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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.12.2022

PRONOUNCED ON : 23.12.2022

CORAM

THE HONOURABLE Mr. JUSTICE P.N. PRAKASH
AND
THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

CRL.A.No.1232 of 2022

Mir Anas Ali

.. Appellant

Vs.

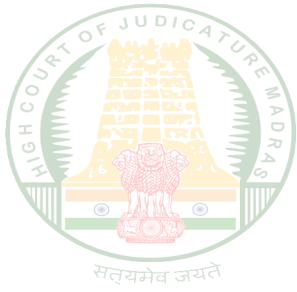
State rep. by
The Inspector of Police
Ambur Town Police Station
Thirupathur District
Cr.No.193/2022

.. Respondent

Criminal Appeal filed under Section 21(1) of the National Investigation Agency, Act, 2008, to set aside the order dated 16.11.2022 passed by the Additional District Munsif-cum-Judicial Magistrate, Ambur, in Crl..M.P.No.4096 of 2022.

For Appellant Mr.J.Ravikumar

For Respondent Mr.R.Muniyapparaj
Additional Public Prosecutor



J U D G M E N T

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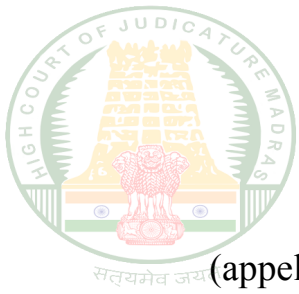
N. ANAND VENKATESH, J.

This Criminal Appeal has been filed to set aside the order dated 16.11.2022 passed by the Additional District Munsif-cum-Judicial Magistrate, Ambur, in Crl..M.P.No.4096 of 2022.

2. The minimum facts that are required to decide this criminal appeal are as under :

2.1. Based on a complaint given by one Thangavel, Special Sub-Inspector of Police, Ambur Town Police Station, a case in Ambur Town P.S. Crime No.193 of 2022 was registered on 30.07.2022 for the offences under Sections 121, 122 and 125 IPC and Sections 18, 18-A, 20, 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 (in short “the UAP Act”) by the Deputy Superintendent of Police, Ambur Sub-Division.

2.2. The complaint discloses that during discreet enquiries conducted by the special branch, an information was received that one Mir Anas Ali



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(appellant herein), S/o.Mir Hidayath Ali, had joined Islamic State of Iraq and Syria (ISIS) and was propagating its ideologies and policies actively in the social media. Therefore, the said Mir Anas Ali was arrested by the Deputy Superintendent of Police, Ambur Sub-Division, on 30.07.2022, for the offences disclosed in the FIR and was produced before the learned Additional District Munsif-cum-Judicial Magistrate, Ambur (for brevity “the Magistrate”) on 30.07.2022, who remanded him in judicial custody for 15 days.

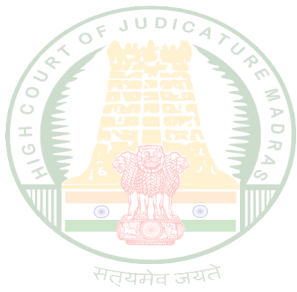
2.3. The investigation was continued by the Deputy Superintendent of Police, Ambur Sub-Division and it is reported that the appellant was being periodically produced before the Magistrate Court, every 15 days for extension of judicial remand. While that being so, the appellant filed a bail petition in CrI.M.P.No.2501 of 2022 in the Court of the Principal District and Sessions Judge, Vellore (for brevity “the Sessions Judge”), which was dismissed on merits on 01.09.2022.



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2.4. Thereafter, the appellant sent a representation from prison to the Court, stating that he does not have the means to engage an Advocate and prayed for his release on bail. Based on this representation that was forwarded to the District Legal Services Authority, a counsel by name Mr.N.Anbarasan (Enrolment No.4142/2012) was nominated to file a bail petition for the appellant. Accordingly, a second bail petition was filed in CrI.M.P.No.3295 of 2022, in which, after hearing both sides, the learned Sessions Judge, by order dated 15.10.2022, released the appellant on bail, without advertng to Section 43D of the UAP Act, treating this case as an another run-of-the-mill bail petition.

