

IN THE SUPREME COURT OF INDIA
[CIVIL ORIGINAL JURISDICTION]

I.A. NO. _____ OF 2020
IN
SUO MOTO WRIT (CIVIL) NO. 3 OF 2020

IN RE :

COGNIZANCE FOR EXTENSION OF LIMITATION

With

S.Madhusudanan,

.... Applicant

With

I.A.No. _____ of 2020
An Application for Direction

PAPER BOOK
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ADVOCATE FOR APPLICANT:: **A. LAKSHMINARAYANAN**

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I.A. NO. OF 2020
IN
SUO MOTO WRIT (CIVIL) NO. 3 OF 2020

IN RE :

COGNIZANCE FOR EXTENSION OF LIMITATION

With

S.Madhusudanan,
S/o Late K.K.Srinivasan
R/o No 12/39, Sunkuwar Street
Triplicane, Chennai
Tamil Nadu 600 005

.... Applicant

AN APPLICATION FOR DIRECTION

TO
THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUSTICES OF THE HON'BLE SUPREME
COURT OF INDIA

THE HUMBLE PETITION ON BEHALF OF
THE APPLICANT NAMED ABOVE NAMED

MOST RESPECTFULLY SHEWETH

1. It is humbly submitted that the applicant in the present Interim Application is an advocate by profession and has more than 15 years of standing at the BAR and is a regular practioner in the High Court of Madras. At the outset it is submitted that the, applicant is not in any manner seeking to challenge the order(s)

dated 23.03.2020 and 06.05.2020 passed by this Hon'ble court in the above Writ Petition. The applicant has filed the present application only to seek for a direction of this Hon'ble Court to clarify as to whether by the order dated 23.03.2020 it was intended to encompass Section 167(2) of the Code of Criminal Procedure ("Cr.PC" for short) too.

2. It is humbly submitted that this Hon'ble Court vide order dated 23.04.2020 passed in the above Writ Petition extended the period of limitation for all proceedings with effect from 15.03.2020 till further orders (A true and typed copy of the same is hereby annexed and marked as **ANNEXURE A-1 (Pages 16 to 18)**). The relevant portions of the order is extracted below

"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."

The above said order was clarified by this court vide order dated 06.05.2020 to include the period of limitation prescribed under the Arbitration and Conciliation Act, 1996 and Negotiable Instruments Act, 1881 to include in the ambit of the said order (A true and typed copy of the same is hereby annexed and marked as **ANNEXURE A-2 (Pages 19 to 22)**). The relevant portions of the order are extracted below.

"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".

3. It is humbly submitted that this Hon'ble Court vide order dated 23.04.2020 passed in the above Writ Petition, realising the plight of the prisoners had directed the high court to constitute high level committee and to release prisoner on parole or bail (A true and typed copy of the same is hereby annexed and marked as **ANNEXURE A-3 (Pages 23 to 33)**). The relevant portions of the said order is extracted below

"We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State

Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum."

A conjoined reading of both the orders have been passed one to obviate the difficulty of litigants in filling appeal or suit wherein the time limit was to expire on 15-3-2020. Whereas the later is clearly states that this Honble Court was more concerned of the prisoners too, who are in judicial custody to be release on bail or parole by the committees.

4. It is humbly submitted that the order of this Hon'ble Court dated 23.03.2020 was sought to be misinterpreted by the prosecution that it would be applicable to Sec 167(2) Cr.P.c too. This has been subject to different interpretations by different high courts and co-ordinate benches of the same high court. This has resulted in great amount of confusion and uncertainty among

litigants, lawyers and the Lower Judiciary. The relevant extracts of orders passed by different high courts are listed below

S.Kasi v State Crl.OP(MD). No.5296 of 2020 (Madras High Court) Dated 11.05.2020 (A true and typed copy of the same is hereby annexed and marked as **ANNEXURE A-4 (Pages 34 to 46)**)

"7. No doubt in the above order the Honourable Supreme Court has not specifically mentioned that police investigation should also be covered by the said order. However, the Apex Court while invoking its extraordinary power conferred in Article 142 of the Constitution during an extraordinary circumstances has clearly expressed his intention and reason for passing such order. The order has been passed to obviate the difficulties faced by the litigants across the country in filing their petitions/applications/suits/appeals/ all other proceedings (emphasis added). Therefore it is appropriate for any prudent person to appreciate the order of the Honourable Apex Court in a holistic perspective. The pandemic situation, total nationwide lockdown, restrictions on movement, fear of death looming large paralysing the routine function of the administration including judiciary were the reason for issuing such order. The Honourable Supreme Court to render complete justice has invoked Article 142

and passed this order. No courts below obliterate the intention of the Supreme Court by offering pedantic interpretation. Oblivious of the provisions of law and spirit behind such laws."

Settu v State CRL OP(MD). No.5291 of 2020(Madras High Court) Dated 08.05.2020 (A true and typed copy of the same is hereby annexed and marked as **ANNEXURE A-5 (Pages 47 to 62)**)

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."

Vivek Sharma V State of Uttarakhand (First Bail Application No.511 of 2020) (Uttarakhand High Court) dated 12.05.2020 (A true and typed copy of the same is hereby annexed and marked as **ANNEXURE A-6(Pages 63 to 69)**)

"8. The Hon'ble Supreme Court has not mentioned in the said Orders that investigation will be covered under these Orders. The Orders of the Hon'ble Supreme Court are binding on all the courts including High Courts. No court has the right to interpret the Orders passed by the Hon'ble Apex Court. Therefore, the police investigation is not covered under the Orders of the Hon'ble Supreme Court."

5. It is humbly submitted that the Hon'ble Chief Justice of Madras High Court in the light of the conflicting judgments, referred the conflict of question of law to a larger bench for authoritative pronouncement by order dated 12.05.2020 (A true and typed copy of the same is hereby annexed and marked as **ANNEXURE A-7 (Pages 70 to 74)**). The relevant portions of the same is extracted below

"Thus there are two conflicting opinions arising out of the orders referred to above and in my considered view, since the same is likely to have a direct impact on bail orders to be passed by the Subordinate Judiciary or even by this Court, the matter deserves to be resolved by an authoritative pronouncement. Accordingly, in exercise of the powers conferred under Order I Rule 6 of the Madras High Court Appellate Side Rules the conflict between the above said two orders raising a pure question of law based on the interpretation of the order of the Supreme Court dated 23rd March, 2020 deserves to be clarified by an authoritative pronouncement. The reference to be answered that arises out of the said conflict of opinions is:

"Whether the orders passed by the Apex Court on 23rd March, 2020 and 6th May, 2020 in Suo Motu Writ Petition (Civil) No.3 of

2020 also apply to the proceedings under Sec.167(2) Cr.P.C. and consequently which of the two opinions expressed by the learned single Judges in the case of Settu (supra) and Kasi (supra) lays down the law correctly?''.

