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Crl.O.P.No.901 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.02.2024**

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.901 of 2024

1. Varun
S/o.Babu

2.Nanda Krishna
S/o.Divyesh

Both the Petitioners are confined at Central Prison, Coimbatore
... Petitioners

Vs.

State
Rep. by the Inspector of Police
Sulur Police Station
Crime No.330 of 2023
...Respondent

Criminal Original Petition under Section 482 of the Criminal Procedure Code to set aside the impugned docket order of the trial Court dated 15.11.2023.

For Petitioner : Ms.P.Kritika Kamal

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This petition has been filed challenging the written endorsement of the Court below dated 15.11.2023 wherein the statutory bail petition filed by the petitioner was returned on the ground that the charge sheet has already been filed by the respondent.

2. When the matter came up for hearing on 29.01.2024, this Court passed the following order :-

When the matter came up for hearing on 22.01.2024, this Court passed the following order :-

The learned counsel for the petitioners submitted that the petitioners were arrested and remanded to judicial custody on 18.05.2023. The 118th day expired on the mid night of 13.11.2023. The petitioners filed the statutory bail on 15.11.2023 at 10.30 a.m. However, this application has been returned by the Court below through the impugned endorsement dated 15.11.2023 on the ground that charge sheet has already been filed.

2.The learned Additional Public Prosecutor appearing on behalf of respondent submitted that the final report was filed on 13.11.2023 at 11.24 a.m. and it was taken on file and numbered as C.C.No.96 of 2023 on 15.11.2023. Therefore, it was contended that the petitioners are not entitled for statutory bail and that this bail



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application can be considered only on merits.

3.The learned counsel for the petitioners seeks for some time to verify and make her submissions.

4.Post this case under the same caption on 29.01.2024

*2. When the matter was taken up for hearing today, Mrs.Krithika Kamal, learned counsel for the petitioner produced the print-out of the case status in CC No.96 of 2023. The learned counsel contended that the said print out makes it clear that the final report was filed only on 15.11.2023 and it was numbered on the same day as CC No.96 of 2023. However, even before the filing of this final report, the petitioner had filed the statutory bail on 15.11.2023 at 10.30 a.m. The learned counsel therefore submitted that the claim made by the prosecution as if the final report was filed on 13.11.2023 is unsustainable. The learned counsel for the petitioner in order to substantiate her submission, relied upon the judgement of the Apex Court in **[Enforcement Directorate, Government of India Vs. Kapil Wadhawan and another etc.,]** reported in **2023 LiveLaw (SC) 249.***

3. The learned Additional Public prosecutor once again reiterated that the final report was filed on 13.11.2023 itself and it was taken cognizance and numbered on 15.11.2023 as CC No.96 of 2023. Hence, it was contended that the statutory bail application filed by the petitioner on 15.11.2023 cannot be entertained and if at all the petitioner seeks for bail, it can only be by way of regular bail, which should be considered in line with Section 37 of the NDPS Act.

4. The only clarification that has to be given in the present case is as to when actually the final report was filed by the respondent



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police before the Court below and when it was taken cognizance and assigned a case number. The learned Special Judge, Coimbatore, is directed to give a clarity in this regard.

5. Post this case under the same caption on 31.01.2024.

3. Pursuant to the above order, this Court received a report from the Special Judge, Coimbatore, to the effect that the final report was filed with all the relevant documents on 13.11.2023 through e-filing mode and that the same was taken cognizance on 15.11.2023 and a case number was assigned as CC No.96 of 2023.

4. The learned counsel for the petitioner submitted that admittedly the final report is said to have been filed on 13.11.2023 through e-filing platform and the papers were not physically available in the Court. The physical papers were available before the Court only on 15.11.2023 and by then, the period of 180 days had expired and the petitioner had also filed a petition seeking for statutory bail. Therefore, the indefeasible right of the petitioner under Section 167(2) of Cr.PC had come into force and therefore, the Court below ought to have dealt with the petition and granted statutory bail to the petitioner. The learned counsel also disputed the fact that the final



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report was filed through e-filing mode on 13.11.2023.