2.5. Realising the seriousness of the case, the prosecution filed a petition on 17.10.2022 in CrI.M.P.No.3427 of 2022 in CrI.M.P.No.3295 of 2022 to cancel the bail under Section 439(2) Cr.P.C. in the Sessions Court. Since the prosecution had moved the petition for cancellation of bail, the sureties that were offered by the appellant were not accepted and therefore, he continued to be in incarceration.



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2.6. After notice to the appellant, the learned Sessions Judge, allowed CrI.M.P.No.3427 of 2022 on 20.10.2022, by cancelling the bail that was granted to the appellant earlier in CrI.M.P.No.3295 of 2022 on 15.10.2022. The reasons given by the learned Sessions Judge in the cancellation order, is extracted hereunder:

“14) This Court had granted bail to the respondent/accused on two grounds.

(1) He is an engineering student, hails from a poor family and also considering his representation that he is not at all connected with any unlawful organisations, his detention is spoiling his career as a bright student.

(2) Except for oral arguments, the Prosecution has not filed any document to show the illegal activities.

15) But, now, the Prosecution has seriously opposed that the respondent/accused was secured band on confidential information which cannot be disclosed and upon the very confidential information only the respondent/accused has been arrested by the Police and two laptops, cell phones, knives were recovered from him in presence of witnesses and that if the respondent is enlarged on bail, it will lead to serious issues and it will be serious threat to the Country's security and law and order and the same is against national interest and prayed to cancel the bail already granted by this Court. Since the cancellation of bail petition was filed, the respondent is still under judicial custody

16) From the submissions made by both the prosecution and the respondent counsel, it is evident that the respondent had misrepresented this Court that as if he hails from a poor family to get the mercy of this Court. But in actual, on verification of his



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family background, this Court comes to know that he hails from an affluent and rich family, his father being employed in Dubai. Secondly, the respondent had stated in his letter that he is no way connected with any organisations. But, the prosecution has stated that after verifying the laptop and mobile phones, they came to know about the connection of the respondent with the ISIS organisation, which is a serious threat to the Country and public and it is represented by the prosecution that the case is going to be transferred and investigated by the National Intelligent Agency and since there is concrete evidence the respondent should not be enlarged on bail.

17) Hence, considering the supervening circumstances now put forth by the prosecution that if the respondent/accused is enlarged on bail, it would be a serious threat to the Nation's Security, considering the strong objections of the Prosecution, considering the fact that if this petition is dismissed, it is very difficult for prosecution to secure further evidence in respect of the connection of the respondent with the terrorist organisations, this Court has to interfere with its own order, that the cancellation of bail is utmost necessary for the sake of nation's interest and security and considering the fact that the respondent/accused mis-represented this Court and obtained bail through Legal Aid, this Court is inclined to cancel the bail already granted to the petitioner in Cr.M.P.No.3295 of 2022 dated 15.10.2022."

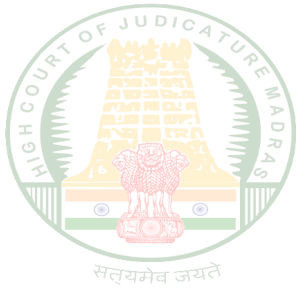
2.7. Now, the scene shifted from the Sessions Court to Magistrate Court. As stated above, the first remand of the appellant was on 30.07.2022 and calculated from that date, 90 days period envisaged under Section 167 Cr.P.C. fell on 27.10.2022. It may be pertinent to state here that the prosecution has not completed the investigation and filed the final report by



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then. Therefore, the appellant filed a petition under Section 167(2) Cr.P.C. on 11.11.2022 in Magistrate Court, for bail. This petition was returned on the ground that the appellant should have to approach the Sessions Court. When the appellant approached the Sessions Court, his default bail petition was forwarded to the Magistrate, with a further direction not to send any papers to the Sessions Court, till committal. Therefore, the default bail petition once again came to the Magistrate Court.

