station, Erode District), this Hon'ble Court after referring to the order passed in Jagannath Rout Vs. State of Orissa (1975 Cri.L.J.1684) and Sham Sunder Vs. State of Delhi (1990 Cri.L.J.2370), has held as follows: "

10. I regret, I am unable to persuade myself to agree with the said view taken by the Orissa High Court as well as Delhi High Court wherein the learned Judges have taken the view that where there is failure of the accused to appear before the Court, no further enquiry or proof is necessary or contemplated for recording satisfaction. In my considered opinion, mere failure to appear before the Court, in the absence of any willfulness on the part of the accused, would not amount to "a breach" in terms of Section 446 of the Code of Criminal Procedure. Manifestly, there has to be an animus on the part of the accused not to abide by or comply with, the terms and conditions of the bond. Such animus alone makes the failure of the accused to appear, a breach in terms of Section 446 of the Code. Such animus on the part of the accused could be ascertained only after affording sufficient opportunity to the accused. For example, while on his way to the Court, if an accused had met with an

accident and he was taken to a hospital, such failure of the accused to appear before the Court on that particular date of hearing can never be treated as breach in terms of Section 446 of the Code. On receipt of notice, if the accused satisfies the Court that he was prevented from appearing before the Court due to sufficient reason, like the one, illustrated above, the Court may not record such satisfaction holding that the accused had committed a breach of bond. The language "proved to the satisfaction" needs to be underscored, which clears doubt, if any, that the term "proof" held within it "disproof" by the accused/surety also. Such proof or disproof of animus can be arrived at only after sufficient opportunity to the accused/surety. Such opportunity shall satisfy the principles of natural justice "Audi Alteram Partem" which is not alien to criminal law as it has the sanction of the Constitution of India. Therefore, before recording such satisfaction, notice to the accused is necessary and further enquiry should follow. On such enquiry only, the learned Magistrate has to get satisfied himself on proof as to whether there was any breach of the terms of the bond; and after so satisfied that breach has taken place, then only such recording of the satisfaction of the Court will indicate the breach of the terms of the bond. 11. The above view of mine is fortified by judgment of Himachal Pradesh High

Court in Narata Ram Vs. State of Himachal Pradesh, 1994 Cri.L.J.491, wherein, the Himachal Pradesh High Court in para 10 has held as follows:

" The scheme of Section 446 of the Code of Criminal Procedure envisages two stages, as indicated above. No doubt, accused did not appear nor they could be produced by the petitioner and non-bailable warrants had been issued for their appearance on 1st July, 1992, the Court below had also afforded an opportunity to the petitioner to produce the accused on 1st July 1992. Had this last opportunity to produce the accused been afforded, the portion of the order dated 25th May, 1992, directing the forfeiture of the amount under the bonds was legal and valid and for the reasons stated above, the Court could be deemed to have satisfied regarding the existence of reasonable grounds for directing the forfeiture of the bond. Here, a composite order was passed. The petitioner could have produced the accused on 1st July 1992 and had he complied with the order to this effect, the circumstances would not have attracted the issuance of order forfeiting the bonds. Thus, in such circumstances, the Court cannot be deemed to have satisfied itself as to the existence of grounds for directing the issuance of forfeiture of the bonds on 25th May, 1992. In other words, the trial Court committed an illegality by exercising jurisdiction improperly, which had also not

been noticed by the appellate Court."

12. In para 13 of the said judgment, the Himachal Pradesh High Court has gone to the extent of saying that issuance of notice to the individual to afford an opportunity is part of principles of natural justice which states that no adverse order could be passed to affect any party without affording sufficient opportunity of being heard.

13. In view of the said position, I am of the firm view that before recording such satisfaction that breach has been committed, the learned Magistrate is required to issue notice and after affording an opportunity to offer any explanation, if the Magistrate is not satisfied with the said explanation offered by the accused, then, he had to record such satisfaction that the terms of the bond have been breached which alone signifies the forfeiture of the bond.

9. I am in respectful agreement with the decision rendered by this Hon'ble Court above and applying the ration laid thereunder the present petition is liable to be allowed.

10. Hence on a consideration of the above said facts the order of remand passed against the petitioner is hereby set aside and the petitioner is directed to appear before the trial court on the next hearing to be fixed by the trial court. In view of the order passed by this court there is no necessity to take up the

bail petition filed by the petitioner before the trial court. The second respondent is directed to release the petitioner forthwith.