6. It is humbly submitted that it is a well-established principle of law that the decision of this Hon'ble Court is not subject to convenient or different interpretation by any other court. The exercise now before the Larger Bench of the Hon'ble High Court of Madras(Madurai Bench), is to interpret the orders of this Hon'ble Court. With deep respect, such course of action at the hands of the larger Bench of the Hon'ble Madras High Court is impermissible as in any event it would amount to tinkering the order of this Hon'ble Court.

7. It is humbly submitted that confusion and uncertainty regarding the applicability of the order this Hon'ble Court dated 23.03.2020 to Section 167(2) of the Cr.P.C is affecting a large number of prisoners as they have not been released by the magistrates as per the mandate of the law, however their bail application are adjourned before different forums of the country in the present lockdown condition which has emerged due to social distancing. The interpretation done by various high court on this

issue, has resulted in defeating the accrued right of default bail which inures to an arrested person under Section 167(2) of the Cr.PC.

8. Section 167(2) of the Cr.Pc which is an enabling provision of the trial court to grant bail in the event the final report is not filed within 60 or 90 days. No Magistrate can however authorise the detention of the accused person in custody beyond this period, he has no other option but to release the accused on bail even without an application if he is prepared to and does furnish bail.

9. This Hon'ble Court in the case of **Achpal @ Ramswaroop vs The State Of Rajasthan : 2018 AIR SC 4647** held that

“It must therefore be taken to be well settled that in terms of 3rd conclusion as recorded in Uday Mohanlal Acharya (supra), on the expiry of the period stipulated (in Section 167(2) of the Cr.PC), an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period stipulated and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate”

This Hon'ble Court has further laid down that such right was not defeated even when an irregular/ improper charge sheet was filed within the stipulated period, but which came to be returned and a proper charge sheet was filed after the stipulated period.

10. It is settled principle of law as laid down by this Hon'ble Court that no merits are to be considered while exercising powers under Sec 167 cr.p.c as the same arises due to the default of the agencies.

11. The Hon'ble high courts have failed to take note of the order passed by this Hon'ble Court in Su moto W.P.No.1 of 2020, wherein this Hon'ble Court had directed all high courts to constitute high level committees to release prisoners due to the present pandemic. As such this would have eventually enabled the Honble high courts to appreciate that this Honble Court had never intended to defeat the rights of the prisoners as such it hasn't encompassed the order of limitation onto Sec 167 Cr.P.C.

12. The order passed in the above Writ Petition is to obviate litigants and lawyers from the difficulty of meeting with filing deadlines for Appeals before the respected Court in light of the Covid-19 pandemic, which among others had severely restricted their movement. The order passed with such noble considerations

cannot be misinterpreted by the high courts, resulting in enabling the investigating authorities in denying the statutorily right which is sought to be waived. As is too well settled, this Hon'ble Court even in exercise of its powers under Article 142 of the Constitution of India would not pass orders in conflict with express provisions of a statute, more so when the statutory provision is drawn from Article 21 of the Constitution of India.

13. In the event the non applicability is not clarified the divergent interpretation by the subordinate courts would result as a order of detention against the remand prisoners, thereby violate their Fundamental Right under Article 14 and 21 of the Constitution of India.

P R A Y E R

In the above circumstances it is therefore most respectfully prayed that this Hon'ble Court may pleased to:

- i). To clarify that the order dated (s) dated 23.03.2020 and 06.05.2020 passed by this Hon'ble court in the above Writ Petition do not cover the time limit prescribed under Section 167(2) of the Code of Criminal Procedure for grant of bail.

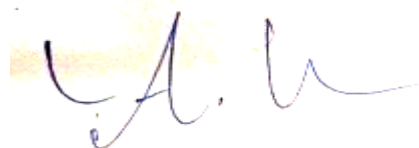
- ii) To issue appropriate directions qua proceedings in relation to section 167(2) of the Criminal Procedure Code, 1973.
- iii) Pass such other order or orders as this Hon'ble Court would deem fit and proper in the facts and circumstances of the case.

AND FOR THE ACT OF KINDNESS ,THE APPLICANT AS
IN DUTY BOUND SHALL EVER PRAY.

Drawn by

A.Velan, Advocate
Navpreet Kaur, Advocate

Filed by



A. LAKSHMINARAYANAN
Advocate for the Applicant

Drawn on: 16.05.2020
Filed on : 16.05.2020

3. I say that the Annexure A-1 to A-7 filed with the Application Leave Petition are true copies of their respective originals.



DEPONENT

VERIFICATION

Verified at New Delhi on this 16th day of May, 2020 that the facts stated herein are true to my knowledge, no part of it is false and nothing material has been concealed therefrom.



DEPONENT

ANNEXURE A-1

ITEM NO.12 COURT NO.1 SECTION PIL-W

S U P R E M E C O U R T O F I N D I A

R E C O R D O F P R O C E E D I N G S

S U O M O T U W R I T P E T I T I O N (C I V I L) N o (s) . 3 / 2 0 2 0

I N R E : C O G N I Z A N C E F O R E X T E N S I O N O F L I M I T A T I O N

Date : 23-03-2020 This petition was taken up suo motu for hearing today.

C O R A M : H O N ' B L E T H E C H I E F J U S T I C E

H O N ' B L E M R . J U S T I C E L . N A G E S W A R A R A O

H O N ' B L E M R . J U S T I C E S U R Y A K A N T

By Courts Motion

C O U N S E L P R E S E N T

Mr. Tushar Mehta, SG

Ms. Swati Ghildiyal, Adv.

Mr. Ankur Talwar, Adv.

Mr. G.S. Makkar, Adv.

