

# Ajith Kumar vs State Rep. By on 16 February, 2016

**Author: P.N.Prakash**

**Bench: P.N.Prakash**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2016

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) Nos.1785 of 2016

1941, 2073, 2047 and 2224 of 2016

1. Ajith Kumar

Rep. By his father

Thangaraj, Keelakandani Village,

Sivagangai Taluk,

Sivagangai District. ... Petitioner/A3 in Crl.O.P.(MD)1785/2016

2. Saravanakumar

Rep. By his father

Chinnathurai, North Street,

Santhanamariamman Koil Street,

Thiruchendur, Thoothukudi District. ... Petitioner/Sole Accused in

Crl.O.P.(MD)1941/2016

3. L.Mahesh

Rep. By his father as natural  
guardian Lingaraj,

113, Shanmuganagar,

Tuticorin. ... Petitioner/A3 in Crl.O.P.(MD)2073/2016

4. Mani @ Manikandan

Rep. By his father as natural  
guardian Saravanan,

192/6, Malaiyamman Kovil Street,

Tiruchendur, Tuticorin District.

... Petitioner/A5 in Crl.O.P.(MD)2047/2016

5. Sudhakar

Rep. By his father Murugesan

Mattapparai Village,

Nilakottai Taluk,

Dindigul District

... Petitioner/A1 in Crl.O.P.(MD)2224/2016

-VS-

1. State Rep. By  
The Inspector of Police,  
Sivagangai Town Police Station,  
Sivagangai District.  
(Crime No.644/2015) ... Respondent/Complainant in  
Crl.O.P.(MD)1785/2016
2. State Rep. By  
The Inspector of Police,  
Thiruchendur Temple Police Station,  
Thiruchendur, Thoothukudi District.  
(Crime No.25/2016) ... Respondent/Complainant in  
Crl.O.P.(MD)1941/2016
3. State Rep. By  
The Inspector of Police,  
South Police Station,  
Tuticorin, Tuticorin District.  
(Crime No.56/2016) ... Respondent/Complainant in  
Crl.O.P.(MD)2073/2016
4. State Rep. By  
The Inspector of Police,  
Tiruchendur, Tuticorin District.  
(Crime No.25/2016) ... Respondent/Complainant in  
Crl.O.P.(MD)2047/2016
5. State Rep. By  
The Inspector of Police,  
Vadipatti Police Station,  
Madurai District.  
(Crime No.56/2016) ... Respondent/Complainant in  
Crl.O.P.(MD)2224/2016

Prayer in Crl.O.P.(MD)1785/2016: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to direct the Juvenile Justice Board, Sivagangai to accept the surrender of the petitioner in connection with the Crime No.644 of 2015 on the file of the respondent police and to consider and pass orders in the bail application on the same day on surrender.

Prayer in Crl.O.P.(MD)1941/2016: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to direct the learned Juvenile Justice Board, Thoothukudi to consider the petitioner's bail application and dispose of the bail application on the same day, if the petitioner surrenders before the learned Juvenile Justice Board, Thoothukudi in Crime No.25 of 2016 on the file of the respondent.

Prayer in Crl.O.P.(MD)2073/2016: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to direct the Juvenile Justice Board, Tuticorin to accept the surrender of the petitioner and consider the bail application on merits on the date of surrender in Crime No.56 of 2016 on the file of the respondent police.

Prayer in Crl.O.P.(MD)2047/2016: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to direct the Juvenile Justice Board, Tuticorin to accept the surrender of the petitioner and consider the bail

application on merits on the date of surrender in Crime No.25 of 2016 on the file of the respondent police.

Prayer in CrI.O.P.(MD)2224/2016: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to direct the learned Juvenile Justice Board, Madurai to consider the bail application of the petitioner/accused to be filed in Cr.No.56 of 2016 on the file of the respondent police and to accept the surrender of the petitioner on the same day on merits.