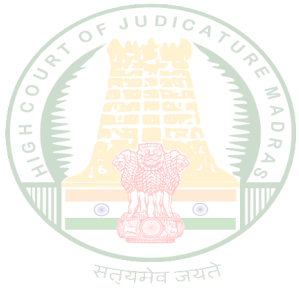
2.8. Now, the prosecution got scent on this and therefore, the Public Prosecutor and the Investigating Officer filed a petition under Section 43D(1)(2)(b) of the UAP Act, for extension of the period of remand from 90 days to 180 days, on the ground that the investigating agency is unable to complete the investigation. This petition under Section 43(D)(1)(2)(b) of the UAP Act was filed in the Magistrate Court on 15.11.2022. Therefore, as on 15.11.2022, there were two petitions before Magistrate Court viz., the petition in CrI.M.P.No.4096 of 2022 for default bail filed by the appellant and the petition in CrI.M.P.No.4098 of 2022 filed by the prosecution under Section 43D(1)(2)(b) of the UAP Act, for extension of the period of remand.



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2.9. At the risk of repetition, we are constrained to state here that the petition for default bail was filed on 11.11.2022, though the 90 days period expired as early as 27.10.2022 and the petition under Section 43D(1)(2)(b) of the UAP Act, was filed only on 15.11.2022. The Magistrate allowed the petition in Crl.M.P.No.4098 of 2022 filed under Section 43D(1)(2)(b) of the UAP Act, by order dated 16.11.2022 and dismissed the petition in Crl.M.P.No.4096 of 2022 filed by the appellant for default bail on the same day *viz.*, 16.11.2022, on the short ground that he has allowed the petition of the prosecution in Crl.M.P.No.4098 of 2022 and has granted extension of period of remand to 180 days. Aggrieved by the order dated 16.11.2022, passed by the Magistrate in Crl.M.P.No.4096 of 2022, the appellant is before this Court.

3. Heard Mr.J.Ravikumar, learned counsel for the appellant and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent State.



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4. Before dealing with the issue that is involved in the present case, we are reminded of the famous parable of Lord Jesus, where he told his disciples thus: “Can the blind lead the blind? Will they not fall into a pit?”. The reason why we started our discussion with this parable, will become evident once the reasons unfold.

5. In the instant case, admittedly, the FIR was not only registered for the offences under IPC, but also for the offences under the UAP Act. The applicability of the National Investigation Agency Act, 2000 (in short “the NIA Act”) for trial of offences under the UAP Act, is no longer *res integra* and a three judge bench of the Apex Court in *Bikramjit Singh Vs. State of Punjab [(2020) 10 SCC 616]*, has categorically held that, for all offences under the UAP Act, the Special Court as defined under Section 13 of the NIA Act alone has exclusive jurisdiction to try such offences. In view of the same, the Special Courts will have the original jurisdiction to take cognizance of the final reports and the bar imposed under Section 193 Cr.P.C has been expressly overridden. The Full Bench judgment of this Court in *Jaffar Sathiq Vs. State [2021 (4) CTC 497]*, has categorically held



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that, till the Special Courts are constituted by the State, the Court of Session alone will have the jurisdiction to entertain bail applications and the Station House Officers were directed to file final reports directly before the Special Court or the Courts of Session. Since the Courts of Session alone are entitled to decide bail applications, it was further held that, as against the order passed in the bail applications, appeals can be filed only before this Court and it can be heard only by a Division Bench.

6. Section 43C of the UAP Act provides that the Code of Criminal Procedure shall apply, insofar as they are not inconsistent with the provisions of the UAP Act, to all arrests made under the UAP Act. Section 43D(2) of the UAP Act specifically provides that Section 167 of the Code will apply in relation to a case, involving an offence punishable under the said Act and hence, a person who is arrested and detained in custody, has to be forwarded to a Magistrate, within a period of 24 hours and the Magistrate is empowered to remand the accused to judicial custody. The first remand can be made by a Magistrate, even if he has no jurisdiction to try the case. However, once the Magistrate becomes aware of the fact that he has no



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jurisdiction to try the case or to commit it for trial, the further extension of judicial custody as provided under Section 43D(2)(a) of the UAP Act, should be done only by the Special Court or the Courts of Session, since it is only these Courts which will have the jurisdiction to try offences under the UAP Act.

7. The appellant was arrested and remanded to judicial custody by the Magistrate on 30.07.2022. Today, Mr.T.Thangarajan, Special Sub-Inspector of Police, Ambur Town Police Station, who was present before this Court at the time of hearing, informed us that the extension of remand was every time done only by the Magistrate. This procedure that was adopted by the Police was the starting point for the entire confusion. We must also hasten to add that the investigation should have been transferred to the specialised agency like Q Branch, considering the seriousness of the case and strangely, the investigation continues to be done by the respondent Police.