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5. The learned counsel in order to substantiate her submissions relied upon the judgement of the Apex Court in ***[Achpal Alias Ramswaroop and another Vs. State of Rajasthan]*** reported in ***2019 14 SCC 599*** and in the case of ***[Enforcement Directorate, Government of India Vs. Kapil Wadhawan and another., etc]*** reported in ***2023 livelaw (SC) 249***.

6. The learned counsel for the petitioner concluded her arguments by submitting that the case status as shown in the official website clearly reflects the fact that the final report was filed only on 15.11.2023 and it was taken cognizance and numbered only on 15.11.2023. Since these particulars are taken from the official website, the same must be taken to be correct and must be acted upon. If this date is taken into consideration, it is clear that the final report was filed only after the right accrued in favour of the petitioner under Section 167(2) of Cr.PC.

7. Per contra, the learned Additional Public Prosecutor submitted



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that there is a mechanism available for e-filing of the final report along with

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all the relevant materials. This mechanism was adopted by the prosecution and the final report along with all the relevant documents were uploaded on 13.11.2023. The same is clear from the official website developed by the e-filing services of e-committee. The learned Additional Public Prosecutor further submitted that since the final report and the materials were in order, the same was taken cognizance on 15.11.2023 and it was also numbered on the same day. In view of the same, it is clear that the final report was filed even before the expiry of the 180th day and therefore, the right of the petitioner to seek for statutory bail ceases to exist and if at all, the petitioner seeks for bail, it can only be considered on merits. The learned Additional Public Prosecutor in order to substantiate his submissions relied upon the judgement of the Apex Court in ***[Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra and another]*** reported in ***2013 3 SCC 77*** and in ***[Serious Fraud Investigation Officer (SFIO) Vs. Rahul Modi and others]*** reported in ***2022 SCC online SC 153***.

8. The learned Additional Public Prosecutor apart from addressing



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the issue involved in the present case, also brought to the notice of this Court

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that there is a practice in almost all the Special Courts to take up the extension petition and the statutory bail petition together and pass common orders. The learned Additional Public Prosecutor submitted that in many cases the extension petition is filed under Section 36A (4) of the Narcotic Drugs and Psychotropic Substances Act (hereinafter called as the “NDPS Act”) within time and whereas, it is numbered later and it is taken up along with the statutory bail petition filed by the accused. In other words, by the time the extension petition is taken up for hearing, the statutory period comes to an end and therefore, some directions must be issued by this Court to the Special Courts, to follow a uniform procedure in dealing with these petitions. The learned Additional Public Prosecutor relied upon the judgement of the Calcutta Full Bench Judgement in the case of *[Subhas Yadav and others Vs. State of West Bengal]* reported in *2023 SCC online Cal 313*. The learned Additional Public Prosecutor specifically relied upon Paragraph 31 in that judgement which gives the conclusion for the issues taken up by the Full Bench.



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

10. In the instant case, it is clear from the report given by the Special Court, Coimbatore, that the final report along with all the materials was filed by the prosecution on 13.11.2023 through e-filing platform. The Special Judge, Coimbatore, has further stated in the report that this was acted upon and the final report was taken cognizance on 15.11.2023 and the case was numbered on the same day as CC No.96 of 2023. In the light of this report, the learned counsel expressing doubt with regard to the e-filing that took place on 13.11.2023, is unfounded.

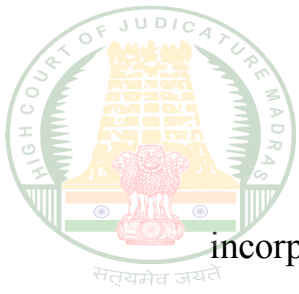
11. The learned counsel for the petitioner submitted that the case status as available in the official platform shows that the final report was filed only on 15.11.2023 and it was taken cognizance on the same day and it was numbered on the same day. By the time, this process was undertaken, the indefeasible right of the petitioner under Section 167(2) of Cr.PC had accrued.