!For Petitioners : Mr.V.Kannan

(in CrI.O.P.(MD)1785/2016)

Mr.R.J.Karthick

For Mr.M.Saravanan

(in CrI.O.P.(MD)1941/2016)

Mr.S.Senthil Sankaranantha Kumar

(in CrI.O.P.(MD)2073&2047/2016)

Mr.N.Ranjith

(in CrI.O.P.(MD)2224/2016)

^For Respondents : Mr.K.V.Rajarajan

Govt. Advocate (CrI.Side)

Mr.C.Mayilvahan Rajendran

Addl. Public Prosecutor

Mr.A.P.Balasubramani

Govt. Advocate (CrI.Side)

: COMMON ORDER

These petitions have been filed to direct the respective Juvenile Justice Boards to accept the surrender of the petitioners and consider the bail applications on merits on the same day of their surrender in Crime Nos.644 of 2015, 25 of 2016 and 56 of 2016 on the file of the respective respondent police.

2. Since a common question of law arises in all these petitions, they have been clubbed together for adjudication.

3. The petitioners in these cases are admittedly juveniles in conflict with law and they have been arrayed as accused for various offences which will be discussed when the individual cases are being dealt with.

4. It is uniformly contended by the respective counsel that, if a juvenile accused is arrested and produced before the Board, he is placed in the custody of an Observation Home till a report from the Probation Officer is obtained and this causes undue prejudice to the juvenile inasmuch as he is likely to come into contact with those involved in serious offences in the Observation Home, which will be detrimental to his interest. Therefore, the counsel pleaded that, on surrender of a juvenile before the Board, the Board should consider the bail application on the same day without insisting upon the report from the Probation Officer. In support of this contention, learned counsel relied upon the following judgments:

1.Minor Pradeesh Kumar and another vs. The Station House Officer, Cuddalore District, 2009 (3) MWN (Cr.) 40;

2.Karkuvel Mani, Minor vs. State rep. By the Inspector of Police, Thoothukudi District (Crl.O.P.(MD) No.8955 of 2014) decided on 08.05.2014;

3.S.Vasanth vs. State rep. By the Inspector of Police, Namakkal District (Crl.O.P.No.11680 of 2015) decided on 05.05.2015;

4.Siva vs. State rep. By the Inspector of Police, Thoothukudi District, (Crl.O.P.(MD) No.18988 of 2015) decided on 05.10.2015.

5. It may be necessary to state here that the order in Karkuvel Mani's case, referred to above, has been passed by me. Though I had granted the relief as prayed for in Karkuvel Mani's case, in retrospect I am of the opinion that the view taken by me requires reconsideration. After all, we become wiser day by day. The order passed by my brother Judge Justice S.Vaidyanathan in Crl.O.P.No.22361 of 2015, decided on 08.10.2015, taking a contrary view, has also been placed before me.

6. The Juvenile Justice (Care and Protection of Children) Act, 2000, has been repealed by The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No.2 of 2016), which received the assent of the President of India and has come into force from 15.01.2016 vide Notification dated 12.01.2016, issued under Section 1(3) of the Act 2 of 2016. Section 111 of the Act 2 of 2016 states as follows:

?111. (1) The Juvenile Justice (Care and Protection of Children) Act, 2000 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.?

7. In the light of the above, this Court should have to consider the bail plea of the petitioners as per the provisions of Section 12 of Act, 2 of 2016. It may be apposite to state here that Section 12 of the Old Act, which deals with the bail of juveniles is almost in-parimateria with Section 12 of Act 2 of 2016. Section 12 of Old Act and Section 12 of Act 2 of 2016 read as under:

?Section 12 - Bail of juvenile.? (Old Act) (1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety 1[or placed under the supervision of a Probation Officer or under the care of any fit institution of fit person] but he shall not be so released if there appear reasonable grounds for believing that

the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

Section 12 of Act 2 of 2016 (New Act):

12 (1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.

8. From the above, it is clear that a juvenile in conflict with law is statutorily entitled to bail, even though he is involved in a non bailable offence. The Juvenile Justice Boards in Tamil Nadu do not mechanically refuse bail in all the cases. In serious offences like attempt to murder, murder etc., there is every possibility of the victim party retaliating and that may expose the juvenile to ?moral, physical or psychological danger?