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8. The sequence of events narrated *supra*, makes it clear that the first bail petition filed in CrI.M.P.No.2501 of 2022, the second bail petition filed in CrI.M.P.No.3295 of 2022 and the cancellation of bail petition filed in CrI.M.P.No.3427 of 2022, were all dealt with only by the Court of Session. The statutory bail petition filed under Section 167(2) Cr.P.C. by the appellant, was initially filed before the Magistrate Court on 31.10.2022. The learned Magistrate rightly refused to entertain this petition, since the jurisdiction to try the statutory bail petition vested only with the Court of Session. Hence, the appellant filed a fresh petition under Section 167(2) Cr.P.C before the Sessions Court on 11.11.2022. The learned Sessions Judge ought to have entertained this petition. But, on the contrary, the learned Sessions Judge, proceeded to send back the entire file to Magistrate Court, with a direction that no papers must be sent to the Court of Session, till a final report is filed, cognizance is taken and the matter is committed to the Court of Session. This direction given by the learned Sessions Judge, is in total ignorance of the provisions of the UAP Act and the judgment of the Full Bench in *Jaffar Sathiq* referred *supra*.



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9. The learned Magistrate assumed jurisdiction, based on the direction given by the learned Sessions Judge and proceeded to deal with the statutory bail petition filed by the appellant under Section 167(2) Cr.P.C in CrI.M.P.No.4096 of 2022 and also the extension petition filed by the respondent police in CrI.M.P.No.4098 of 2022. The learned Magistrate did not have the power and/or jurisdiction to entertain both these petitions and whatever orders that were passed by learned Magistrate in these two petitions, are *non est* in the eye of law and these orders are liable to be set aside on this ground alone, even without going into the merits of the case.

10. The Public Prosecutor has filed the application under Section 43D(1)(2)(b) of the UAP Act, seeking extension of the remand period from 90 days to 180 days. Admittedly, this petition was filed only on 15.11.2022. The 90 days period came to an end on 27.10.2022. The statutory bail petition was filed by the appellant on 11.11.2022, much prior to the petition filed by the respondent police, seeking extension of the remand period on 15.11.2022.



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11. It is now too well settled that, where a statutory bail petition is filed immediately on the expiry of 90 days, 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 furnish bail as directed by the Court. This indefeasible right cannot be defeated/frustrated by the prosecution, by filing a petition seeking extension of the remand period from 90 days to 180 days. Such a petition filed subsequently cannot be entertained by the Court and the time cannot be extended, by dismissing the statutory bail petition filed by the accused. It has been held that, once the indefeasible right under the first proviso to Section 167(2) Cr.P.C. kicks in, the accused will be entitled to default bail, as a matter of right. This is in view of the fact that Section 167(2) Cr.P.C. is directly relatable to Article 21 of the Constitution of India .



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12. In the light of the above discussion, apart from interfering with the order passed by the learned Magistrate on the ground that it is *non est* in the eye of law, it is also liable to be interfered, since allowing the petition filed by the prosecution seeking extension of the remand period from 90 days to 180 days and dismissing the statutory bail petition filed under Section 167(2) Cr.P.C., runs completely contrary to the settled position of law.

13. Taking cue from the above parable, the first blind person in this case is the learned Sessions Judge, who was guiding the learned Magistrate, who was also blind, due to ignorance of the legal position and ultimately, both of them fell in a pit, leading to illegal and *non est* orders passed by the learned Magistrate.

14. We are constrained to use harsh words in this order, since the nature of allegations as could be seen from the orders, is very serious and it involves the safety and security of this State and Nation. It is quite unfortunate that the specialised agency did not take over the investigation



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and the respondent police were proceeding further in a mechanical fashion.

To add insult to injury, even the trained Judicial officers were ignorant as to the procedure to be adopted in a case involving offences under the UAP Act.

