

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 08/05/2020

PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL OP(MD). No.5291 of 2020

Settu S/o.Govindaraj,
Athaliyur Village,
Mottur Post, Uthangarai Taluk,
Krishnagiri.

... Petitioner/Accused

Vs.

The State, rep.by
The Inspector of Police,
Vallam Police Station,
Thanjavur District.
(Crime No. 10 of 2020).

... Respondent/Complainant

For Petitioner : M/s.K.M.Karunakaran, Advocate.

For Respondent : Mr.A.Robinson,
Government Advocate (Crl.Side)

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

PRAYER :- For Bail in Crime No. 10 of 2020 on the file of the
respondent Police.

ORDER : The Court made the following order :-

Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondent police.

Facts of the case :

2. According to the respondent police, one Arokiyarnary was on her morning walk on 19.01.2020 in Alakudi Road when she was robbed of her gold chain. A person coming from behind in a two wheeler bearing Registration No.TN 47 AQ 5726 intercepted her and threatened her with a knife and took away her one sovereign gold chain. The occurrence is said to have taken place at about 06.30 A.M and the complaint was lodged at around 8.00 A.M. It was registered as Crime No.10 of 2020 by the respondent for the offences under Sections 392 and 397 of I.P.C. The petitioner was arrested during the course of the day on the allegation that it was he who committed the aforesaid robbery. He was remanded to judicial custody.

3. The petitioner had earlier filed bail petitions before me. I dismissed them because the petitioner was said to be involved in

three previous cases of the same nature. This petition has been filed solely on the ground that since final report has not been filed within the mandatory time limit, the petitioner is entitled to default bail.

Objection raised by the prosecution :

4. Shri.A.Robinson, the learned Government Counsel (crl.side) submitted that the petitioner is accused of having committed the offences under Sections 392 r/w 397 of IPC. The offence under Section 397 of IPC is punishable with imprisonment which shall be not less than seven years. It is an offence triable by the Sessions Court. Section 392 of IPC deals with robbery of two kinds ; robbery committed on the highway between sunset and sunrise and other kinds of robbery. The former is punishable with imprisonment that may extend to 14 years. Robbery simpliciter is punishable with rigorous imprisonment for a term which may extend to ten years. If the case on hand is brought under the robbery simpliciter category, the petitioner can seek default bail on the expiry of the 60th day from the date of remand. If the petitioner's case is categorized under the aggravated type, then it will be on the expiry of 90

3/19

days. The petitioner's arrest and remand was on 19th January, 2020. The 60th day will fall on 19th March, 2020. The 90th day will fall on April 18th 2020. Shri.A.Robinson with his customary fairness submitted that the final report has not been made ready till date. But, he wanted to take advantage of the special direction passed by the Hon'ble Supreme Court on 23.03.2020 in *Suo Motu Writ Petition (Civil) No.3 of 2020* by which the period of limitation prescribed under various laws stood extended until further orders. The sweep and reach of the order passed by the Hon'ble Supreme Court is with effect from 15th March, 2020. Even if the petitioner's case comes under the lesser category, his right to default bail will accrue only on 20th March. In view of the intervention by the Hon'ble Supreme Court, the failure of the prosecution to file final report will not confer any right on the petitioner. His pointed contention is that while it is open to this Court to grant bail on merits, the petitioner is not entitled to claim the benefit of default bail.

Order passed by the Hon'ble Supreme Court on 23.03.2020 in *Suo Motu Writ Petition (Civil) No.3 of 2020*:

“This Court has taken *Suo Motu* cognizance of the situation arising out of the challenge faced by the

country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”

Issue arising for consideration :

5. Section 167 of Cr.PC lays down the procedure to be followed when investigation cannot be completed in 24 hours. Section 167 (1) and (2) of the Code is as under :

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

(2) The Magistrate to whom an Accused person is forwarded under this Section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the Accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in

the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the Accused to be forwarded to a Magistrate having such jurisdiction:

Provided that (a) the Magistrate may authorise the detention of the Accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the Accused person in custody under this paragraph for a total period exceeding,--(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years; (ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the Accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this Sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter; (b) no Magistrate shall authorise detention in any custody under this Section unless the Accused is

produced before him; (c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.”

Sub-section (2) stipulates that the magistrate cannot authorise detention of the accused in custody on expiry of such period of 90 days or 60 days as the case may be and shall release him on bail, if the accused person is prepared to and furnishes bail. The question of law to be answered is whether the order passed by the Hon'ble Supreme Court will apply to Section 167(2) of Cr.Pc also.