9. Whether in a given case, the juvenile in conflict with law will be exposed to ?moral, physical or psychological danger? is a fact that can be assessed only by the Juvenile Justice Board, where members are trained to gauge the situation. Therefore, this Court should not give a blanket order in all the cases to the Juvenile Justice Board to release the juvenile in conflict with law on bail on the very same day of his production. Such direction will go contrary to the mandates of Section 12(1) of the Old Act as well as New Act. No direction under Section 482 of the Code can be given contrary to the express statutory provisions under a Special Act.

10. For example, coming to the case of the petitioner in CrI.O.P.(MD) No.1941 of 2016, he is involved in Thiruchendur Temple Police Station Crime No.25 of 2016 for offences under Sections 509, 153(A) IPC and Section 67(A) of the Information Technology Amendment Act, 2008 and the allegation against this petitioner is that he had made derogatory remarks about women of another community in the village, which, in all probabilities, would lead to communal violence. In the teeth of such serious allegations, if the petitioner is released on bail on the same day, there is every possibility of outbreak of communal violence in the village, which will be detrimental to the interest of the petitioner. The petitioner also requires counselling so that he does not make such inflammatory statements and post them on his Facebook account. He must be taught to first respect women and also members of other communities.

11. Similarly, the petitioner in CrI.O.P.(MD) No.2073 of 2016, is involved in Tuticorin South Police Station Crime No.56 of 2016 for offences under Sections 341, 294(b), 323, 307 and 506(ii) IPC, in which the victim has been attacked with knife. In this case also, the Board should have to assess, if there is any danger to the Juvenile or his release would defeat the ends of justice. Though this Court cannot issue directions under Section 482, the effect of which would be putting fetters on the power of the Board to conduct a full and effective assessment of the Juvenile's case for grant of bail.

12. Finally, I am of the view that a direction under Section 482 Cr.P.C., as prayed for, cannot be given, as the source of power for grant of bail to a juvenile in conflict with law is not traceable to the Code of Criminal Procedure, but to Section 12 of the Act. Section 1(4) of Act 2 of 2016 reads as under:

?1(4) - Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including ?

(i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;

(ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.?

13. Section 12 of Act 2 of 2016 also has non obstante clause, indicating the legislative intent, that the source of power to grant bail under this Act is independent from that of the Code. Section 5 of Code of Criminal Procedure indubitably protects the procedures laid down in special statutes from the onslaught of the provisions of the Code in the absence of a specific provision to the contrary in the Code. This rests on the principle *Generalia Specialibus Non Derogant* (special law prevails over general law). The non obstante clause used in Section 1(4) and Section 12 of the Juvenile Justice Act cited supra denudes the power of this Court to issue such directions under Section 482 Cr.P.C. Section 482 cannot be used to foreclose the power of the Board to conduct a full pledged enquiry under Section 12 of the J.J.Act.

14. Therefore, this Court has no jurisdiction under Section 482 Cr.P.C. to give such directions as prayed for by the petitioners in matters concerning a special statute, namely, the Juvenile Justice Act, and directing the Board to act in breach of law, however, noble it may seem to appear.

In the result, all these petitions stand dismissed and it is left open to the respective Juvenile Justice Boards to decide the cases without in any way being influenced by what is stated above and pass orders in accordance with law.

To

1. Juvenile Justice Board, Sivagangai.
2. Juvenile Justice Board, Thoothukudi.
3. Juvenile Justice Board, Madurai
4. The Inspector of Police, Sivagangai Town Police Station, Sivagangai District.
5. The Inspector of Police, Thiruchendur Temple Police Station, Thiruchendur, Thoothukudi District.
6. The Inspector of Police, South Police Station, Tuticorin, Tuticorin District.
7. The Inspector of Police, Tiruchendur, Tuticorin District.
8. The Inspector of Police, Vadipatti Police Station, Madurai District.
9. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai..