

# Law Today Live Doc. Id. 15522

**SUPREME COURT OF INDIA**

**Before: Ashok Bhushan, R. Subhash Reddy & M.R. Shah, JJ.**

Criminal Appeal Nos. 681-682 of 2020 Decided on: 15.10.2020

(Arising from S.L.P. (Criminal) Nos.4386-4387/2020)

Saravanan

Appellant

Versus

State represented by the Inspector of Police

Respondent

For Appellant(s):

Mr. Sriram P., AOR, Mr. B. Raghunath, Adv.

For Respondent(s):

Mr. Jayanth Muthuraj, Sr. Adv., Mr. M. Yogesh Kanna, AOR, Mr. Rajarajeswaran, Adv.

**A. Code of Criminal Procedure, 1973 (2 of 1974), Section 167(2) -- Default bail – Condition to deposit Rs.8,00,000/- – Permissibility of – Held, only requirement for getting the default bail/statutory bail u/s 167(2), Cr.P.C. is that the accused is in jail for more than 60 or 90 days, as the case may be -- And within 60 or 90 days, as the case may be, the investigation is not completed and no chargesheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail -- Imposing such condition while releasing the accused on default bail/statutory bail would frustrate the very object and purpose of default bail under Section 167(2), Cr.P.C. -- Condition imposed by the High Court is unsustainable and deserves to be quashed and set aside – Condition quashed and set aside.**

(Para 9-11)

**B. Code of Criminal Procedure, 1973 (2 of 1974), Section 167(2) -- Default bail -- Condition directing the appellant to report before the concerned police station daily at 10:00 a.m., until further orders, for interrogation is concerned is unsustainable, as it is too harsh -- Instead, condition which can be imposed is directing the appellant to cooperate with the investigating officer in completing the investigation and to remain present before the concerned police station for investigation/interrogation as and when called for, and on breach the investigating officer can approach the concerned court for cancellation of the bail – Condition modified by Supreme Court.**

(Para 10)

**Cases referred:**

1. Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67.

**JUDGMENT**

**M.R. SHAH, J. –**

Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned order dated 24.06.2020 in Criminal O.P.(MD) No. 6214 of 2020 and order dated 27.07.2020 in Criminal M.P.(MD) No. 3622 of 2020 passed by the Madurai Bench of the Madras High Court, by which the High Court has released the appellant on default bail/statutory bail, on condition to deposit Rs.8,00,000/- (Rupees Eight Lakhs only) to the credit of crime No. 31 of 2019 before the learned Judicial Magistrate, Court No.1, Nagercoil, Kanyakumari District, the original accused has preferred the present appeals.

3. That the appellant herein was arrested and remanded to the judicial custody on 31.01.2020 for the offences punishable under Section 420 of the IPC in Crime No.31 of 2019 on the file of the D.C.B. Police Station, Kanyakumari District. That the appellant herein filed an application before the learned Judicial Magistrate seeking bail under Section 437 Cr.P.C. That the wife of the appellant filed an affidavit before the learned Magistrate and assured to pay Rs.7,00,000/- (Rupees Seven Lakhs only) and the balance amount to be paid on or before 06.04.2020, against the alleged amount of Rs.15,67,338/- (Rupees Fifteen lakhs Sixty Seven thousand Three hundred thirty eight only). Therefore, by order dated 3.2.2020, the learned Magistrate released the appellant on bail on the conditions stated in the said order. One of the conditions was directing the appellant to deposit Rs.7,00,000/- in the Court, and the balance amount of Rs.8,67,338/- was directed to be deposited on or before 06.04.2020.

4. Feeling aggrieved and dissatisfied with condition nos. 2 and 3 of the order passed by the learned Magistrate releasing the appellant on bail, i.e, directing the appellant to deposit Rs.7,00,000/-, out of the total alleged amount of Rs.15,67,338/- and the balance to be deposited on or before 6.4.2020, the appellant approached the High Court by way of Criminal OP(MD) No. 6214 of 2020. The High Court dismissed the said application with liberty to the appellant to approach the Magistrate Court for any modification and observed that if any modification is required, the same may be considered by the Magistrate. That thereafter, the appellant filed an application before the learned Sessions Court being Criminal M.P. No. 1695/2020 to release the appellant on default bail/statutory bail under Section 167(2), Cr.P.C. It was the case on behalf of the appellant that he was arrested and remanded on 31.01.2020 and he is inside the jail for more than 101 days and the investigation is not completed and the police has not filed the final report within the period provided under Section 167 Cr.P.C. The said application came to be dismissed by the learned Sessions Court on the ground that earlier when the appellant applied for regular bail and which was allowed on condition to deposit Rs.7,00,000/- in the Court and the same has not been complied with, and despite the liberty reserved by the High Court to approach the Magistrate Court for modification of the conditions, instead of doing so, the appellant has filed an application for default bail/statutory bail under Section 167(2), Cr.P.C., therefore, the learned Sessions Court dismissed the said application.