Mr. Raj Bahadur, Adv.

Mr. B.V. Balaram Das, AOR

Mr. Dushyant Dave, Sr. Adv.

UPON hearing the counsel the Court made the following

O R D E R

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.

(SANJAY KUMAR-II)
Astt. Registrar-cum-PS

(MUKESH NASA)
Court Master

(INDU KUMARI POKHRIYAL)
Assistant Registrar

//TRUE COPY//

ANNEXURE A-2

ITEM NO.6 Virtual Court 1 SECTION PIL-W

S U P R E M E C O U R T O F I N D I A

R E C O R D O F P R O C E E D I N G S

S U O M O T O W R I T (C I V I L) N O . 3 o f 2 0 2 0

IN RE : COGNIZANCE FOR EXTENSION OF LIMITATION
WITH

IA No.48411/2020 - APPROPRIATE ORDERS/DIRECTIONS

IA No.48375/2020 - CLARIFICATION/DIRECTION

IA No.48511/2020 - CLARIFICATION/DIRECTION

IA No.48461/2020 - CLARIFICATION/DIRECTION

IA No.48374/2020 - INTERVENTION APPLICATION

IA No.48416/2020 - INTERVENTION APPLICATION

IA No.48408/2020 - INTERVENTION APPLICATION

I.A NO..... OF 2020 - FILED BY MR. NARAYAN
VASUDEO MARATHE, APPLICANT-IN-PERSON

Date : 06-05-2020 This matter(s) was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE DEEPAK GUPTA

HON'BLE MR. JUSTICE HRISHIKESH ROY

By Courts Motion

Counsel for the parties

Mr. K.K. Venugopal, Ld. AG

Mr. Tushar Mehta, Ld. SG
Mr. B.V. Balram Das, AOR
Mr. Dushyant Dave, Sr. Adv.
Mr. Sameer Pandit, Adv.
Mr. Nikhil Ranjan, Adv.
Mr. Utkarsh Kulvi, Adv.
Mr. Pranaya Goyal, AOR
Ms. Meenakshi Arora, Sr. Adv.
Mr. Ankur Mahindro, Adv.
Ms. Anannya Ghosh, AOR
Mr. Arjun Garg, AOR
Mr. Divyakant Lahoti, AOR
Mr. Parikshit Ahuja, Adv.
Ms. Praveena Bisht, Adv.
Mr. Kartik Lahoti, Adv.
Ms. Madhur Jhavar, Adv.
Ms. Vindya Mehra, Adv.
Mr. Mayank Kshirsagar, AOR
Mr. Sahil Mongia, Adv.
Mr. Aniruddha P. Mayee, AOR
Mr. Narayan Marathe, Applicant-in-Person

UPON hearing the counsel the Court made the following

ORDER

IA No.48411/2020 – FOR DIRECTIONS

By way of filing this application for directions, the applicant has made the following prayer :

“To issue appropriate directions qua (i) arbitration proceedings in relation to section 29A of the Arbitration and Conciliation Act, 1996 and (ii) initiation of proceedings under section 138 of the Negotiable Instruments Act, 1881;”

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.

IA No.48375/2020 – CLARIFICATION/DIRECTION AND IA
No.48511/2020 – CLARIFICATION/DIRECTION AND IA
No.48461/2020 – CLARIFICATION/DIRECTION AND IA

No.48374/2020 – INTERVENTION APPLICATION AND IA
No.48416/2020 - INTERVENTION APPLICATION AND IA
No.48408/2020 - INTERVENTION APPLICATION

Issue notice.

Waive service on behalf of the respondent – Union of India since Mr. K. K. Venugopal, learned Attorney General for India and Mr. Tushar Mehta, learned Solicitor General, appear on its behalf. Let notice be issued to other respondents.

(CHARANJEET KAUR)
AR-CUM-PS

(SANJAY KUMAR-II)
AR-CUM-PS

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR

//TRUE COPY//

ANNEXURE A-3

ITEM NO.8 COURT NO.1 SECTION PIL-W

S U P R E M E C O U R T O F I N D I A

R E C O R D O F P R O C E E D I N G S

S U O M O T U W R I T P E T I T I O N (C) N O . 1 / 2 0 2 0

I N R E : C O N T A G I O N O F C O V I D 1 9 V I R U S I N P R I S O N S

(W I T H I A N o . 4 6 0 8 6 / 2 0 2 0 – F O R I N T E R V E N T I O N /
I M P L E A D M E N T A N D I A N o . 4 6 0 9 1 / 2 0 2 0 – F O R P E R M I S S I O N
T O A P P E A R A N D A R G U E I N P E R S O N)

W I T H W . P . (C) N o . 4 5 0 / 2 0 2 0 (P I L - W)

(F O R A D M I S S I O N)

W . P . (C) N o . 4 4 5 / 2 0 2 0 (P I L - W)

(F O R A D M I S S I O N a n d I A N o . 4 6 1 1 3 / 2 0 2 0 - P E R M I S S I O N T O
F I L E L E N G T H Y L I S T O F D A T E S)

W . P . (C) N o . 4 6 6 / 2 0 2 0 (P I L - W)

(F O R A D M I S S I O N a n d I A N o . 4 8 1 2 4 / 2 0 2 0 - E X - P A R T E A D -
I N T E R I M R E L I E F)

D a t e : 2 3 - 0 3 - 2 0 2 0 T h e s e m a t t e r s w e r e c a l l e d o n f o r h e a r i n g t o d a y .

C O R A M : H O N ' B L E T H E C H I E F J U S T I C E

H O N ' B L E M R . J U S T I C E L . N A G E S W A R A R A O

H O N ' B L E M R . J U S T I C E S U R Y A K A N T

C O U N S E L F O R T H E P A R T I E S

M r . T u s h a r M e h t a , S G

M s . S w a t i G h i l d i y a l , A d v .

M r . A n k u r T a l w a r , A d v .