15. The learned Additional Public Prosecutor appearing on behalf of the respondent submitted that, if the learned Magistrate does not have the power and jurisdiction to pass orders in the default bail petition and the petition filed seeking extension of remand period from 90 days to 180 days, both the orders must be construed as *non est* in the eye of law. Hence, according to the learned Additional Public Prosecutor, the matter has to be sent back to the appropriate Court and both the parties can be directed to work out their remedy in the manner known to law.

16. On a first blush, the submission made by the learned Additional Public Prosecutor looks attractive. However, on a deeper consideration, we find that the said submission, is unsustainable in law. The 90 days period came to an end on 27.10.2022. The statutory bail petition was filed by the appellant before the appropriate Court on 11.11.2022. Instead of the

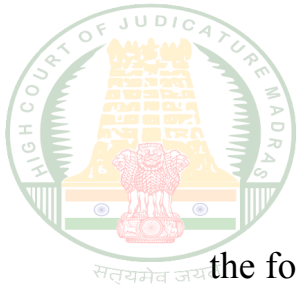


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Sessions Court dealing with this petition, it was wrongly sent back to the learned Magistrate. That mistake committed by the Sessions Court cannot be put against the appellant, since it involves his indefeasible right guaranteed under Article 21 of the Constitution of India.

17. Hence, as a Constitutional Court, we have to necessarily deal with this petition and recognise the statutory right of the appellant and grant the appropriate relief. While doing so, we find that the extension petition filed by the respondent was much after the filing of the statutory bail petition and that apart, the order that was passed in this petition has already been held to be *non est* in the eye of law. Consequently, there is no scope for extension of time and the statutory period has come to an end on 27.10.2022 and we have to necessarily grant default bail to the appellant.

18. The upshot of the above discussion is that, the orders passed by learned Magistrate in CrI.M.P.No.4096 of 2022 and in CrI.M.P.No.4098 of 2022 dated 16.11.2022, are hereby set aside and as a sequel, this Criminal Appeal stands allowed and the appellant is granted statutory bail, subject to

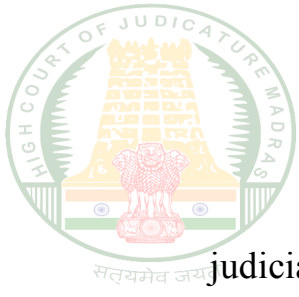


the following conditions:

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- (i) The appellant shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be one of his parents, each for a like sum, to the satisfaction of the Principal District and Sessions Judge, Vellore ;
- (ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Sessions Judge may obtain a copy of their Aadhaar card or Bank pass book and mobile number to ensure their identity; and
- (iii) The petitioner shall appear before the respondent Police daily at 10.30 a.m., until further orders.
- (iv) If the petitioner adopts any dilatory tactics, it is open to the Sessions Judge to cancel the bail and remand the petitioner to custody as laid down by the Supreme Court in *State of U.P. Vs. Shambhu Nath Singh [JT 2001 (4) SC 319]*.
- (v) Though bail has been granted by this Court, as held by the Supreme Court in *P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560]*, the Sessions Judge can cancel the bail, if situation warrants. If the petitioner who is on bail absconds, a fresh FIR shall be registered against him under Section 229-A IPC.

19. Before we draw the curtains, we deem it appropriate to direct the Tamil Nadu State Judicial Academy to conduct a refresher course to the



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judicial officers, by focusing on the special enactments like UAP Act, POCSO Act, SC/ST Act, NDPS Act, etc. and make them aware of the procedure to be followed at the time of remand, extension of remand, extension of remand period from 90 days to 180 days, provided under certain enactments, taking cognizance of the final report etc.

[P.N.P., J.] [N.A.V., J.]

23.12.2022

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P.N.PRAKASH, J.
AND
N.ANAND VENKATESH, J.

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To
1.The Principal District and Sessions Court
Vellore

2.The Director
Tamil Nadu State Judicial Academy
30(95), "Malligai" P.S.K.R. Salai
Greenways Road
R.A.Puram, Chennai-28

3.The Additional District Munsif
-cum-Judicial Magistrate
Ambur

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4.The Inspector of Police
Ambur Town Police Station
Thirupathur District
Cr.No.193/2022

5.The Public Prosecutor
Madras High Court
Chennai

6.The Superintendent
Central Prison, Vellore

23.12.2022