5. Feeling aggrieved, the appellant approached the High Court and prayed to release the appellant on default bail/statutory bail. It was the case on behalf of the appellant that non-deposit of any amount which was required to be deposited pursuant to the order passed by the learned Magistrate, imposed while releasing the appellant on regular bail under Section 437, Cr.P.C., shall

not come in the way of the appellant-accused in getting default bail/statutory bail under Section 167(2), Cr.P.C. It was submitted that the default bail/statutory bail under Section 167(2), Cr.P.C. is mandatory bail, provided the conditions in Section 167 Cr.P.C. are satisfied, i.e., investigation is not completed and the chargesheet/report is not filed by the investigating agency within the time stipulated under Section 167 Cr.P.C. The High Court, by the impugned judgment and order dated 24.06.2020 accepted the same, however, considering the earlier undertaking given by the wife of the appellant in the Court of the learned Magistrate while considering the regular bail application under Section 437, Cr.P.C., i.e., to deposit Rs.7,00,000/-, while releasing the appellant on default bail/statutory bail, the High Court has imposed the condition that the appellant shall deposit a sum of Rs.8,00,000/- before the learned Magistrate. That thereafter, the appellant preferred application being Criminal MP(MD) No. 3622 of 2020 before the High Court to modify condition nos. (b) and (d) in Criminal OP(MD) No. 6214/2020 by which the appellant was directed to deposit Rs.8,00,000/- before the learned Judicial Magistrate and the appellant was directed to report before the concerned police station daily at 10:00 a.m., until further orders, for interrogation. By the impugned order dated 27.07.2020, the High Court has dismissed the said application for modification observing that earlier wife of the appellant filed affidavit before the learned Magistrate to deposit Rs.7,00,000/- and the alleged amount is Rs.32,23,073/-, condition nos. (b) and (d) in order dated 24.06.2020 in Criminal OP(MD) No. 6214/2020 are not required to be modified. Hence, the present appeals.

6. Learned counsel appearing on behalf of the appellant has vehemently submitted that condition nos. (b) and (d) imposed by the High Court imposed while releasing the appellant on default bail/statutory bail under Section 167(2), Cr.P.C is contrary to the scheme of Section 167 of the Cr.P.C. It is submitted that as observed by this Court in catena of decisions, the scheme of Code of Criminal Procedure delineates that provisions of Section 167 Cr.P.C. give due regard to the personal liberty of a person. Without submission of charge sheet within 60 days or 90 days, as may be applicable, an accused cannot be detained by the Police. The provision gives due recognition to the personal liberty. It is submitted that as held by this Court in **Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67**, where investigation is not completed within 60 days or 90 days, as the case may be, no chargesheet is filed on the 60th or 90th day, accused applies for default bail and is prepared to furnish bail, accused becomes entitled to default bail, it cannot be frustrated either by the prosecution or the Court. It is submitted that it is further held that accused need not make out any grounds for grant of default bail but only needs to state that 60/90 days, as the case may be, have expired, chargesheet not filed, he is entitled to bail and willing to furnish the same. It is submitted that therefore condition nos. (b) and (d) imposed by the High Court while releasing the appellant on default bail/statutory bail are against the scheme of Section 167, Cr. P.C.

6.1 It is submitted by the learned counsel appearing on behalf of the appellant that affidavit filed by the wife of the appellant before the learned Magistrate to deposit Rs.7,00,000/- and the earlier order passed by the learned Magistrate to release the appellant on deposit of Rs.15, 67,338/- was with respect to regular bail under Section 437, Cr.P.C. and the same shall not come in the way of the appellant in getting the default bail/statutory bail, if a case is

made out under Section 167(2), Cr.P.C. It is submitted that, as such, and in fact the High Court has accepted the same and has released the appellant on default bail/statutory bail, however, with condition to deposit Rs.8,00,000/- on the ground that while considering the regular bail application under Section 437, Cr.P.C., the wife of the appellant agreed to and filed affidavit to deposit Rs.7,00,000/-. It is submitted that condition to deposit Rs.8,00,000/- while releasing the appellant on default bail/statutory bail on the aforesaid ground would defeat the very purpose of grant of default bail/statutory bail. It is submitted that while considering the default bail/statutory bail, the only thing which is required to be considered and the statutory requirement is that the statutory period for filing the chargesheet or challan has expired and the accused is prepared to furnish the bail.