Mr. G.S. Makkar, Adv.
Mr. Raj Bahadur, Adv.
Mr. B.V. Balaram Das, AOR
Mr. Dushyant Dave, Sr. Adv. (Amicus Curiae)
Dr. Monika Gusain, Adv.
Mr. Nikhil Goel, AOR
Mr. Suhaan Mukerji, Adv.
Mr. Vishal Prasad, Adv.
For M/s PLR Chambers & Co.
Ms. Astha Sharma, Adv.
With Mr. Ajay Chaudhuri,
Resident Commissioner, Mizoram
Mr. Raghvendra Kumar, Adv.
Mr Narendra Kumar, AOR
Mr. Milind Kumar, AOR
Mr. Vishal Meghwal, Adv.
Mr. Jayanth Muthraj, Sr. Adv./AAG
Mr. M. Yogesh Kanna, AOR
Mr. S. Raja Rajeshwaran, Adv.
Mr. Arun R. Pednekar, Adv.
Mr. Hitesh Kumar Sharma, Adv.
Ms. Mukti Chowdhary, AOR
Ms. Ashima Mandla, Adv.
Mr. Fuzail Ahmad Ayyubi, AOR

Mr. Ibad Mushtaq, Adv.

Mr. Vishal Tiwari, PIP

Mr. Avijit Mani Tripathi, AOR

Mr. V.G. Pragasam, AOR

Mr. S. Prabu Ramasubramanian, Adv.

Mr. K.V. Jagdishvaran, Adv.

Ms. G. Indira, AOR

Mr. Sachin Patil, Adv.

Mr. Geo Joseph, Adv.

Ms. Bansuri, AAG

Dr. Monika Gusain, AOR

With

Mr. Jagjit Singh, IG Prisons (Haryana)

Mr. P. Venkat Reddy, Adv.

Mr. Prashant Tyagi, Adv.

Mr. P. Srinivas Reddy, Adv.

For M/s. Venkat Palwai Law Associates, AOR

Mr. Tapesk Kumar Singh, AOR

Mr. Aditya Pratap Singh, Adv.

Mr. Ahinav Sekhri, Adv.

Mr. Senthil Jagadeesan, AOR

Mr. Ashok Kumar Singh, Adv.

Mr. Hussain Mueen Farooq, Adv.

Ms. Manju Jetley, AOR

Mohd. Kamran Khan, Adv.
Ms. Sudha, Adv.
Mr. Ajeet Kumar Sharma, Adv.
Mr. Vikas Mahjan, AAG
Mr. Vinod Sharma, AOR
Mr. G. N. Reddy, AOR
Mr. T. Vijaya Bhaskar Reddy, Adv.
Mr. M. Shoeb Alam, AOR
Mr. Keshav Mohan, Adv.
Mr. Santosh Kumar - I, AOR
Mr. A.P. Mayee, AOR
Ms. K. Enatoli Sema, AOR
Mr. G. Prakash, AOR
Ms. Garima Prashad, AOR
Mr. Avijit Mani Tripathi, AOR
Mr. V.N. Raghupathy, AOR
Mr. Pukhrambam Ramesh Kumar, AOR
Mr. Fuzail Ahmad Ayyubi, AOR
Mr. Shuvodeep Roy, AOR
Mr. Sumeer Sodhi, AOR
Ms. Uttara Babbar, AOR
Mr. Vinay Arora, AOR
Mr. Abhimanyu Tewari, AOR

UPON hearing the counsel the Court made the following

O R D E R

SUO MOTU WRIT PETITION (CIVIL) NO.1/2020

By an order dated 16.03.2020, this Court had issued notice to all the States and Union Territories, to show cause why directions should not be issued for dealing with the present health crisis arising out of Corona virus (COVID-19) with regard to Prisons and Remand Homes. Several States and UTs have filed their responses detailing measures and initiatives taken while dealing with Corona virus (COVID-19) in respect of persons detained in Prisons and Remand Homes.

States of Gujarat, Manipur, Meghalaya, Odisha and UTs of Dadar & Nagar Haveli, Daman & Diu, National Capital Territory of Delhi and Puducherry have not filed their responses. The State of Andhra Pradesh, Punjab, Tamil Nadu, Madhya Pradesh, Kerala, Himachal Pradesh and UT of Jammu & Kashmir, though have filed their responses with regard to the measures taken for prisons but have not submitted their response in relation to measures taken for juveniles in Remand Homes.

An overview of the responses reflects that considerable measures for protection of health and welfare of the prisoners to

restrict the transmission of COVID-19 have been taken by the State Governments. These measures generally include creation of isolation wards, quarantine of new prisoners including prisoners of foreign nationality for a specific period, preliminary examination of prisoners for COVID-19, ensuring availability of medical assistance, entry points scanning of staff and other service providers, sanitisation and cleanliness exercise of prison campus and wards, supply of masks, barring or limiting of personal visit of visitors to prisoners, suspension of cultural and other group activities, awareness and training with regard to stoppage of transmission of COVID-19 and court hearings through video conferencing among others. Many states have also initiated the process of installing digital thermometers for the purpose of examination of the prisoners, staff and visitors. Some of the States have taken similar measures for Remand Homes as well.

In other significant measures the States of Bihar, Karnataka, Maharashtra, Uttar Pradesh, Tripura, Jharkhand, Goa, Kerala, Telangana and UTs of Jammu & Kashmir and Chandigarh have advised the prison authorities that visitors may be allowed to interact with prisoners only through video calling or telephonic call. States of Goa, Kerala, Telangana, Karnataka and Haryana

have adopted screening of prisoners returning from parole to prevent possible transmission.

State of Uttar Pradesh has constituted 'COVID-19 Special Task Force' in all 71 prisons comprising of the Superintendent, the Jailor, Circle Officer/Deputy Jailor, Medical Officer and One member of para-medical staff to monitor the prevention of transmission of infection.

Importantly, Rajasthan and Jharkhand have taken measures to decongest the prison by transferring prisoners from congested prisons to other prisons where the number of prisoners is low. The State of Punjab has directed to identify places in and around the prison, which can be used as a temporary prison in case if there is an outbreak of the virus.

The State of Haryana has directed prisons to prepare blockwise time table relating to food and other services for prevention of overcrowding. Andhra Pradesh, Uttarakhand, Punjab and Maharashtra and UT of Ladakh have identified special groups of prisoners, which are more vulnerable such as old age prisoners with respiratory diseases etc. to infections for special focus and scrutiny.

Looking into the possible threat of transmission and fatal consequences, it is necessary that prisons must ensure maximum possible distancing among the prisoners including undertrials.

