

DATED THIS THE 26TH DAY OF APRIL (2010) 2011 * 

BEFORE * corrected vide chamber
order dated 5.9.2012

THE HON'BLE MR. JUSTICE K.N.KESHAVANARAYANA

2012
Lenny King

DEVALAH @ SACHIN
S/O SUBBAIAH,
AGED ABOUT 33 YEARS,
R/O NELLORE
KIRGORE POST
VIRAJPET.

NO.225, 6TH MAIN,
HMT LAYOUT,
R.T.NAGAR,
BANGALORE.

... PETITIONER

AND:

STATE BY
COTTONPET P.S.,
BANGALORE
REP. BY
THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
HIGH COURT BUILDINGS
BANGALORE.

... RESPONDENT

(BY SRI. RAJA SUBRAMANYA BHAT, ADDL. SPP)

7K

THIS CRIMINAL PETITION FILED UNDER SECTION 482 OF CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT HIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE ORDER DATED 18.11.2010 PASSED BY THE I ACCM., BANGALOR EIN CRL.NO.275/2010 OF COTTONPET P.S., AND DIRECT RELEASE OF THE PETITIONER ON SUCH TERMS AND CONDITIONS THAT THIS HON'BLE COURT DEEMS FIT IN THE CIRCUMSTANCES OF THE CASE.

THIS CRL.P. COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner herein is aggrieved by the dismissal of the application filed by him under Section 167(2) of Cr.P.C.

2. The petitioner herein was apprehended and arrested by the respondent-police for the alleged offences under Sections 120(b), 121 and 121A of IPC and Section 18 of the Unlawful Activities (Prevention) Act, 1967. The petitioner was remanded to the Judicial Custody by the jurisdictional Magistrate as contemplated under Section 167(2) of Cr.P.C.

3. Regard being had to the nature of the offences for which investigation was taken up, the maximum



period for which the custody of the petitioner/accused could have been extended under Section 167(2) of Cr.P.C was 90 days. Upon expiry of 90 days, if the remand of the accused is not regularised under any other provisions, the petitioner had indefeasible right to get himself released on bail under Section 167(2) of Cr.P.C.

4. As the investigation was not over within a period of 90 days, his remand was not regularised under any other provisions of the Act. Since final report was not filed and no application for extension of time as contemplated under Section 43-B of the Unlawful Activities (Prevention) Act, 1967, had been filed before expiry of 90 days, the petitioner sought for release on bail under Section 167(2) of Cr.P.C.

5. However, on 92nd day the Investigation Officer filed an application under Section 43-B of the Unlawful Activities (Prevention) Act, 1967, seeking extension of time for completing the investigation and for filing the final report.



6. The learned Magistrate having regard to the fact that the Investigation Officer had filed an application under Section 43-B of the Unlawful Activities (Prevention) Act, 1967, rejected the bail application filed by the petitioner and also accused No.4 under Section 167(2) of Cr.P.C.

7. The Accused No.4 - Vinay Kumar assailed the said order before this Court in Criminal Petition No.5559/2010. This Court by order dated 9.2.2011 allowed the said petition holding that the application under Section 43-B of the Unlawful Activities (Prevention) Act, 1967, on the 92nd day has no effect of effacing the indefeasible right of accused to get himself released on bail under Section 167(2) of Cr.P.C. Therefore, this Court allowed the said application in respect of accused No.4 and granted him bail subject to certain conditions.

8. The petitioner herein who is accused No.5 and similarly placed has assailed the very same order



passed by the learned Magistrate by presenting this petition.

9. I have heard learned Counsel for petitioner as well as learned Addl. SPP appearing for the State.

10. The order passed by the learned Magistrate clearly indicates that both accused Nos.4 and 5 filed an application under Section 167(2) for release on bail on the ground that within a period of 90 days the Investigation Officer has not completed the investigation and final report has not been filed, as such they have an indefeasible right to get themselves released on bail.

11. As noticed supra, this Court in CrI.P. No.5559/2010 filed by accused No.4 has held that since the application for extension of time as contemplated in Section 43-B of the Unlawful Activities (Provision) Act, 1967, was not filed before the expiry of 90 days and the said application came to be filed only on 92nd day, the accused had right to get himself released on bail under Section 167(2) of Cr.P.C.



12. In view of the fact, the petitioner - accused No.5 is similarly placed as that of accused No.4 who has already been enlarged on bail by this Court under Section 167(2) of Cr.P.C, I do not find any reason to deny the said relief to this petitioner also.

13. In this view of the matter this petition is allowed. The impugned order is set aside and the petitioner is ordered to be released on bail on his executing a personal bond for Rs.25,000/- with two sureties. Petitioner shall not tamper with the evidence and shall not threaten the witnesses and shall mark his attendance before the concerned jurisdictional police on 10th and 25th day of every calendar month till conclusion of the trial.

Sd/-
JUDGE

Vsk/-