**6.2** Making the above submissions, it is prayed to allow the present appeals and delete condition nos. (b) and (d) of order dated 24.06.2020 passed by the High Court in Criminal OP(MD) No. 6214 of 2020.

**7.** Mr. Jayanth Muthuraj, learned Additional Advocate General appearing on behalf of the State has tried to support the impugned order(s) passed by the High Court by submitting that as earlier the wife of the appellant filed an affidavit before the learned Magistrate to deposit Rs.7,00,000/- and the alleged amount was Rs.15,67,338/-, probably the High Court has imposed condition no. (b) directing the appellant to deposit Rs.8,00,000/-.

**8.** We have heard the learned counsel for the respective parties at length.

The short question which is posed for the consideration of this Court is, whether while releasing the appellant-accused on default bail/statutory bail under Section 167(2), Cr.P.C., any condition of deposit of amount as imposed by the High Court, could have been imposed?

**9.** Having heard the learned counsel for the respective parties and considering the scheme and the object and purpose of default bail/statutory bail, we are of the opinion that the High Court has committed a grave error in imposing condition that the appellant shall deposit a sum of Rs.8,00,000/- while releasing the appellant on default bail/statutory bail. It appears that the High Court has imposed such a condition taking into consideration the fact that earlier at the time of hearing of the regular bail application, before the learned Magistrate, the wife of the appellant filed an affidavit agreeing to deposit Rs.7,00,000/-. However, as observed by this Court in catena of decisions and more particularly in the case of *Rakesh Kumar Paul (supra)*, where the investigation is not completed within 60 days or 90 days, as the case may be, and no chargesheet is filed by 60th or 90th day, accused gets an "indefeasible right" to default bail, and the accused becomes entitled to default bail once the accused applies for default bail and furnish bail. Therefore, the only requirement for getting the default bail/statutory bail under Section 167(2), Cr.P.C. is that the accused is in jail for more than 60 or 90 days, as the case may be, and within 60 or 90 days, as the case may be, the investigation is not completed and no chargesheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail. No other condition of deposit of the alleged amount involved can be imposed. Imposing such condition while releasing the accused on default bail/statutory bail would frustrate the very object and purpose of default bail under Section 167(2), Cr.P.C. As observed by this Court in the case of *Rakesh Kumar Paul (supra)*

and in other decisions, the accused is entitled to default bail/statutory bail, subject to the eventuality occurring in Section 167, Cr.P.C., namely, investigation is not completed within 60 days or 90 days, as the case may be, and no chargesheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail.

**9.1** As observed hereinabove and even from the impugned orders passed by the High Court, it appears that the High Court while releasing the appellant on default bail/statutory bail has imposed the condition to deposit Rs.8,00,000/- taking into consideration that earlier before the learned Magistrate and while considering the regular bail application under Section 437 Cr.P.C., the wife of the accused filed an affidavit to deposit Rs.7,00,000/-. That cannot be a ground to impose the condition to deposit the amount involved, while granting default bail/statutory bail.

**9.2.** The circumstances while considering the regular bail application under Section 437 Cr.P.C. are different, while considering the application for default bail/statutory bail. Under the circumstances, the condition imposed by the High Court to deposit Rs.8,00,000/-, while releasing the appellant on default bail/ statutory bail is unsustainable and deserves to be quashed and set aside.

**10.** Now so far as condition no. (d) imposed by the High Court, namely, directing the appellant to report before the concerned police station daily at 10:00 a.m., until further orders, for interrogation is concerned, the same is also unsustainable, as it is too harsh. Instead, condition which can be imposed is directing the appellant to cooperate with the investigating officer in completing the investigation and to remain present before the concerned police station for investigation/interrogation as and when called for, and on breach the investigating officer can approach the concerned court for cancellation of the bail on breach of such condition.

**11.** In view of the above and for the reasons stated above, the present appeals succeed. Condition No. (b) of order dated 24.06.2020 passed by the High Court in Criminal OP(MD) No. 6214 of 2020, i.e., directing the appellant to deposit Rs.8,00,000/- to the credit of crime No. 31 of 2019 before the learned Judicial Magistrate, Court No.1, Nagercoil, Kanyakumari District, while releasing the appellant on default bail, is hereby quashed and set aside. Condition no. (d), namely, directing the appellant to report before the concerned police station at 10:00 a.m. daily, until further orders for interrogation is hereby modified to the extent and it is directed that the appellant shall co-operate with the investigating agency and shall report the concerned police station as and when called for investigation/interrogation and on non-cooperation, the consequences including cancellation of the bail shall follow. Rest of the conditions imposed by the High Court in order dated 24.06.2020 are maintained.

**13.** The appeals are allowed accordingly in the aforesaid terms.

**Appeals allowed.**

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