Taking into consideration the possibility of outside transmission, we direct that the physical presence of all the undertrial prisoners before the Courts must be stopped forthwith and recourse to video conferencing must be taken for all purposes. Also, the transfer of prisoners from one prison to another for routine reasons must not be resorted except for decongestion to ensure social distancing and medical assistance to an ill prisoner. Also, there should not be any delay in shifting sick person to a Nodal Medical Institution in case of any possibility of infection is seen.

We also direct that prison specific readiness and response plans must be developed in consultation with medical experts. *“Interim guidance on Scaling-up COVID-19 Outbreak in Readiness and Response Operations in camps and camp like settings”* jointly developed by the International Federation of Red Cross and Red Crescent (IFRC), International Organisation for Migration (IOM), United Nations High Commissioner for Refugees (UNHCR) and World Health Organisation (WHO),

published by Inter-Agency Standing Committee of United Nations on 17 March, 2020 may be taken into consideration for similar circumstances. A monitoring team must be set up at the state level to ensure that the directives issued with regard to prison and remand homes are being complied with scrupulously.

The issue of overcrowding of prisons is a matter of serious concern particularly in the present context of the pandemic of Corona Virus (COVID – 19).

Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the Corona Virus within the prisons is controlled.

We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7

years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.

The Undertrial Review Committee contemplated by this Court *In re Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700, shall meet every week and take such decision in consultation with the concerned authority as per the said judgment.

The High Powered Committee shall take into account the directions contained in para no.11 in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

Some States/Union Territories who have not filed responses may file the same within three weeks from today.

List the matter after three weeks.

WRIT PETITION (CIVIL) NOS.450/2020, 445/2020 AND
466/2020

Learned counsel appearing for the petitioners prays for withdrawal of the instant writ petitions with liberty to approach the concerned Ministries, Union of India, New Delhi.

Prayer is allowed.

Copies of these writ petitions shall be served upon Mr. Tushar Mehta, learned Solicitor General appearing for the Union of India and they shall be treated as representations. The concerned Ministries shall dispose of the representations in accordance with law.

It is made clear that if the concerned Ministries deem it appropriate, they may hear the petitioners.

The Writ Petitions are dismissed as withdrawn with the aforesaid liberty.

(SANJAY KUMAR-II) ASTT. REGISTRAR- cum-PS	(MUKESH NASA) COURT MASTER	(INDU KUMARI POKHRIYAL) ASSISTANT REGISTRAR
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ANNEXURE A-4

BEFORE THE MADURAI BENCH OF MADRAS HIGH
COURT

(Criminal Jurisdiction)

Date : 11/05/2020

PRESENT

The Hon`ble Dr.Justice G.JAYACHANDRAN

CRL OP(MD). No.5296 of 2020

S.Kasi, ... Petitioner/Accused No.3

Vs

State through

The Inspector of Police,

Samaynallur Police Station,

Madurai District.

(Crime No.495 of 2020). ... Respondent/Complainant

For Petitioner: M/s.S.Mahendrapathy, Advocate.

For Respondent: Mr.S.Chandrasekar, Additional Public Prosecutor

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

PRAYER :-

For Bail in Crime No. 495 of 2020 on the file of the
respondent Police.

ORDER : The Court made the following order :-

The petitioner herein was arrested by the respondent police on 21.02.2020 for the alleged offence under Sections 457(2),380(2), 411 (2) and 414(2) of IPC.

2. The petitioner herein is now before this Court seeking bail. In view of the national wide lock down, to avoid physical contacts and to maintain social distancing courts are function through virtual mode. The petitioner has filed his petition through E-mail and same is heard through video conferencing.

3. The learned counsel for the petitioner would urge this Court for grant of bail on the ground that the petitioner is innocent and falsely implicated in this case. The respondent to give quitus to the long pending idol theft case under investigation without any progress for nearly 5 years have chosen this petitioner and others as scapegoats. According to the learned counsel for the petitioner the case of idol theft was registered by the respondent police on 31.12.2015 under Section 457(2), 382, 411(2) and 414(2)of IPC in Crime No.495 of 2015. After 4 years the petitioner was arrested on 21.02.2020. The petitioner is in custody for the past 92 days. The respondent police has not filed the final report. Hence the petitioner

is entitled for bail by default as contemplated under Section 167(2) of Cr.P.C.

4. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that three idols of Hindu God and Goddess were stolen from the Srinivasa Perumal Temple within the jurisdiction of Samayanallur Police Station, Madurai District. The Case was registered on 31.12.2015. Investigation revealed that seven persons were involved in this case. After the arrest of A1, based on the confession given by A1 out of three idols stolen one was recovered from the relative of this petitioner who is arrayed as A3. Two more idols are yet to be recovered. Police could not be able to secure A-1 to A-4. Three more accused are still at large. In view of the lockdown clamped by the Government, the investigation could not be completed within the time prescribed under the statute. The investigating officer is handicapped with the restrictions imposed by the State which included free movement and access to witnesses for recording their statements. The learned Additional Public Prosecutor would further submit that the petitioner is carrying very bad antecedent. He is accused of idol theft in 3 more cases and still pending. If the petitioner is released

on bail, there is possibility of absconding as well as recurrence of similar crime.

5. Heard the learned Counsels on either side. On considering the antecedent of the accused, crime alleged, abscondance of few more accused persons and non-recovery of the remaining stolen property this court finds that the petitioner does not deserve bail at this juncture.

6. However, in view of the covid-19 lockdown and the order passed by the Hon'ble Supreme court extending the limitation, a unique and peculiar legal issue stares at the Court whether the petitioner is entitle to avail the benefit of Section 167(2) of Cr.P.C?.

Taking note of the Covid-19 situation and realising the gravity of the pandemic, the Hon'ble Supreme Court on 23/03/2020 in a suomotu writ petition (SUO MOTU WRIT PETITION (CIVIL) No(s).3/2020 IN RE : COGNIZANCE FOR EXTENSION OF LIMITATION) passed order extending the period of limitation to obviate the difficulties faced by the litigants who are supposed to personally come to the court and file their petition/application/suits/in all other proceedings until further orders.

For the sake of proper appreciation, the relevant portion of the Supreme court order is extracted below:

“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.”