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WEB COPY 12. This Court enquired the Special Court, Coimbatore, as to why the date of filing of the final report is shown in the official website as 15.11.2023 when the e-filing was already done on 13.11.2023. In answer to this query, the Special Court informed that in all cases across Tamil Nadu, the date of filing does not reflect the date on which the e-filing is done and the date of filing gets reflected only by taking into consideration the physical availability of the papers in the Court. Therefore, even though the e-filing was done on 13.11.2023, based on the physical availability of the papers before the Judge, the same is incorporated in the official website as the date of filing.

13. If e-filing mechanism is officially recognized as a mode of filing, obviously the date of e-filing must be taken to be the date of filing. At the time of filing, the papers are on a soft copy mode and later, it translates itself into a hard copy. The date on which the hard copy is brought before the Court cannot be taken to be the date of filing and in every case, the date of filing can only be the date on which the e-filing is done and that should be



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incorporated as the date of filing in the official website. This practice has to be consistently followed by all the Courts in order to avoid any future confusion. In the instant case, there is no dispute with regard to the fact that the e-filing was done on 13.11.2023 and the cognizance of the final report was taken on 15.11.2023 and the case was also numbered on the same day.

14. The next issue to be gone into is as to whether the e-filing of the final report will suffice or the Court must deal with the physical papers and only then, it can be construed that the actual filing had taken place. This issue is taken up since the learned counsel for the petitioner brought to the notice of this Court the judgement of the Apex Court in ***Enforcement Directorate case*** referred supra. The learned counsel submitted that the Apex Court in this case disregarded the filing of the complaint through e-mail on 11.07.2020 and took into consideration only the physical application on 13.07.2020 and as on that day, since the statutory period ended, the Apex Court held that the accused person therein was entitled for a statutory bail. By relying upon this judgement, the learned counsel submitted that the e-filing that was done on 13.11.2023 cannot be taken to be the relevant date



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and it is the date of the physical filing on 15.11.2023, which must be taken to be the relevant date and if this date is taken into account, the petitioner will be entitled for a statutory bail, since the statutory period of 180 days ended on 15.11.2023. The learned counsel submitted that the Court below lost its power to remand the petitioner beyond the statutory period and to substantiate the same, the learned counsel relied upon the first proviso to Section 167(2) of Cr.PC.

15. To appreciate the above ground that has been raised by the learned counsel for the petitioner, it is necessary to understand the facts of the case that was dealt with by the Apex Court and the final conclusion arrived at in that case. The relevant paragraphs are extracted hereunder:-

2. In the present case, we discuss the rights of such accused, whose right to default bail, hangs in the balance by difference of a single day or even less. Ostensibly, one may presume this to be insignificant. However, the constitutional import of the matter is such, that personal liberty, which may only be taken away by a just and fair procedure established by law, needs to be analyzed and



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protected. The issue is simple to state but hard to answer. It is embedded in a maze of case law that this Court needs to negotiate. Simply put, the Court needs to answer whether the period of remand under the first proviso to Sec. 167 (2) of the Code of Criminal Procedure, 1973 (hereinafter 'CrPC') is inclusive of the day on which the Magistrate orders remand. Whatever be the outcome, this Court is conscious that none should suffer incarceration without legal authority. Although, the State is tasked to prevent crime and maintain security, personal liberty-should not be the collateral.

13. The applicants contended before the High Court that they were arrested on 14.5.2020 and on the very same day, they were remanded by the Magistrate and such remand orders came to be passed from time to time. As per the ED, on 11.7.2020, (i.e. a Saturday), a complaint was filed by them, through e-mail and it was argued by the applicants that this was only a forward but not the entire complaint. On 13.7.2020 i.e. Monday, the ED filed the physical complaint before the Court. Based on these facts, the applicants' counsel submitted that the period of 60 days from the



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date of remand of the applicants (14.5.2020) expired on 12.7.2020 (Sunday) and the applicants on 13.7.2020 sought enlargement on default bail, under the proviso (a) (ii) of Section 167 (2), CrPC. Initially, the applications were transmitted through e-mail at around 8:53 AM and after about two hours on 13.7.2020, at around 11 AM, the bail applications were presented for physical filing in the Sessions Court and a token acknowledging the filing was issued and the applications were also numbered. 14. The ED claimed to have filed the complaint through e-mail on 11.7.2020 followed by a physical application on 13.7.2020. As per the ED, relying on Rustam (supra), the 60 day period ends on 13.7.2020 (wherein it seeks to exclude the date of remand i.e. 14.5.2020). Thus, as per the ED, complaint was filed in time.

