

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.801 of 2020
(arising out of SLP (Cr1.) No.1452/2019)

VENKATESAN BALASUBRAMANIYAN . . . APPELLANT(S)

VERSUS

THE INTELLIGENCE OFFICER,
D.R.I. BANGALORE . . . RESPONDENT(S)

WITH

CRIMINAL APPEAL NO.802 of 2020
(arising out of SLP (Cr1.) No.1820/2019)

VILLAYUTHAM NAGU . . . APPELLANT(S)

VERSUS

THE INTELLIGENCE OFFICER,
D.R.I. BANGALORE . . . RESPONDENT(S)

AND

CRIMINAL APPEAL NO.803 of 2020
(arising out of SLP (Cr1.) No.1443/2019)

VIJAYA KUMAR L. . . APPELLANT(S)

VERSUS

THE INTELLIGENCE OFFICER,
D.R.I. BANGALORE . . . RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

Leave granted. These three appeals have been filed against the common judgment dated 30.11.2018 of

the High Court of Judicature at Hyderabad in Criminal Petition No.10524 of 2018 filed by the respondent before the High Court. By the impugned judgment dated 30.11.2018, the petition filed by respondent Under Section 439(2) Cr.P.C. has been allowed cancelling the bail granted to the appellants by order dated 12.07.2018 by Metropolitan Sessions Judge, Hyderabad.

2. The facts and issues in these appeals being similar, it shall be sufficient to refer to the pleadings in **Criminal Appeal arising out SLP (Cr1.) No.1452 of 2019- Venaktesan Balasubramaniyan Vs. The Intelligence Officer** for deciding all these appeals, brief facts of which are as under:-

2.1 On 11.01.2018, car bearing No. KA 39 M 2117 was intercepted by Directorate of Revenue Intelligence (hereinafter referred to as "D.R.I."), Hyderabad at toll plaza, Kamkole Village, Munnipalli Mandal, Sangareddy District, Telangana in which appellants (driver and two men) were travelling. The

appellants along with other two persons introduced themselves on being asked as to whether they have secreted anything illegal in the car, the appellant's replied in negative. The Officers searched the car and found false casing behind the rear seats on the side walls of the boot of the car with metal doors. The appellants' opened the door and few transparent packets with off-white coloured packets were found in the casing attached to the walls of the boot. The appellants' told that packets were of Narcotic drug, which were loaded in the car by a person named Suraj at Omerga, Osmanabad District Maharashtra, which were to be delivered at Chennai. The Officers in presence of Panchas and the appellants opened the packet and tested the materials in the packet. The appellants were taken to the office of D.R.I., Hyderabad. The total quantity of packets (Methaqualone) weighed to be 45.874 Kgs.

2.2 On 12.01.2018, the appellants were arrested in exercise of power conferred under Section 42 of NDPS Act, 1985 (hereinafter referred to as "Act, 1985"). The D.R.I. officers prepared a crime report against all the accused-appellants for commission of offence under Sections 22, 28 and 29 of NDPS Act and produced them before the VI Additional CMM, Hyderabad. The duty Magistrate on 12.01.2018 allowed the application for remand and the appellants were remanded till 25.01.2018. On 25.01.2018, the appellants-accused persons were produced before the Special Sessions Judge Court, D.R.I., Hyderabad. Remand of the appellants was extended from time to time. On 10.07.2018 the appellants were remanded only for two days since 180 days prescribed for filing charge sheet were coming to an end on 12.07.2018.

2.3 On 12.07.2018, since 180 days had expired, the appellants filed bail application. Learned Special Sessions Judge, Hyderabad

granted bail to the appellants under Section 167(2) Cr.P.C. On 12.07.2018, a letter was received from the Additional Sessions Judge, Omerga, Maharashtra asking to handover the custody of appellants to D.R.I., Bangalore as they were required to appear before the Additional Sessions Judge, Omerga, Maharashtra in Special Case (NDPS) No.17 of 2018. The Sessions Court, Hyderabad granted the custody of three accused on 13.07.2018 to the D.R.I., Bangalore. D.R.I., Bangalore produced the appellants before Additional Sessions Judge, Omerga, Maharashtra on 14.07.2018 where they were remanded till 27.07.2018.

2.4 On 02.08.2018, D.R.I., Bangalore filed application before the Special Court, Hyderabad to transfer the records in the Hyderabad case to Omerga Sessions Court. On 24.08.2018, the Special Sessions Judge, Hyderabad transferred the records to the Omerga Court. When Special Court, Omerga,

Maharashtra came to know that the appellants-accused have already been granted bail on 12.07.2018 before which date charge sheet was already filed before the Omerga Court on 06.07.2018 which was taken on file on 11.07.2018 A show cause notice was issued to D.R.I., Bangalore to give explanation. The D.R.I., Bangalore filed an application for cancellation of bail under Section 439(2) Cr.P.C. in the High Court by filing Criminal Petition No. 10524 of 2018. The High Court by the impugned order dated 30.11.2018 cancelled the bail granted under Section 167(2) Cr.P.C. dated 12.07.2018. Aggrieved against the order dated 30.11.2018, these appeals have been filed by the three accused-appellants.

3. This Court on 22.02.2019 noticed that only one of the appellants, i.e., Villayutham Nagu, has been released in pursuance of the bail order dated 12.07.2018, interim order was passed in the special leave petition filed by Villayutham Nagu alone and

other two appellants being still under custody, notices were issued in all the matters.

4. We have heard Shri M. Karpaga Vinayagam, learned senior counsel for the appellants. Shri Vikramjit Banerjee, learned Additional Solicitor General has appeared for the respondent.

5. Learned senior counsel for the appellants submits that before the Special Judge, Hyderabad when the case was taken on 12.07.2018 neither any charge sheet was filed before the Special Court Hyderabad nor any information was given to the Special Court that any charge sheet has been filed in Omerga Court, Maharashtra. No complaint under Section 36A(d) of NDPS Act having been filed by 12.07.2018 by which period, 180 days had lapsed, the learned Special Court had granted default bail on 12.07.2018 to all the appellants. The accused were entitled for default bail under Section 167(2) Cr.P.C. Learned Senior counsel submits that instead of filing an application for cancellation of the bail before the Special Court under Section 439(2) Cr.P.C., the respondent approached before the High Court under

Section 439(2) Cr.P.C. When the bail order was passed by the Special Court, D.R.I., Bangalore ought to have informed the Special Court seeking the cancellation of the bail by giving explanation as to why the fact of filing combined complaint was not informed to the Special Court. It is submitted that recovery of contraband from accused by the D.R.I. Hyderabad is entirely different from the Omerga case, which is relating to the recovery of the contraband manufactured at the factory situated at Omerga. The appellants are to be charged only for the offence of possession and the transport. The appellants have no role to play with reference to the manufacture of contraband in the factory at Omerga. The seizure of the contraband was made by the D.R.I., Hyderabad on 11.01.2018 only during the time between 12 PM to 3:30 PM at Hyderabad whereas the recovery of contraband from the factory at Omerga was made by the D.R.I., Bangalore only on 11.01.2018 at 4.30 PM and on 12.01.2018. It is further submitted that when the Special Court was not informed either on 10.07.2018 or 12.07.2018 that any charge sheet has been filed on

06.07.2018, no error was committed by Special Court in granting the default bail under Section 167(2) Cr.P.C.

6. Learned Additional Solicitor General refuting the submissions of the learned senior counsel for the appellants contends that the appellant's Car was intercepted at Hyderabad on basis of specific and credible information that huge quantity of NDPS substance being illegally manufactured in premises of M/s. Pragati Electrical Work Omerga, which is being transported to Chennai. A total of 45.874 Kgs of NDPS substance from the appellants was seized on the basis of specific intelligence. In the voluntary statements of accused Nos. 5, 6 and 7 (appellants), recorded under Section 67 of the Act, 1985 in connection with the seizure of 45.874 Kgs. of substance, they have stated that started from Omerga for Chennai. It is submitted that a combined charge sheet has been filed taking into consideration the entire sequence of events including the seizure of 45.874 Kgs. NDPS substance by D.R.I., Hyderabad in which present appellants are accused Nos. 5, 6 and 7.

It was due to non-communication of information of combined complaint having been filed on 06.07.2018, the order was passed by the Special Court on 12.07.2018 granting default bail whereas on the same day, a letter was received by Special Court, Hyderabad where the Special Court, Omerga has asked for the custody of the accused. All the appellants filed a bail petition on 18.07.2018 before the Omerga Court under Section 439 Cr.P.C., which bail application was subsequently withdrawn on 25.09.2018. On 31.10.2018, upon fulfilling the conditions by one of the accused, Villayutham Nagu, the learned Omerga Court was pleased to release the said accused on 31.10.2018 and rest of the two accused are still in Osmanabad Jail. The High Court rightly cancelled the bail, which was earlier granted by the learned Special Judge and the combined complaint having been filed on 06.07.2018, which was also taken on file on 11.07.2018, the appellants were not entitled for grant of default bail under Section 167(2) Cr.P.C.