7. No doubt in the above order the Honourable Supreme Court has not specifically mentioned that police investigation should also be covered by the said order. However, the Apex Court while invoking its extraordinary power conferred in Article 142 of the Constitution during an extraordinary circumstances has clearly expressed his intention and reason for passing such order. The order has been passed to obviate the difficulties faced by the litigants across the country in filing their petitions/applications/suits/appeals/ all other proceedings(emphasis added). Therefore it is appropriate for any prudent person to appreciate the order of the Honourable Apex Court in a holistic perspective. The pandemic situation, total nationwide lockdown, restrictions on movement, fear of death looming large paralysing the routine function of the administration including judiciary were the reason for issuing such order. The Honourable Supreme Court to render complete justice has invoked Article 142 and passed this order. No courts below obliterate the intention of the Supreme Court by offering pedantic interpretation. Oblivious of the provisions of law and spirit behind such laws.

8. Section 167 of Cr.P.C envisages completion of investigation within the period of 60 days or 90 days, as the case may be, depending upon the gravity of the offence and the extent of punishment. If the investigation not completed within period prescribed, the person accused of the offence is entitled for bail as if he has committed bailable offence. Thereafter the Provisions of Chapter XXXIII of the Code will apply. In other words, Section 167 of the Code of Criminal Procedure mandates the investigating agency to complete the investigation within the time prescribed. If they fail to complete the investigation, statutory right blossom to the person in custody to seek release from prison on bail as matter of right.

9. This provision in common parlance among the respected members of the bar and bench aptly called as 'default bail'. The reason, when there is default on the part of investigation right of bail gets accrues to the person detained. Now with this understanding of Section 167(2) of Cr.P.C, and in the light of the order passed by the Apex Court extending limitation to render complete justice to the litigants the submission of the learned counsel for the petitioner has to be examined.

10. Currently, the State has restricted free movement of the Public. The Law Enforcing Agencies are directed to ensure complete lock down. Access to places restricted either partially or absolutely. Government mechaneries has almost come to stand still. Courts gates are locked. Public access is prohibited. All judicial proceedings are conducted through video conference. Administration wings of the Court yet to resume the physical functioning. In such a circumstances, the wings of the investigating agency are clipped; their legs are tied. They are unable to conduct the investigation and complete the same. Even if they complete the investigation, courts are not open to receive it. This is not their fault. Covid-19 situation is the cause for not completing the investigating within the time fixed under the Statute.

11. Therefore taking note of the situation The Hon'ble Supreme Court has passed the order dated 23.03.2020 extracted above. The order came to be passed to do complete justice to the litigants who face difficulty in presenting their documents related to the proceedings. Any attempt to misread the order or to interpret the order contrary to the spirit of this order will cause injustice. In spite of the Apex Court order extending the period of limitation in all proceedings where litigants face difficulties to be present

physically, if one say it is not applicable to filing of final report on completion of investigation, he just mock the Apex Court order and nothing less.

12. Violators of law cannot take undue advantage of the extra ordinary situation and enjoy the liberty while the entire nation is under lock down and crippled from carrying on their normal activities.

13. The lockdown announced by the Government is akin to proclamation of emergency. Under Article 352 of the Constitution, in case of external aggression National Emergency can be proclaimed by the President. Presently we face aggression not by human agencies, but by micro-organs. Like wise when the nation face threat to the credit or financial stability under Article 360 Financial emergency can be declared. If emergency is declared, under Article 358 the rights under Article 19 gets suspended. The right to liveguaranteed under Article 21 is subject restriction. Presently, though the state is not passing through emergency duly proclaimed, whole nation has accepted the restrictions for well being of mankind. At this juncture, myopic reading of Section 167 of Cr.P.C conveniently ignoring the spirit behind the order by the

Apex Court invoking its power under Article 142 of the constitution will amount to judicial indiscipline.

14. The spirit behind the order of the Apex Court is to do complete justice. Conscious to the fact that there are several legislations prescribing limitation, the Honourable Supreme Court has generally stated the period of limitation prescribed under general law of limitation or under special laws shall be extended until further order. Therefore it is needless to mention that the limitation under Section 167 for investigation also get extended.

15. The learned counsel for the petitioner relying upon the order passed by this Court in CrI.O.P(MD) No. 5291 of 2020 in Settu - vs- The State rep. by the Inspector of Police, Vallam Police Station, Thanjavur District, dated 08.05.2020 insisted that the extension of period envisaged in the Apex court order will not apply to Section 167 Cr.P.C.

16. This Court had the privilege of reading the said order. It is hight of ignorance to expect the investigation agency to complete the investigation and file final report in the Court within time prescribed after closing down the gates and prohibiting the access. After imposing restrictions on their movements and chiding them, “executive must exhibit nimble footwork and not hide behind

judicial order. Only little children hide behind the saree end (paalu) of their mothers” is uncharitable.

17. The learned judge has mis-interpreted the Apex Court Order dated 23/03/2020. The clarification order dated 06/05/2020 no way dilute or restrict the scope and extend of the earlier order. Since the order relied by the learned counsel for the petitioner is contrary to the spirit of the Honourable Supreme Court order issued in exercise to the power of Article 142 it is non-est and has no binding force.

18. In any given situation, a person accused of the offence and the investigation agency has to be treated at par under law. Order passed by the Supreme Court invoking Article 142 of the constitution is an equitable order. After putting fetters on the investigating agency upon their right of movement causing delay in completing investigation, the person accused of the offence cannot take undue advantage of the situation and seek default bail. The liberty enshrined under Article 21 is subject to restrictions. The order of the Apex Court is Law binding on all courts. The petitioner's life and liberty is restricted only by due process of law and procedure established under law. Neither Section 167(2) nor Article 21 give unfettered right to the person accused of an offence. In an extraordinary situation, the Apex Court has passed the

order invoking its extraordinary power under Article 142 extending the period of limitation prescribed in the general law of limitation and other special laws. The Supreme Court order eclipses all provisions prescribing period of limitation until further orders. Undoubtedly, it eclipses the time prescribed under Section 167(2) of the code of Criminal Procedure also.

19. In this case, the petitioner is arrested for the theft of three idols in the temple. One idol has been recovered based on the confession of the co-accused and two idols are yet to be recovered. Out of seven accused four have been arrested and three more are at large. In view of the order passed by the Honourable Supreme Court extending the limitation, the time prescribed for completing investigation under Section 167(2) gets eclipsed. The petitioner cannot harp on the limitation prescribed under Section 167(2) of Cr.P.C and pray release on bail.

20. Hence the bail petition is dismissed.

sd/-
11/05/2020

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/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE INSPECTOR OF POLICE,
SAMAYNALLUR POLICE STATION,
MADURAI DISTRICT.

2. THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL OP(MD) No.5296 of 2020

Date :11/05/2020

AAV

AE/PN/SAR-III (12.05.2020) 7P 4C

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ANNEXURE A-5**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 catergorized under the aggravated type, then it will be on the expiry of 90 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 authorize 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 authorize detention in the custody of the police.”

Sub-section (2) stipulates that the magistrate cannot authorize 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 lockdown 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 :

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].

G.R.S., J.

08.05.2020

Index : Yes / No

Internet : Yes / No

Skm

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.

G.R.SWAMINATHAN, J.

skm

ORDER

IN

CRL OP(MD) No.5291 of 2020

Date : 08/05/2020

TRUE COPY

ANNEXURE A-6

Uttarakhand High Court

Vivek Sharma vs State Of Uttarakhand on 12 May, 2020

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

First Bail Application No.511 of 2020

Vivek Sharma

....Applicant

Vs.

State of Uttarakhand

.....Respondent

Hon'ble Alok Kumar Verma, J.

This bail application has been filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in connection with FIR No.68 of 2019, registered with Police Station Banbasa, District Champawat for the offences under Sections 409,420,466,467,468,471 and 120-B of the I.P.C.

2. According to the FIR, in the scholarship scam, in compliance of the order of this High Court passed in Writ Petition (PIL) No.33 of 2019, a Special Investigation Team was constituted. After enquiry, the informant Jasveer Singh Chauhan, Officer-In- Charge of Police Station Banbasa, District Champawat lodged the FIR

against the present applicant, Secretary of Dev Bhumi Vidyapith and other co-accused persons. During investigation, embezzlement of Rs.39,52,000/- was found.

3. During pendency of the regular bail application, the applicant had applied for "default bail" before the learned Chief Judicial Magistrate, Champawat. The said application was rejected on 22.04.2020 after holding that the applicant is not entitled to claim the benefit of default bail in the light of order dated 23.03.2020 passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (CIVIL) No.3/2020 In Re-Cognizance For Extension Of Limitation. The applicant filed the copy of the said order dated 22.04.2020 and orally challenged the said order before this Court.

4. Counter affidavit filed by the State is taken on record.

5. Heard Mr. Sanpreet Singh Ajmani, learned counsel for the applicant and Mr. G.S. Sandhu, learned Government Advocate assisted by Mr. J.S. Virk, learned Assistant Government Advocate for the State through video conferencing.

6. The Hon'ble Supreme Court had ordered on 23.03.2020 in Suo Motu Writ Petition (CIVIL) No.3/2020, "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."

7. On 06.05.2020, the Hon'ble Supreme Court had passed an Order in the very same Suo Motu Writ Petition (CIVIL) No.3/2020 and extended the limitation period for statutory provisions under Section 138 of the Negotiable Instruments Act and the Arbitration and Conciliation Act with effect from March 15, 2020 till further order.

8. The Hon'ble Supreme Court has not mentioned in the said Orders that investigation will be covered under these Orders. The Orders of the Hon'ble Supreme Court are binding on all the courts including High Courts. No court has the right to interpret the Orders passed by the Hon'ble Apex Court. Therefore, the police investigation is not covered under the Orders of the Hon'ble Supreme Court.

9. In Rakesh Kumar Paul vs. State of Assam (2017) 15 SCC 67, the Hon'ble Supreme Court observed, "on 11th January,2017 when the High Court dismissed the application for bail filed by the petitioner, he had an indefeasible right to the grant of "default bail" since the statutory period of 60 days for filing a charge sheet had expired, no charge sheet or challan had been filed against him (it

was filed only on 24th January, 2017) and the petitioner had orally applied for "default bail". Under (2012) 9 SCC 1 these circumstances, the only course open to the High Court on 11th January, 2017 was to enquire from the petitioner whether he was prepared to furnish bail and if so then to grant him "default bail" on reasonable conditions. Unfortunately, this was completely overlooked by the High Court."

10. The learned counsel for the applicant submits that he wants to press only the prayer of default bail at this stage.

11. It is settled principle of law that when the application for bail on default is filed, the merits of the case are not to be gone into, as held by the Hon'ble Supreme Court in Union of India vs. Thamisharasi and others, (1995) 4 SCC 190.

12. Personal liberty of the individual, guaranteed under Article 21 of the Constitution of India, is very precious fundamental right and it should be curtailed only according to law.

13. The learned counsel appearing for the State opposed the bail application, however, the learned counsel for the State fairly concedes that the application for default bail was moved by the applicant after the statutory period for filing a charge sheet. It is

admitted fact between the parties that the investigation is going on and the applicant is in judicial custody since 23.01.2020.

14. In Uday Mohanlal Acharya vs. State of Maharashtra, (2001) 5 SCC 453, the Hon'ble Supreme Court has held, "on the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the Investigating Agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate."

15. Having considered the submissions of learned counsel for both the parties and in the light of the well settled law, this Court is of the view that the applicant is entitled for "default bail".

16. Let the applicant be released on bail on his executing a personal bond and furnishing two reliable sureties, each in the like amount, to the satisfaction of the court concerned subject to the following conditions :-

- i) the applicant shall make himself available for interrogation by the Investigating Officer as and when required;

ii) the applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case;

iii) the applicant shall not leave the State of Uttarakhand without prior permission of the concerned trial court.

17. It is clarified that if the applicant misuses or violates any conditions, imposed upon him, the Investigating Officer or the prosecution shall be free to move the Court for cancellation of bail.

(Alok Kumar Verma, J.)