Analysis :

6.The order passed by the Hon'ble Supreme Court is not only under Article 142 but also under Article 141 of the Constitution of India. It is binding on all the Courts and Tribunals including the High Courts. No one has the right to interpret the orders and directions passed by the Hon'ble Supreme Court. This is well settled. Yet when a case of this nature arises, I have no option but to examine the issue and answer to the best of my lights.

7.It has been held in ***Achpal v. State of Rajasthan (2019) 14 SCC 599*** that the provisions of the Code do not empower any one to extend the period within which the investigation must be completed. If on the expiry of the period aforesaid mentioned, the accused applies for bail and is ready to furnish sureties, an indefeasible right would accrue in his favour.

8.The Hon'ble Supreme Court taking note of the extraordinary situation obtaining in the country has ordered as mentioned above that the period of limitation shall stand extended until further orders. This was to obviate the difficulties faced by the litigants and to ensure that they and their lawyers do not have to come physically to file in the respective Courts and Tribunals. The Hon'ble Supreme Court has not mentioned that police investigations would also be covered by the said order.

9.What has been extended is the period of limitation prescribed under the general law of limitation or under special laws. Section 2(j) of the Limitation Act reads as follows :

“period of limitation” means the period

of limitation prescribed for any suit, appeal or application by the Schedule, and “prescribed period” means the period of limitation computed in accordance with the provisions of this Act.”

Black's Law Dictionary defines limitation as “1. The act of limiting; the quality, state, or condition of being limited. 2. A restriction. 3. A statutory period after which a lawsuit or prosecution cannot be brought in the court.” P.Ramanatha Aiyar's Advanced Law Lexicon gives the following meaning :

“In its ordinary sense, restriction or circumspection; in its ordinary legal and popular sense, the word refers to the time within which an action may be brought, or some act done, to preserve a right.

Period beyond which legal proceedings cannot be brought; the period usually commences when the cause of action arises.

The term “Limitation” has been defined to mean the time which is prescribed by the authority of the law, during which a title may be acquired to property by virtue of a simple adverse possession and enjoyment, of the time at the end of which no action or suit can be maintained”.

The limitation barrier prescribed for institution of suits is impregnable and cannot be breached. However, Section 5 of the Limitation Act provides for extension of prescribed period in certain cases. If Section 5 of the Limitation Act is not excluded either expressly or by implication, the power to condone delay in filing the appeal or application can always be invoked. The special laws also contain special periods of limitation with or without power to condone delay.

10.The point to note is after the expiry of the limitation period, the application or appeal cannot be straightaway admitted. That is why, the Hon'ble Supreme Court in its benevolence has ordered that the period of limitation shall stand extended during this lock-down period. Thus, the litigants will not lose their rights. But, filing of final report stands on a different footing altogether. Section 167 (2) of Cr.Pc does not bar the filing of final report even after the period specified therein. The implication of Section 167 (2) is that if the final report is not filed within the time limit prescribed therein, the magistrate will be divested of the jurisdiction to authorise the detention of the accused person beyond the said period, if the

accused is prepared to and does furnish bail. The expiry of the period results in accrual of right in favour of the accused. Even though this time limit is referred to as period of limitation, technically it is not. It is only Chapter XXXVI of Cr.Pc that deals with limitation for taking cognizance of certain offences. Even Section 167 (5) of Cr.Pc has been interpreted to mean that the magistrate shall only make a direction for stopping further investigation in a summons case if it is not concluded within the period of six months and the said period has not been extended and it does not bar the magistrate from taking cognizance based on the final report filed thereafter. Hence, Section 167 of Cr.PC cannot be construed as containing the period of limitation for filing of final reports.

11.The Hon'ble Supreme Court had passed one more order on 06.05.2020 in the very same Suo Motu Writ Petition in respect of proceedings in relation to Section 29 (A) of the Arbitration and Conciliation Act, 1996 and initiation of proceedings under Section 138 of the Negotiable Instruments Act, 1881 in I.A No.48411/2020. The said order reads as follows :

12/19

In view of this Court's earlier order dated 23.03.2020 passed in *Suo Motu Writ Petition (Civil) No.3/2020* and taking into consideration the effect of the Corona Virus (COVID 19) and resultant difficulties being faced by the lawyers and litigants and with a view to obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunal across the country including this Court, it is hereby ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings.

In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.

In view of the above, the instant interlocutory application is disposed of.”

This order also does not deal with Section 167 of Cr.Pc.

12.It is not as if crimes have not taken place during these pandemic times. Arrests are also being made and accused are being remanded. Therefore, the respondent is not justified in citing the closure of the courts and the general extension of the limitation period. Section 167 (2A) of contemplates the situation when the judicial magistrate is not available. In such circumstances for a short period, even the executive magistrate may pass detention orders. In this case, nothing stopped the respondent from formally presenting the final report before the stipulated date and getting the initial of the jurisdictional magistrate. This Court would definitely have construed the same as sufficient compliance of the requirement of law. Such is not the case here.

13.This Court can take note of the fact the Government has come out with the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 on 01.04.2020. The ordinance provides relaxations related to compliance, such as extension of time limit and waiver of penalty, in relation to certain specified laws. The time limits for compliance or completion of certain actions under the specified laws, falling

during the period March 20, 2020 to June 29, 2020, have been extended. No similar change has been effected in respect of Section 167(2) of Cr.Pc. If the executive had actually intended that the period specified in Section 167 of Cr.Pc should be extended, it ought to have come out with an appropriate formal measure. The executive must exhibit nimble footwork and not hide behind judicial orders. Only little children hide behind the saree end (pallu) of their mothers.

14. Personal liberty is too precious a fundamental right. Article 21 states that no person shall be deprived of his personal liberty except according to procedure established by law. So long as the language of Section 167(2) of Cr.Pc remains as it is, I have to necessarily hold that denial of compulsive bail to the petitioner herein will definitely amount to violation of his fundamental right under Article 21 of the Constitution of India. The noble object of the Hon'ble Supreme Court's direction is to ensure that no litigant is deprived of his valuable rights. But, if I accept the plea of the respondent police, the direction of the Hon'ble Supreme Court which is intended to save and preserve rights would result in taking away the valuable right that had accrued to the accused herein.

15.Of course, the construction placed by me will have no application whatsoever in the case of certain offences under certain special laws, such as Unlawful Activities (Prevention) Act, 1967 and NDPS Act, 1985. For instance Section 36-A (4) of the NDPS Act enables the investigation officer to apply to the special court for extending the period mentioned in the statute from 180 days to 1 year if it is not possible to complete the investigation. Thus, under certain statutes, the prosecution has a right to apply for extension of time. In those cases, the benefit of the direction of the Hon'ble Supreme Court made 23.03.2020 in Suo Motu Writ Petition (Civil) No.3 of 2020 will apply. But, in respect of the other offences for which Section 167 of Cr.Pc is applicable, the benefit of the said direction cannot be availed.

Result :

16.In view of the reasons set out above, I conclude that the petitioner is entitled to default bail. Of course, as held by the Hon'ble Supreme Court in ***Rakesh Kumar Paul vs. State of Assam (2017) 15 SCC 67*** this order does not prohibit the arrest or rearrest of the petitioner on cogent grounds in respect of the subject charge and in that event, the petitioner will have to move

a regular application for grant of bail which of course will be considered on its own merits.

17. Accordingly, the petitioner is ordered to be released on default bail, subject to the following conditions;

(i) the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Thanjavur District.

(ii) the petitioner is directed to appear before the respondent police as and when required for interrogation.

(iii) on breach of any of the aforesaid conditions, the Magistrate/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 Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005) AIR SCW 5560].