7. We have considered the submissions of the learned counsel for the parties and have perused the records.

8. The appellants' car by which they were travelling from Omerga to Hyderabad on 11.01.2018 was intercepted by the D.R.I. officials of Hyderabad Zonal Unit near the Kamkole near Hyderabad and from the possession of the appellants 45.874 Kgs of narcotic substance was recovered. Appellants' in the statement recorded under Section 67 of NDPS Act have stated that they have started from Omerga to Chennai in the car in which the narcotic substance was being transported. The remand of the appellants was extended from time to time till 12.07.2018 by Special Court, Hyderabad. On 11.01.2018, recovery of narcotic substance was also made at Omerga in the factory premises of M/s Pragati Electrical Work, MIDC Omerga, Maharashtra, on which D.R.I. has registered a case and a combined complaint dated 06.07.2018 was submitted by Intelligence Officer, D.R.I., Bangalore before the Special Court, Omerga. Complaint under Section 36A(1)(d) of NDPS Act for offences under Section 8(c) punishable under Section 21(c), 22(c),

23(c), 28 and 29 read with Section 38 of the NDPS Act has been filed dated 06.07.2018 by Intelligence Officer, D.R.I. in Omerga Court. The appellants have been made accused Nos. 5, 6 and 7 in the complaint. The combined complaint has been brought on the record by the respondent alongwith additional documents in which with regard to accused Nos. 5, 6 and 7, i.e., appellants in these appeals, apart from other allegations and facts, following has been stated in paragraphs 110 and 111:-

110. The complainant submits that, accused No. 5, 6 and 7 i.e. Shri Villautham Nagu (**A5**), Shri Venkatesan Balasubramaniyan (**A6**) and Shri Vijay Kumar L (**A7**), who were possessing / carrying the "**Ketamine Hydrochloride**" a psychotropic substance in commercial quantity in their car bearing No. KA-39-M-2117 from Omerga to Chennai and the same was seized on 11.01.2018. Hence, they had committed an offence under Section 8(c) and 9A are liable to be punished under Section 21(c), Section 22(c), Section 23(c) read with Section 28, Section 29 and Section 38 of the NDPS Act, 1985.

111. Ketamine Hydrochloride seized from accused No. 5, 6 and 7 under Mahazar dated 11.01.2018, under Mahazar dated 11/12.01.2018 and under 11.02.2018 have been submitted to the Hon'ble Court vide various Memos in a sealed cover are liable for confiscation under the provisions of Section 60, 61, 62 and 63 of the NDPS Act. This Hon'ble Court may be pleased to pass

appropriate order relating to the confiscation of the above said goods in terms of Section 63 of the NDPS Act.

Sl. No.	Quantity	Remarks
01.	45.874 Kgs	Seized under dated Mahazar 11.01.2018
02.	500 Grams	Seized under dated, 11/12.01.2018 Mahazar
03.	9.65 Kgs	Seized under dated 11.06.2018 Mahazar

9. The High Court in the impugned judgment noted that charge sheet having been filed on 06.07.2018, i.e., well within the stipulated period of 180 days, the accused could not have been granted the benefit under Section 167 Cr.P.C. In paragraph 8, following

has been observed by the High Court:-

"8.It can be culled out from the record that filing of the single charge sheet on 06.07.2018 before the Additional Sessions Court, Omerga, was not brought to the notice of the Metropolitan Sessions Court, Hyderabad for whatever reason may be. Since the factual aspect remains that the charge sheet was filed on 06.07.2018 i.e., well within the stipulated period of 180 days, the respondents-accused are not entitled for the benefit under Section

167(2) Cr.P.C. Under these circumstances, the respondents-accused are entitled for bail in accordance with the provisions laid down under the NDPS Act read with Sections 437 and 439 Cr.P.C. and accordingly they are entitled to work out the remedies under the said provisions."