28. The above judgments makes it very clear that the purpose of a PT warrant is very limited to the extent of directing the production of a person who is confined or detained in prison by a lawful order. The scope of PT warrant cannot be enlarged by assuming the same to be an authorization for detaining the prisoner beyond the period of detention. The issuance of PT warrant cannot be equated or construed to be an order of remand. The person who has been granted bail, cannot be detained further on the sole ground that a PT warrant has been issued by another Court. A person who has already been granted bail, when produced under the PT warrant while he is detained in the another case, cannot be remanded without canceling the earlier bail granted in favour of the accused.

29. It is therefore clear that a PT warrant can never be converted into a regular warrant, in a case where the accused person is already on bail and thereby it does not authorize the Court to remand the accused on a strength of a regular warrant. The first issue raised before this Court is answered accordingly.

30. In this case, admittedly the bail was granted by this Court. However,

the Court below which is subordinate to this Court, has proceeded to cancel the bail by virtue of the impugned order. Whether such a procedure adopted by the Court below is in accordance with law. This is the second issue that arises for consideration.

31. Judicial discipline requires a Subordinate Court not to cancel the bail granted by a Superior Court/Higher Court. This does not require any elaborate discussion or quoting of judicial precedents and it falls within the first principles of law wherein a Subordinate Court cannot cancel or set aside the order granted by a Superior Court/Higher Court.

32. In a case where this Court has granted bail and the accused person fails to appear before the Court below during the hearing dates, should the Subordinate Court remain powerless to deal with the situation and wait for the higher court to cancel the bail and only thereafter proceed further with the case.

33. This Court had an occasion to deal with a similar issue in ***Pillappan @ Ravikumar vs. State*** reported in ***2018 3 CTC 156***. The relevant portions are extracted hereunder:

11 Sec. 439(1)(a) of the Code empowers the Sessions Court/High Court to impose any condition which it considers necessary. Only by virtue of this power, the Sessions Court / High Court directs the accused to stay in a particular place other than the place where the crime had occurred and report before either a police station or Court, depending upon the facts of each case. Thus, a bail order of the Sessions Court / High Court under Sec. 439 of the Code needs to discuss only the eligibility criteria for grant of bail. In the bail orders of the Supreme Court and several High Courts, after directing the release of the accused on bail, the orders would direct the actual release of the prisoner on bail to the satisfaction of the concerned Magistrate. The amount of bail bond also will not be fixed, because, the financial capability and other factors can be best assessed only by the police officer/Magistrate in whose custody the accused remains. Here, Sec. 441 of the Code steps in and the same reads thus:

"441 Bond of accused and sureties:—(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

2 Where any condition is imposed for the release of

any person on bail, the bond shall also contain that condition.

3 If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

4 For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.?

12 A reading of Sec. 441 clearly shows that the Legislature has left it to the discretion of the police officer/Court to fix the amount of the bond and the number of sureties. If the police officer / Magistrate fixes an unreasonable amount, the Sessions Court / High Court has the power to reduce it under Sec. 440(2) of the Code.

13 When such is the law, why does the High Court fix the bond amount at Rs.5,000 or Rs.10,000/-? The expression "Court" in Sec. 441 of the Code has been interpreted to include the Sessions Court / High Court and the Magistrate, because, it came to the notice of the higher judiciary that exorbitant amounts were being fixed as bond amount by the Magistrates which were

resulting in the orders of bail getting obfuscated, resulting in over-crowding of undertrials in prisons. Therefore, superior Courts took upon themselves to fix the bond amount and left the discretion to the Magistrate to test the sufficiency of the sureties alone. The bail order need not kidglove the accused reminding him about his obligation to attend the Court on all the hearing dates, because, Sec. 441 of the Code and Form 45 of the Code statutorily mandate this. Therefore, the accused is bound to appear on all the hearing dates before the Court unless his presence is dispensed with.

14 What happens when on a particular date, the accused does not appear nor a petition is filed by his counsel to dispense with his presence? The answer to this question is available in Sec. 89 of the Code which reads as follows:

"89 Arrest on breach of bond for appearance: When any person who is bound by any bond taken under this Code to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him."