50. Since there exists vacuum in the application and details of Section 167 CrPC, we have opted for an interpretation which advances the cause of personal liberty. The accused herein were remanded on 14.05.2020 and as such, the chargesheet ought to have been filed on or before 12.07.2020 (i.e. the sixtieth day). But the same was filed, only on 13.07.2020 which was the 61st day of



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their custody. Therefore, the right to default bail accrued to the accused persons on 13.07.2020 at 12:00 AM, midnight, onwards. On that very day, the accused filed their default bail applications at 8:53 AM. The ED filed the chargesheet, later in the day, at 11:15 AM. Thus, the default bail Applications were filed well before the chargesheet. In Ravindran(supra) and Bikramjit (supra), which followed the Constitution Bench in Sanjay Dutt(supra) it was rightly held that if the accused persons avail their indefeasible right to default bail before the chargesheet / final report is filed, then such right would not stand frustrated or extinguished by any such subsequent filing. We therefore declare that the stipulated 60/90 day remand period under Section 167 CrPC ought to be computed from the date when a Magistrate authorizes remand. If the first day of remand is excluded, the remand period, as we notice will extend beyond the permitted 60 /90 days' period resulting in unauthorized detention beyond the period envisaged under Section 167 CrPC. In cases where the chargesheet / final report is filed on or after the 61st/91st day, the accused in our considered opinion would be entitled to default



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bail. In other words, the very moment the stipulated 60/90 day remand period expires, an indefeasible right to default bail accrues to the accused.

16. The learned counsel for the petitioner relied upon the judgement in *Achpal case* referred supra and the relevant portions in that judgement are extracted hereunder :-

18. The provision has a definite purpose in that; on the basis of the material relating to investigation, the Magistrate ought to be in a position to proceed with the matter. It is thus clearly indicated that the stage of investigation ought to be confined to 90 or 60 days, as the case may be, and thereafter the issue relating to the custody of the accused ought to be dealt with by the Magistrate on the basis of the investigation. Matters and issues relating to liberty and whether the person accused of a charge ought to be confined or not, must be decided by the Magistrate and not by the Police. The further custody of such person ought not to be guided by mere suspicion that he may have committed an offence or for that matter, to facilitate pending investigation.



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19. In the present case as on the 90th day, there were no papers or the charge-sheet in terms of [Section 173](#) of the Code for the concerned Magistrate to assess the situation whether on merits the accused was required to be remanded to further custody. Though the charge-sheet in terms of [Section 173](#) came to be filed on 05.07.2018, such filing not being in terms of the order passed by the High Court on 03.07.2018, the papers were returned to the Investigating Officer. Perhaps it would have been better if the Public Prosecutor had informed the High Court on 03.07.2018 itself that the period for completing the investigation was coming to a close. He could also have submitted that the papers relating to investigation be filed within the time prescribed and a call could thereafter be taken by the Superior Gazetted Officer whether the matter required further investigation in terms of [Section 173\(8\)](#) of the Code or not. That would have been an ideal situation. But we have to consider the actual effect of the circumstances that got unfolded. The fact of the matter is that as on completion of 90 days of prescribed period under [Section 167](#) of the Code there were no papers of investigation before the concerned Magistrate. The accused were thus denied of protection established by law. The issue of their custody had to be considered on merits by



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the concerned Magistrate and they could not be simply remanded to custody dehors such consideration. In our considered view the submission advanced by Mr. Dave, learned Advocate therefore has to be accepted.