10. It is true that the bail granted under Section 167(2) Cr.P.c. could have been cancelled under Section 439(2) Cr.P.C.. This Court in **Pandit Dnyanu Khot Vs. State of Maharashtra and Ors., (2008) 17 SCC 745** while considering the case where bail granted under Section 167(2) Cr.P.C. was cancelled under Section 439(2) Cr.P.C. by learned Sessions Judge after noticing the facts upheld the order under Section 439 Cr.P.C. cancelling the bail. Paragraphs 7, 8 and 9 of the judgment are as follows:-

"7. In the present case, against the accused, FIR for the offences punishable under Sections 302, 307, 147, 148, 149, 324 and 323 IPC and Section 27 of the Arms Act was registered. The accused were arrested on 28-10-2000 and were produced before the Judicial Magistrate. They filed an application under Section 167(2) CrPC on 25-1-2001 for releasing them on bail on the ground that charge-sheet was not submitted within the stipulated time and the court released them on bail on the

same date by exercising jurisdiction under Section 167(2) CrPC. The State filed an application on 31-1-2001 under Section 437(5) and Section 439(2) CrPC before the Sessions Judge, Kolhapur for cancellation of bail. Before the said application could be finally disposed of, the accused preferred an application Ext. 8 submitting that an application under Sections 437(5) and 439(2) was not maintainable before the Sessions Court and the State ought to have approached the learned Magistrate for cancellation of the bail. That application was rejected by the learned Additional Sessions Judge by order dated 3-3-2001. Thereafter, the learned Additional Sessions Judge by judgment and order dated 2-5-2001 allowed the said application and set aside the order passed by the Judicial Magistrate on the ground that the accused were released on the 89th day, that is, before expiry of 90 days.

8. In our view, it appears that the High Court has committed basic error in not referring to the provisions of Section 439(2) CrPC which specifically empower the High Court or the Court of Session to cancel such bail. Section 439(2) reads as under:

*"439. Special powers of High Court or Court of Session regarding bail.—(1)****

(2) A High Court or Court of Session may direct that any person

who has been released on bail under this Chapter be arrested and commit him to custody."

9. The proviso to Section 167 itself clarifies that every person released on bail under Section 167(2) shall be deemed to be so released under Chapter XXXIII. Therefore, if a person is illegally or erroneously released on bail under Section 167(2), his bail can be cancelled by passing appropriate order under Section 439(2) CrPC. This Court in *Puran v. Rambilas* [(2001) 6 SCC 338] has also clarified that the concept of setting aside an unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation."

11. It is not even submitted before us that Omerga Court where common complaint has been filed against the accused had no jurisdiction to inquire and try the offence. It was due to some miscommunication that at the time when Court passed the order on 12.07.2018, the factum of filing of combined complaint dated 06.07.2018 was not brought into the notice of Special Court, Hyderabad. Although, letter of the same date 12.07.2018 was received by Special

Court, Hyderabad from Special Court, Omerga praying for custody of the appellants, which custody was also granted by the Special Court, Hyderabad on the next day, i.e., 13.07.2018. All these facts were brought before the High Court in application filed under Section 439(2) Cr.P.C. and the High Court has rightly cancelled the bail order dated 12.07.2018. We do not find any error in the order of the High Court cancelling the bail order dated 12.07.2018.

12. It is true that two offences, one at Hyderabad being at the instance of D.R.I., Hyderabad namely D.R.I. 48 of 2018 was registered and another case Special NDPS No. 17 of 2018 by the D.R.I., Bangalore, Zonal Unit. A combined complaint taking care of both the offences was filed before the Special Court, Omerga as noted above wherein offences committed by the accused were also inquired and dealt with. There is ample material in the complaint that the transportation of narcotic substance started from Omerga, Maharashtra and was being allegedly to be taken to Chennai and intercepted at Hyderabad. The complaint, which has been brought on the record gives

the detailed facts including the journey and the interception of appellants at Hyderabad. The combined complaint having been filed on 06.07.2018, i.e., well within 180 days, the High Court did not commit any error in cancelling the default bail granted to the appellants on 12.07.2018.

13. We, thus, are of the view that there is no ground for interfering with the impugned judgment /order of the High Court. We have noted above that regular bail application under Section 439 Cr.P.C. was filed before the Omerga Court by the appellants, which was withdrawn on 25.09.2018, we are of the view that it is open for the appellants to file regular bail application before Omerga Court under Section 439 Cr.P.C. afresh, which may be considered on merits without being influenced by any observations made by the order passed by the High Court in the impugned judgment or observations made by us. We further observe that bail application to be filed by the appellants under Section 439 Cr.P.C. be considered and decided expeditiously. The order dated 12.07.2018 having been set aside by the High Court, which order

having been confirmed by this Court, the appellant, Villayutham Nagu is to surrender before the Special Court, Omerga. All the appeals are dismissed subject to liberty granted to the appellants as above.

.....J.
(ASHOK BHUSHAN)

.....J.
(R. SUBHASH REDDY)

.....J.
(M.R. SHAH)

New Delhi,
November 20, 2020.