15 By virtue of Sec. 89 of the Code, the Court records the absence of the accused and issues a warrant to secure his presence. By his non appearance followed up with the act of the Court in issuing the non-bailable warrant for securing his presence, the accused has prima facie breached the condition of

the bond. A bond is a contract between the accused and the State under which the accused has agreed to appear before the Court on the hearing dates and his sureties have assured the Court that they will ensure that the accused does not commit breach of the bond. In The State of Maharashtra vs. Dadamiya Babumiya Sheikh, etc., [(1972) 3 SCC 85], the Supreme Court has held as under:

"7. A surety bond is a contract and it is a question as to how far its terms can be considered to have been varied by any unilateral act. Each bond, it may be pointed out, has to be construed on its own terms. But in construing the terms of a surety bond for the production of an accused person, the purpose and object of executing it must be kept in view. Such a bond is executed for the purpose of ensuring the presence of the accused concerned in court in which he is standing his trial for a criminal offence at the hearing of the case. But for the execution of such a bond, the accused would have to remain in custody so that the trial may proceed smoothly."

In Mahadeo Amrut Gajbhiye vs. The State of Maharashtra [1974 Cr.L.J. 1075 (V 80 C 332), Chandurkar J., (as he then was), considered the legal relationship between the State and a person entering into a bond in a criminal case and has observed as under:

"6. It is no doubt true that the matter relating to the grant of bail is governed by the provisions of the Code of Criminal Procedure, but that does not rule out the nature of the legal relationship between the State and the person to be released on the one hand and the State and the surety on the other, which must on the terms of the surety bond itself be governed by nothing more than the general principles relating to the enforcement of a contractual liability. . . .

16 Normally, a contract requires to bear the stamp prescribed by the Stamp Act, but, in view of Article 13 of the Indian Stamp Act, 1899 read with Article 14 of Schedule II of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, a Court fee of Rs.5/- is affixed on the bail bond. When the terms of a contract are breached, what follows is damages or compensation under Sections 73 and 74 of the Contract Act. Sec. 74 of the Contract Act reads as under:

"74 Compensation for breach of contract where penalty stipulated for:- When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from

the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.”

As per the above provision, the Court may award reasonable compensation. This may include a genuine/reasonable pre estimate of damages i.e., liquidated damages. The exception to Sec. 74 is a bail bond and the same reads as under:

“When any person enters into any bail-bond, recognizance or other instrument of the same nature or, under the provisions of any law, or under the orders of the Central Government or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.” emphasis supplied

Illustration (c): A gives a recognizance binding him in a penalty of Rs.500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.”

17 It is beyond cavil that the public are interested in dispensation of justice in a criminal case and that can be made possible only if the accused appears for trial as undertaken by him in the bond. The word “recognizance” used above finds place

in the heading of Sec. 445 of the Code - Deposit instead of recognizance. Sec. 445 of the Code permits the accused to deposit the bail bond amount straightaway instead ofc he being entrusted to the custody of his sureties.

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19 A bare reading of Sec. 436(2) of the Code shows that if a person had failed to comply with the conditions of the bail bond as regards the time and place of attendance, and subsequently, if he appears or is produced before the Court, the Court can refuse to release him on bail. Here, the expression 'Court' can mean only the Court to which the accused had executed the bail bond under Sec. 441 of the Code, including the Court to which the case is subsequently transferred. (See the Explanation in Sec.446 of the Code). The Legislature thought it fit to include a new provision as Sec. 436(2) to the Code, because, the accused, who had jumped bail, cannot claim bail under Sec. 436(1) as a matter of right even in a bailable case. To say that Sec. 436(2) would deny bail only to an accused who had jumped bail in a case involving bailable offence and not to an accused who had jumped bail in a case involving a non-bailable offence, would clearly defeat the very purpose of the provision. Sec. 436(2) of the Code is not a provision for cancellation of bail. It deals with breach of conditions of the bail bond and the consequence of it, viz., that the person cannot, as a matter of right, ask for bail. Under Sec. 437(5) of the Code, there is an independent power to cancel bail to a person involved in a non-bailable offence and who has been granted bail by the Magistrate under Sec. 437(1). However, under

Sec. 439(2) of the Code, the Sessions Court / High Court can cancel the bail of a person who has been released on bail under Chapter XXXIII, which means that these Courts can cancel the bail of a person who has been released by the Magistrate even in a case involving a bailable offence. Now, the inherent power of the High Court under Sec. 482 of the Code need not be invoked for cancellation of bail. The lacuna in the 1898 Code that was observed by the Supreme Court in Talab Haji Hussain (supra) has been plugged in the 1973 Code by Sec. 436(2).

20 In any event, the principle of audi alteram partem is a sine qua non for cancelling the bail either under Sec. 437(5) or under Sec. 439(2) of the Code, unless, despite issuance of notice, if the Court is satisfied that the accused is deliberately keeping away from participating in the cancellation proceedings. For instance, if a foreigner released on bail, had illegally slipped away from India, it will be ludicrous for the Court to wait for his return to India in order that he can participate in the proceedings for cancellation of bail.

21 In reality, the problem of bail jumping remains unsolved even after the amendment. The malaise plagues the system even today as could be seen from the Report called for by this Court from one District, viz., Dindigul, which shows that from 1990 to 2018, 2,595 non-bailable warrants are pending execution against the accused who have jumped bail, out of which, 39 warrants are in respect of the offence under Sec. 302 IPC and 125 warrants relate to the offence under Sec. 307 IPC. To put it more pithily,

the police arrest the accused and bail is granted by the Court, after which, the accused absconds and if the police once again arrest the accused and produce him in execution of non-bailable warrant, can it be said that the accused should be just like that released on the ground that his bail has not been formally cancelled? In a case where the Magistrate had granted bail, the Magistrate can cancel the bail under Sec. 437 (5) of the Code. In a case where bail has been granted by the Sessions Court/High Court, the Magistrate cannot cancel the bail, unless the superior Court had expressly authorised the Magistrate to do so, in terms of the law laid down by the Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]. In the absence of such an express authorisation, the Magistrate cannot cancel the bail in a case where it has been granted by the superior Court.

22 The Code was amended again in 1980 vide the Code of Criminal Procedure Amendment Act, 1980 with effect from 27.12.1980. The said amendment introduced Sec. 446-A to the Code and also made consequential changes in Sec. 436. Sec. 446-A of the Code reads as under:

446-A Cancellation of bond and bail bond: Without prejudice to the provisions of section 446, where a bond under this Code is for appearance of a person in a case and it is forfeited for breach of a condition?

a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties

in that case shall stand cancelled; and

b) thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition;

Provided that subject to any other provision of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the Court, as the case may be, thinks sufficient." (emphasis supplied)

*23 To reiterate, Sec. 446-A of the Code was included by the 1980 Amendment in order to curb the menace of bail jumping. It is a trite law that cancellation of bail is not synonymous to cancellation of bail bond and this has been recognised by this Court in *Prabakaran vs. State* [2010 (2) MLJ (CrI.) 353], wherein, a learned Single Judge of this Court has held in no uncertain terms as under:*

"16. Thus, it emerges tacitly clear that prior to the introduction of Section 446-A, the bail bond shall stand cancelled only when the bail is cancelled either

under Section 437 or 439 of the Criminal Procedure Code, whereas, now, such cancellation takes place automatically by operation of Section 446-A of the Criminal Procedure Code without there being an order of cancellation of bail.”

24 Sec. 446 essentially deals with sureties for breach of bond by the accused, whereas, Sec. 446-A deals with the consequences that would befall the accused himself, upon forfeiture, for breach of bond conditions. That is why, Sec. 446-A begins with the expression ?without prejudice to the provisions of Sec. 446?. This means that, without prejudice to the power of the Court to take action against the sureties under Sec. 446 of the Code, the Court can deal with the accused separately under Sec. 446-A of the Code for breach of bond. When the accused is produced and if he is not able to satisfactorily give reasons as to why he did not appear before the Court, then, the Magistrate/Court is required to record an order of forfeiture and remand the accused to judicial custody under Sec. 309 of the Code. Thereafter, bail is not a matter of right even in a case involving aailable offence. If the accused is able to give satisfactory reasons for his absence at the time of his production in execution of the non-bailable warrant / appearance, then, there is no necessity to remand him to judicial custody. If the accused seeks time to give his explanation, he can be remanded to judicial custody pending enquiry. The order of forfeiture of bond that has been recorded by the Court will not automatically have any consequence on the sureties under Sec. 446 of the

Code, because, a separate notice is required to be given to the sureties to show cause as to why penalty should not be paid by them and only if they are not able to show cause, can the Court proceed to recover the penalty as if it were a fine imposed under the Code. Thus, the consequences of forfeiture of the bond operates differently for the accused and the sureties. The fact that the accused had been in abscondence for a long period and that he has not been able to give satisfactory explanation for his absence at the time of his production/appearance, is, by itself, a sufficient ground for forfeiture of the bond. What the Court/Magistrate shall record is, the period of abscondence, explanation given by the accused and the reasons for non acceptance. This, by itself, will complete the forfeiture proceedings qua the accused. Thus, the Magistrate has the option to release the accused on his personal bond with one or more sureties or refuse to release him. If the Magistrate / Court refuses to release the accused, he will have to, perforce, remand him to custody under Sec. 309 of the Code. Thereafter, the accused will have to apply for fresh bail. The accused would have been granted bail in the earlier proceedings judging the gravity of the offence, his antecedents and other factors. In the subsequent bail application, the Court will have to consider an additional factor, viz., the factum of the accused having absconded after availing bail. Thus, the consequences of cancellation of bail and the cancellation of bail bond vis-a-vis the accused are one and the same. Any other interpretation of Sec. 446-A would make it otiose. This Court garners support for this interpretation in the judgment of the Kerala High Court in Mahesh vs. State of Kerala

[2009 SCC Online Ker. 6601].

25 In the case at hand, the petitioner was appearing before the Magistrate from 14.06.2010 onwards and from 14.12.2015, he did not appear. Hence, he was arrested upon execution of the warrant on 20.02.2018. His conduct, ex facie, shows that his non appearance continuously was not on account of sufficient cause or due to inadvertence. However, the Magistrate questioned the petitioner on 20.02.2018. Since his explanation was not satisfactory, the Magistrate remanded him to custody under Sec. 309 of the Code by cancelling his bail. In the opinion of this Court, it was not necessary for the Magistrate to have cancelled the bail at all, because, he was well within his powers even under Sec. 446-A of the Code read with Sec. 309 of the Code to remand him to custody. For taking action under Sec. 446 of the Code, notice should be issued to the sureties and it should be proved in a separate proceedings that the accused had violated the bail bond for the sureties to make good the bond amount. Proviso to Sec. 446-A(b) of the Code states that the Court may release him in that case upon execution of a personal bond. The expression 'may' has been recently interpreted by the Supreme Court in Pankaj Jain vs. Union of India and another [2018 SCC OnLine SC 160] in connection with Sec. 88 of the Code. Paragraphs 23 and 31 of the said judgment read thus:

"23 Section 88 of the Cr.P.C. does not confer any right on any person, who is present in a Court. Discretionary power given to the Court is for the

purpose and object of ensuring appearance of such person in that Court or to any other Court into which the case may be transferred for trial. Discretion given under Section 88 to the Court does not confer any right on a person, who is present in the Court rather it is the power given to the Court to facilitate his appearance, which clearly indicates that use of word 'may' is discretionary and it is for the Court to exercise its discretion when situation so demands.

31. We thus conclude that the word 'may' used in Section 88 confers a discretion on the Court whether to accept a bond from an accused from a person appearing in the Court or not.?

The aforesaid interpretation will apply in all fours to the interpretation of the word 'may' used in proviso to Sec. 446-A(b) of the Code. A fortiori, the Court / Magistrate may not release him and after recording that the bond has been forfeited since the accused had been in abscondence for a long period and that the reason given by him for his abscondence is not satisfactory, the Court / Magistrate can remand him to judicial custody under Sec. 309 of the Code. Thereafter, the accused should have to apply for fresh bail which can be considered on merits by taking into consideration the period of his abscondence and the desirability to grant bail to such a person.

26 Supposing, in a given case, bail had been granted by

the superior Court, is the Magistrate helpless and powerless to take cognizance of the violation of the conditions of the bail bond? Is it necessary for the Magistrate to write to the superior Court for cancellation of the bail? This was the position prior to the 1980 Amendment Act and that has been removed now by the introduction of Sec.446-A of the Code.

27 To recapitulate, if an accused on bail, be it in a case involving a bailable or non-bailable offence, (whether granted by the superior Court or by the Magistrate), does not appear on a hearing date and no petition is filed for dispensing with his presence, non-bailable warrant can be issued under Sec. 89 of the Code. On the appearance of the accused or on his production by the police, what is required to be given is, an opportunity to him to explain as to why he did not appear from that particular date onwards. If he gives a satisfactory explanation, he can be let off by recalling the warrant. If his explanation is not satisfactory, the Magistrate/Court is required to record the reasons and give a finding that the bond has been forfeited. On such finding, the bail bond gets automatically cancelled. Thereafter, the Magistrate/Court cannot release him on his own bond in view of the bar under Sec.446-A(b). He may be released under the proviso to Sec.446-A(b) on his executing a bond with fresh sureties, or, he may be remanded to custody under Sec. 309 of the Code. If he is so remanded to judicial custody, he should apply for fresh bail. Thereafter, the Magistrate/Court can issue notice under Sec. 446 of the Code to the sureties separately for payment of penalty. In the bail application filed afresh by the

accused either under Sec.436 or 437 or 439 of the Code, the Court will have to consider not only the usual parameters for grant of bail but also the additional factor, viz., his abscondence.

34. The above judgment has elaborately considered the effect of the execution of the bail bond and non-compliance of the conditions of the bail bond. This Court is completely in agreement with the ratio that has been enunciated in the above judgment. Reiterating the ratio, if an accused on bail in a non-bailable offence, whether granted by a Superior Court or a Magistrate, does not appear on the hearing date and no petition is filed for dispensing with his presence and non-bailable warrant has been issued, on the appearance of the accused or on his production by the police (through PT warrant in this case), an opportunity should be given to the accused person to explain as to why he did not appear from that particular date onwards. If a satisfactory explanation is given, he can be let off by recalling the warrant. If his explanation is not satisfactory, the trial Court is required to record the reasons and give a finding that the bond has been forfeited. On such finding, the bail bond gets automatically cancelled. The effect of Section 446-A is that, on the cancellation of the bail bond, the bail also gets automatically cancelled. Thereafter, the accused person may be released under the proviso under Section 446-A(b) on his executing a bond with fresh sureties or he may be remanded to custody under Section 309 of Cr.P.C.

35. Thus the judgments of the Hon'ble Supreme Court in ***Pankaj Jain vs. Union of India*** referred *supra* and the judgment of this Court in ***Pillappan @ Ravikumar vs. State*** referred *supra*, empowers Subordinate Court to deal with such a situation by virtue of the coming into force of Section 446-A of Cr.P.C. It is important to understand that cancellation of bail is not synonymous to cancellation of bail bond. Therefore, by adopting to such a procedure, the Subordinate Court is not canceling the bail granted by a Superior Court. It is only canceling the bond executed by the accused due to non-compliance of the bail bond condition. This is well within scope of the 446-A of Cr.P.C.

36. In the present case, the Court below did not follow this procedure. The Court below has proceeded to straight away cancel the bail by virtue of the impugned order, dated 29.03.2019. The Hon'ble Supreme Court in the case of ***P.K.Shaji vs. State of Kerala*** reported in ***AIR 2005 SCW 5560*** has held as follows:

The plea of the appellant's learned Counsel is that if the Sessions Court had granted bail, the order of cancellation of such bail should also have been passed by the Sessions Court or by any superior Court and not by the learned Magistrate who is not empowered to cancel it. As a general proposition, the plea raised by the appellant is correct. It is equally true that the accused who

is on bail, should be heard before an order of cancellation of bail is passed by the Court. This Court in Gurdev Singh & Anr. vs. State of Bihar & Anr. 2000(4) Crimes 103 = AIR 2000 SC 3556 held that the accused must be given notice and opportunity of hearing before the bail granted to him is cancelled.

In the present case, the last condition stated in the Bail Order was to the following effect:-

"The investigating officer shall scrupulously ensure that the Petitioner complies with all conditions hereby imposed and shall report breach of conditions, if any promptly to the learned Magistrate who on receipt of such report shall take appropriate action as if the conditions have been imposed and the Petitioner released on bail by the learned Magistrate himself."

The order of the Sessions Court shows that the learned Magistrate has been empowered to consider the question of violation of any of the conditions imposed by the Sessions Court and was given powers to pass appropriate orders. The plea raised by the appellant's learned Counsel is that when the learned Magistrate had no such power, the Sessions Court was not empowered to invest that power in the Magistrate. We do not find any force in this contention. The superior court can always give directions of this nature and authorise the subordinate court to pass appropriate orders and the trial Magistrate would be the competent authority to decide whether any condition had been violated by the person who had been released on bail. When

there is a specific direction to pass appropriate orders as if the conditions for granting bail had been imposed by the learned Magistrate himself, the impugned Order is legal and valid.

37. From the above judgment, it is clear that the bail granted by a Superior Court/Higher Court cannot be cancelled by Magistrate Court/Subordinate Court. As a general public proposition this is the law governing the field. However, the Hon'ble Supreme Court has carved out an exception and held that if the bail order of the Superior Court/Higher Court provides that the Magistrate Court/Subordinate Court can take appropriate action as if the conditions have been imposed and the accused was released on bail by the Magistrate Court/Subordinate Court itself, then the Magistrate Court/Subordinate Court is entitled to cancel the bail even though the bail was granted by the Superior Court/Higher Court.

38. In the instant case the bail order did not provide for such a power that could be exercised by the Court below. Therefore the Court below went wrong in cancelling the bail granted in favour of the petitioner by this Court. The Court below had the option of cancelling the bail bond and could have followed the procedure prescribed by this Court in ***Pillappan @ Ravikumar vs. State*** reported in ***2018 (3) CTC 156*** referred *supra*. The Court below failed to take note of the above judgment. The Court below has also

proceeded to cancel the bail on the same day i.e., on 29.03.2019 without giving sufficient opportunity to the accused person. Therefore, the order passed by the Court below warrants interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

39. The above discussion sufficiently answers the 2nd issue that was raised before this Court.

40. The third issue raised before this Court is as to whether the petitioner should have been permitted to participate in the trial along with the co-accused since he was produced under PT warrant throughout the proceedings from 08.11.2016 till the date of judgment in SC No.34 of 2005 passed on 12.04.2018 ?

41. Without any hesitation, the answer should be "Yes". The petitioner was available before the Court and the trial was under process and there was no reason why the petitioner's case should not have been merged with the main case. This would have saved the time and energy of the Court and by now the petitioner would have known the result of the case. However, the trial Court chose not to adopt this process and thereby the split up case against the petitioner is now pending. This Court is of the considered view that by

itself does not cause any prejudice to the petitioner and the petitioner will always be entitled to cross-examine the witnesses who were examined in SC.No.34 of 2005. The wrong procedure adopted by the trial Court cannot be taken advantage by the petitioner and that does not entitle the petitioner to be let off from the present case. The trial Court should proceed further with the case in accordance with the guidelines given by this Court in the case of ***H.Aarun Basha vs. The State represented by the Inspector of Police, E-5 Cholavaram Police Station, Thiruvallur District*** reported in ***2019 1 LW CrI 15*** and deal with this split up case in SC No.217 of 2009. The third issue raised before this Court is answered accordingly.

42. In the result, the impugned order passed by the Court below dated 29.03.2019 is hereby set aside and this Criminal Original Petition is allowed with the following directions:

- a) the petitioner is directed to be produced before the Court below and the petitioner shall execute a fresh bail bond for a sum of Rs.10,000/- along with two sureties for a like sum, out of which one surety shall be a blood relative.

- b) The petitioner shall appear before the 1st Additional Sessions Judge, Salem daily at 10.30 a.m. until the completion of the

proceedings in SC.No.217 of 2019. This condition shall not be relaxed till the completion of the proceedings.

- c) the petitioner shall not tamper with evidence or witness during trial.
- d) the petitioners shall not abscond during trial.
- e) on breach of any of the aforesaid conditions, the Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the Trial Court itself as laid down by the Hon'ble Supreme Court in ***P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560];***
- f) if the petitioner thereafter absconds, a fresh FIR can be registered under Section 229-A IPC.
- g) The Trial Court shall proceed further with the trial on a day-to-day basis in accordance with the guidelines given in ***Vinod Kumar Vs State of Punjab*** reported in ***2015 (1) MLJ (Crl) 288 SC.***
- h) If the petitioner adopts any dilatory tactics, it is open to the trial Court to remand the petitioner to custody as laid down by the judgment of the Hon'ble Supreme Court in ***State of Uttar Pradesh vs. Shambhu Nath Singh (JT 2001 (4) SC 319).***
- i) The Trial Court shall complete the proceedings in S.C.No.217 of

2009 within a period of three months from the date of receipt of copy of this order.

11.07.2019

Speaking Order/Non-Speaking Order

Index: Yes

Internet: Yes

ssr

To

1. The 1st Additional Sessions Judge, Salem.
2. The Inspector of Police,
Veeranam Police Station,
Salem District.
3. The Public Prosecutor
High Court, Madras.

N.ANAND VENKATESH.J.,

ssr

CRL.O.P.No.14320 of 2019

11.07.2019