24. We, therefore, allow this appeal and direct that the appellants are entitled to be admitted to bail in terms of Section 167(2) of the Code on such conditions as the trial Court may deem appropriate. The matter shall be immediately placed before the trial court upon receipt of copy of this Judgment. We also add that in terms of conclusions arrived at in the majority Judgment of this Court in [Rakesh Kumar Paul](#) (supra), there would be no prohibition for arrest or re-arrest of the appellants on cogent grounds and in such eventuality, the appellants would be entitled to petition for grant of regular bail.

17. In the Enforcement Directorate case, the Enforcement Director had filed a complaint through e-mail on 11.07.2020 followed by a physical application on 13.07.2020. The Apex Court held that as on 11.07.2020 which was a Saturday, the complaint was not available before the Court and only on Monday (i.e) on 13.07.2020, the physical application was available.



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Therefore, it was held that by the time the physical copy was filed before the Court, the right of the accused therein had accrued and he had also filed a default bail application. Therefore, the Apex Court taking into consideration the indefeasible right provided under Section 167(2) of Cr.PC came to a conclusion that the same cannot be defeated by virtue of the complaint being sent by the Enforcement Director through e-mail on 11.07.2020, which was a Saturday and which complaint was not even before the Court.

18. The next judgement that was relied upon by the learned counsel for the petitioner in *Achpal case* was also a case where as on the 90th day, there were no papers or charge sheet in terms of Section 173 of Cr.PC. Therefore, there was no occasion for the Magistrate to deal with the same and the indefeasible right accrued in favour of the accused under Section 167 (2) of Cr.PC and therefore, it was held that the accused person therein is entitled to be released on statutory bail.

19. The above two judgements that were relied upon by the learned counsel for the petitioner will not strictly apply to the facts of the present



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case. In the instant case, the e-filing platform is available to the prosecution to file the final report. This filing is officially recognized to be the date of filing of the final report. It is nobody's case that an incomplete final report was filed on 13.11.2023. It must also be noted that 13.11.2023 was a working day since it was Monday and therefore, the final report along with the materials had reached the e-filing portal of the Special Court. In this digital era, it is too late in the day to claim that the e-filing of the final report cannot be construed as the date of filing and it is only the physical availability of papers that should be construed as the actual date of filing. If this interpretation is given, all the efforts that are being taken by the Apex Court and the other High Courts in India to make the entire legal proceedings digital, will be defeated.

20. In the case on hand, it has to be construed that the final report along with the materials was available before the Court on 13.11.2023 and the Court below had applied its mind and taken cognizance on 15.11.2023 and the case was also numbered on the same day. Admittedly, the 180th day expired only on 15.11.2023. This factual scenario in the instant case, makes



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a huge difference when it is compared with the facts as found in the above two judgements referred by the learned counsel for the petitioner. The judgements that were relied upon by the learned Additional Public Prosecutor in ***Suresh Kumar case and SFIO case***, referred supra makes it very clear that as per the scheme of Cr.PC, once the charge sheet is filed before the Court within the statutory period, that must be taken to be sufficient compliance with the provision under Section 167 of Cr.PC. It is immaterial as to whether cognizance of that final report was taken or not within the statutory period. This dictum laid down in the above two judgements will directly apply to the facts of the present case.

21. In the light of the above discussion, this Court does not find any merits to interfere with the written endorsement made by the Court below on 15.11.2023, returning the statutory bail application filed by the petitioner.

22. The only other issue to be considered is the practice that is followed by the Special Courts and which has been explained supra.



23. The Full Bench of the Calcutta High Court had an occasion to deal with the very same issue and it will be more beneficial to take note of this judgement. The conclusion that was arrived at by the Calcutta High Court is extracted hereunder :-

31. In light of the aforesaid discussion, the issues are answered as follows:—

1. Right of an accused to statutory bail upon expiry of the period of detention prescribed under section [36A\(4\)](#) of [NDPS Act](#) is an inchoate one till he avails of his right by seeking statutory bail either by way of an application or even orally. Hence, he cannot be released automatically on statutory bail on the mere expiry of 180 days even if the prosecutor has failed to submit report seeking extension of detention in terms of the proviso to section 36A(4) of the Act before expiry of the said period;

2. Order extending the period of detention under proviso to section [36A\(4\)](#) of [NDPS Act](#) on a report of the Public Prosecutor submitted after expiry of 180 days but prior to the accused availing of his right does not envisage retrospective operation but the total period of detention under the aforesaid provision cannot exceed one year in the whole;



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3. As per Para 25.3 of *M. Ravindran (supra)* the right to statutory bail stands extinguished once the report of the Public Prosecutor seeking extension is filed. Hence, remand of the accused till the prayer of the prosecutor is disposed of is traceable to section [167\(2\) Cr. P.C.](#) read with section [36A\(4\)](#) of the [NDPS Act](#). In the event, the application for extension is dismissed or an order extending detention is set aside by a superior court right to statutory bail revives in favour of the accused;

4. Upon expiry of 180 days of detention, Special Court as a cautionary measure ought to inform the accused (particularly if he is from an underprivileged section of society and is unrepresented by a counsel) of his right to statutory bail. However, failure to intimate the accused of his right by itself would not entitle him to statutory bail unless he avails of such relief;

5. Prayer for extension of period of detention must be on the basis of a report of Public Prosecutor which must record progress of investigation and spell out specific reasons to justify further detention beyond 180 days pending investigation;

6. Special Court on the basis of the report of Public Prosecutor and materials in support of such plea must be satisfied of the twin requirements, i.e., (a) there is appreciable progress in the investigation



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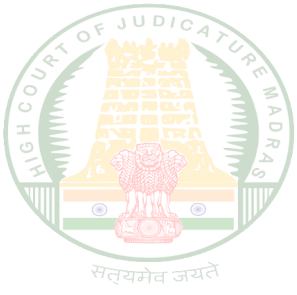


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and (b) there are specific/compelling reasons to justify further detention pending investigation. Each case has to be decided on its own merits. For example, failure to complete investigation solely on the score of non-submission of FSL report of the samples drawn from the contraband is an institutional shortcoming. This by itself may not justify further detention pending completion of investigation. But if the aforesaid fact situation is coupled with compelling circumstances like complexities in investigation in an organized crime racket or inter-state/trans-border trafficking, criminal antecedents of the accused giving rise to possibility of recidivism, abscondence of co-accused, etc., constituting 'specific reasons' justifying further detention, the Court may be inclined to extend the period of detention and deny liberty;

7. Prayer for extension of period of detention must be decided at the earliest without undue delay preferably within 7 days from making such application. Reasons for adjournment must be specifically stated;

8. No written notice or copy of report of Public Prosecutor requires to be served upon the accused or his counsel but the accused or his counsel must be present personally or through video linkage at the time of consideration of the application. Accused and/or his counsel must be aware of such consideration and may raise objection, if any, with regard to compliance of mandatory requirements of law.



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WEB COPY 24. This Court is in complete agreement with the above conclusions arrived at by the Calcutta High Court. The Special Courts across Tamil Nadu, shall keep the above guidelines in mind and it shall be followed in letter and spirit. The Special Courts must get rid of the practice of dealing with the extension petition and the statutory bail petition together. The scope of both these petitions are very different and it must be keep in mind by the Special Courts. A copy of this order shall be circulated to all the Principal District Judges, across Tamil Nadu.

25. Before parting with the case, this Court wants to thank the learned Counsel for the petitioner and the learned Additional Public Prosecutor, for having assisted this Court in coming to a conclusion, considering the knotty issue involved and also in laying some guidelines to be followed by the Courts below.

26. In the result, this Criminal Original petition stands dismissed. It goes without saying that it will be left open to the petitioner to seek for a



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regular bail before the Court below and the same shall be dealt with by the

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01.02.2024

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Index : Yes

Speaking order: Yes

Neutral citation: Yes

Note : The Registry is directed to circulate this order copy to all the Principal District Judges across Tamil Nadu.

To

1. The Special Judge,
Essential Commodities cum Special Court and
Sessions Judge of Coimbatore.
2. The State
Rep. by the Inspector of Police
Sulur Police Station
3. The Public Prosecutor,
High Court, Madras



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