WEB COPY **G.R.S., J.**
08.05.2020

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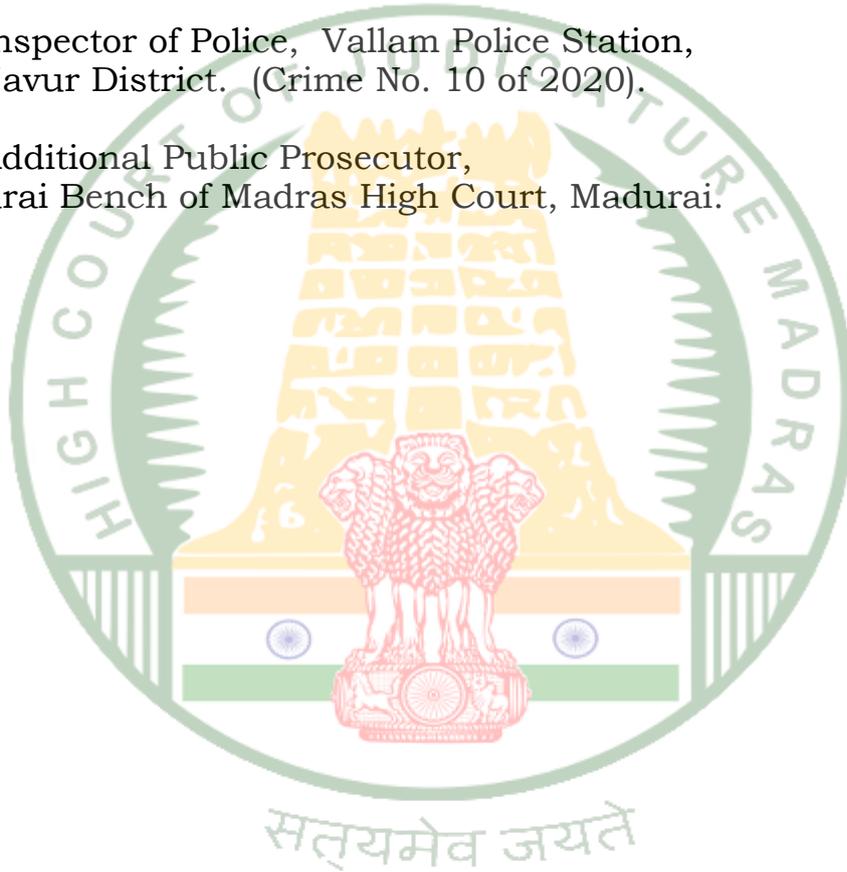
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17/19

Note : The soft copy of the order as uploaded in the website can be acted upon and there is no need for obtaining a certified copy.

To

1. The Superintendent, Central Prison, Trichy.
2. The Inspector of Police, Vallam Police Station, Thanjavur District. (Crime No. 10 of 2020).
3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

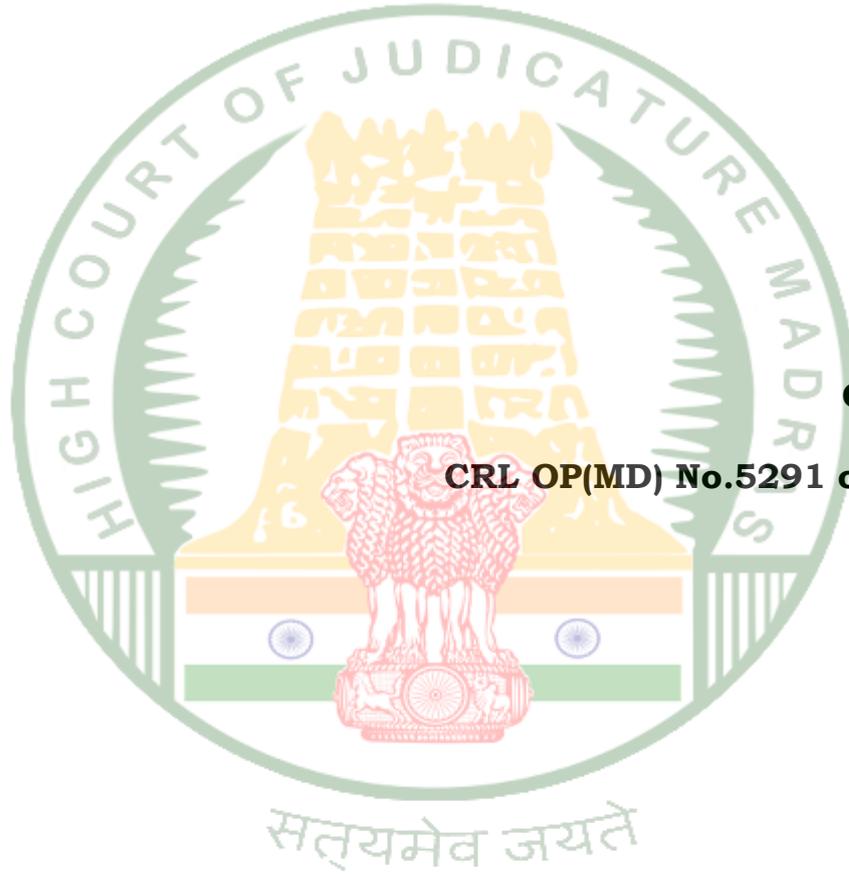


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CRL OP(MD). No.5291 of 2020

G.R.SWAMINATHAN, J.

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**ORDER
IN
CRL OP(MD) No.5291 of 2020**

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