12.05.2020

JKJ

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ANNEXURE A-7**HON'BLE THE CHIEF JUSTICE**

I have come across two divergent orders of learned single Judges of the Madurai Bench in relation to a plea of default bail in the light of provisions of Sec.167(2) CrI.P.C. The divergence is on account of the orders passed by the Apex Court on 23rd of March, 2020 in a Suo Motu Writ Petition (Civil) No.3 of 2020 followed by another order in the same proceedings on 6th of May, 2020 relating to the extension of the period of limitation.

The first order is passed in CrI.O.P. (MD) No.5291 of 2020, dated 8th May, 2020 in Settu v. The State, rep. by the Inspector of Police, Vallam Police Station, Thanjavur District. The accused/petitioner was taken into custody for having committed an offence of chain-snatching and a case was accordingly registered as Crime No.10 of 2020 under Sec.392 and Sec.397 of I.P.C.

The accused had earlier filed bail application which had been rejected by the very same Hon'ble Judge on the ground of involvement of the accused in three previous cases of the same nature. The bail application gave rise to the order dated 8th May,

2020 was filed solely on the ground that since the police report was not filed within the mandatory time-limit, the accused/petitioner was entitled to bail.

The Prosecution took the plea that in view of the directions of the Apex Court on 23rd March, 2020 referred to above, which were in exercise of powers under Art.142 read with Art.141 of the Constitution of India, the delay in filing the Police Report has to be considered in the light of the above orders of the Supreme Court.

The learned single Judge held that the Supreme Court order did not touch upon any specific extension of time for completing investigation and once there was an expiry of the mandatory period as prescribed under Sec.167(2) of Cr.P.C. the accused was entitled for default bail. The learned Judge also referred to the Fundamental Right guaranteed under Art.21 of the Constitution of India and any further detention was found to be in violation of the said right. Accordingly bail was granted by the learned single Judge.

In yet another case in CrI.O.P. (MD) No.5296 of 2020 (S. Kasi v. State through The Inspector of Police, Samanallur Police Station) where the offence was of idol theft and was based on an alleged recovery, another learned single Judge, by order dated 11th May, 2020, refused grant of bail that was prayed for after noting

the order of the learned single Judge referred to hereinabove dated 8th May, 2020. The learned single Judge in this case came to the conclusion by inference that the period of limitation for investigation under Sec.167 Cr.P.C. would also stand extended keeping in view the extraordinary situation of the Covid Virus-19 spread which has led to a general order of extension by the Apex Court. Paragraphs 14 to 18 of the order dated 11th May, 2020 give reasons for not accepting the line of reasoning as adopted by the learned single Judge in the case of Settu (supra).

There is another order of a learned single Judge of the Uttarakhand High Court in the case of Vivek Sharma v. State of Uttarakhand, First Bail Application No.511 of 2020, decided on 12-05-2020, which is similar to the order passed in the case of Settu (supra).

The applicability of the order passed by the Apex Court has to be considered in the light of the fact that Sec.167 Cr.P.C. appears to only set out the outer limit of the detaining power of the Magistrate without charge and thus is an embargo on the period of detention of an accused. The investigation can still continue unhindered. Apart from this there is no express provision so as to

condone delay in the Cr.P.C. except the provisions of Sec.468 to Sec.473 thereof.

Thus there are two conflicting opinions arising out of the orders referred to above and in my considered view, since the same is likely to have a direct impact on bail orders to be passed by the Subordinate Judiciary or even by this Court, the matter deserves to be resolved by an authoritative pronouncement.

Accordingly, in exercise of the powers conferred under Order I Rule 6 of the Madras High Court Appellate Side Rules the conflict between the above said two orders raising a pure question of law based on the interpretation of the order of the Supreme Court dated 23rd March, 2020 deserves to be clarified by an authoritative pronouncement. The reference to be answered that arises out of the said conflict of opinions is:

“Whether the orders passed by the Apex Court on 23rd March, 2020 and 6th May, 2020 in Suo Motu Writ Petition (Civil) No.3 of 2020 also apply to the proceedings under Sec.167(2) Cr.P.C. and consequently which of the two opinions expressed by the learned single Judges in the case of Settu (supra) and Kasi (supra) lays down the law correctly?”

Let this question be answered by a Division Bench presided over by Hon'ble P.N. Prakash at Madurai Bench itself.

The matter may be placed before the Hon'ble Administrative Judge of the Madurai Bench for listing of the matter at the earliest with notice to the learned Public Prosecutor and to the learned counsel for the concerned parties.

Sd/-

(A.P. SAHI, C.J.)

12-05-2020

To
The Registrar (Judicial)
Madras High Court.

TRUE COPY

I.A. NO. OF 2020
IN
SUO MOTO WRIT (CIVIL) NO. 3 OF 2020

IN RE :
COGNIZANCE FOR EXTENSION OF LIMITATION

With

S.Madhusudan,

.... Applicant

VAKALATNAMA

I/ We **S.MADHUSUDANAN** Petitioner(s)/Appellant(s)/ Respondents(s) in the above Suit/Appeal/Petition Reference do hereby appoint and retain **A. LAKSHMINARAYANAN**, Advocate Supreme Court to act and appear for me/us in the above Suit/Appeal/Petition/Reference and on my/our behalf to conduct and prosecute (or defend) the same and all proceedings that may taken in respect of any application connected with the same or any decree or order passed therein including proceeding in taxation and applications for Review, to file and obtain return of documents and to deposit and receive money on my/our behalf in the said Suit/Appeal/Petition/Reference and in applications for Review and to represent me/is and to take all necessary stops on my/our behalf in the above matter. We agree to pay his fees and out of pocket expenses, agree to ratify all acts done by the aforesaid Advocate in pursuance of this Authority.

Dated this the 16th day May of 2020

Accepted



A. LAKSHMINARAYANAN

Advocate on Record
212 NEW LAWYERS CHAMBER
M.C.SETALAD BLOCK
SUPREME COURT BHAGWAN DAS ROAD, NEW DELHI
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Code No.2310



S.MADHUSUDANAN
APPELLANT

MEMO OF APPEARANCE

To,
The Registrar,
Supreme Court of India,
New Delhi

Sir,

Please enter my appearance on behalf of the
Petitioner(s)/Appellant(s)/Respondent(s)/Opposite Parties/Intervener in the matter mentioned.

Dated this the 16th day May of 2020

Yours faithfully,



A. LAKSHMINARAYANAN
Advocate for Appellant