State And Others vs E. Veeramani on 19 October, 1994

Equivalent citations: 1995CRILJ184, 1995(1)CTC29

ORDER

1. These petitions coming on for hearing on 23-8-94, 16-9-94, 17-9-94, 20-9-94, 7-10-94 and 11-10-94 upon perusing the petition and the respective affidavits filed in support thereof and the orders of this court dated 14-6-93 and 25-5-93 and made in Crl.OP Nos. 6271/93 and 6275/93 respectively and the counter affidavits filed therein and upon hearing the arguments of Mr. S. Shanmughavelayutham Addl. Public Prosecutor on behalf of the State, in all the petitions herein and of Mr. A. Natarajan Advocate for the respondent in all the petitions herein and this having stood over for consideration till this day, the Court made the following order :

> On 10-2-1993 the Inspector of Police, L & O R-7 K.K. Nagar Police Station registered a case against one Veeramani the respondent in all these three petitions in his Station crime No. 288/93 under sections 148, 341, 302 and 506(II) IPC read with Section 34, IPC on the complaint that at 8-45 a.m. on that day the said Veeramani and his associates wrongfully restrained one Annadurai at the junction of 100 feet Road and Periyar Street in front of Sakthi Vinayagar Temple, assaulted him with patta knife and committed his murder. On the same day another complaint in Crime No. 237/93 Under Sections 147, 148, 120B, 341, 307, 506(II) and 109 read with Section 149, IPC was registered against the said Veeramani by the Inspector of Police (Law & Order), B. 2 Esplande Police Station on the allegation that at about 4-00 p.m. on 10-2-1993 he had attempted to commit the murder of the complainant therein by stabbing with patta knife. On 11-2-1993 at 4-00 p.m. one Munusu, Inspector of Police, Foreshore Estate Police Station lodged a complaint with the Inspector of Police (Law & Order) D. 5 Marina Police Station in Crime No. 61/93, u/Ss 332, 336, 324, 427 and 307, IPC alleging that on 11-2-1993 he was assigned the specific task of apprehending Veeramani in connection with the abovesaid two cases. When he had gone to Ayodhya Kuppam along with his Police Party, Veeramani and his henchmen threatened the Police Party and attacked him with patta knife aiming at his head.

2. Respondent Veeramani was arrested on 11-2-1993 by the Inspector of Police (Law and Order) E-5 Foreshore Estate Police Station and was remanded to custody. Thereafter, he was detained under Act 14 of 1982 as a bootlegger from 16-2-1993. After the expiry of the detention on 15-2-1994 he continued to be in custody.

3. In the mean while, on 25-5-1993 in Crl. OP No. 6275 of 1993 he was ordered to be released on bail by the Principal Sessions Judge, Madras under section 167(2) Cr. PC on the ground that charge sheet was not laid within 90 days. This order relates to Crime No. 288/93 of K.K. Nagar Police Station. The charge sheet in this crime number was laid only on 3-11-1993. Similarly in Crl.O.P. No. 6271 of 1993 he was granted bail on 14-6-1993 in connection with Crime No. 237/93 of B. 2 Esplanade Police Station Madras. This was also under section 167(2), Cr. PC on the ground that

charge sheet was not laid within 90 days of the arrest of the accused. It appears that without reference to the order in Crl. MP. No. 6271 of 1993 the VII Metropolitan Magistrate, George Town, Madras had already passed an order on 4-5-1993 releasing accused on his own bond under section 167(2), Cr.P.C. on the failure of laying of the charge sheet. The charge sheet herein was laid only on 16-8-1993. In both these crime numbers respondent did not avail the bail order in his favour and got him actually released till the charge sheets were filed. Though his detention period under Act 14 of 1982 expired on 15-2-1994, he continued to remain in prison.

4. On 6-6-1994 he came forward with Crl.M.P. No. 3238 of 1994 before the Principal Sessions Judge, Madras seeking bail regarding his detention in D-5 Marina Police Station Crime No. 61/93. Charge sheet filed in this crime number had been taken on file as SC No. 96 of 1994 in the Court of Principal Sessions Judge, Madras. On 13-6-1994 the II Additional Sessions Judge who was incharge of Principal Sessions Court directed the release of respondent Veeramani on bail on condition that he should stay at Kanniyakumari and report before the Inspector of Police. Kanniyakumari town Police Station daily twice at 10 AM and 5 PM. He was also directed not to leave the Municipal limits of Kanniyakumari without prior permission of the Court pursuant to this order he was actually released from custody on 14-6-1994. In the other two crime numbers also he offered sureties only on 13-6-1994 and came out of prison on 14-6-1994. Two months later on his application dated 12-8-1994 the condition was modified and he was directed to remain at Nagapattinam.

5. In Crl. MP. No. 5253 of 1994 learned Additional Public Prosecutor seeks cancellation of bail granted to the respondent by the Principal Sessions Judge, Madras on 13-6-1994 in Crl. MP No. 3238 of 1994 in SC No. 96 of 1994 on his file, The cancellation is sought for these reasons :-

> (i) when the respondent came forward with Crl.M.P. No. 2609 of 1994 before II Assistant Sessions Court on 27-4-1994 notice was ordered to 29-4-1994. The respondent was produced on that day and the petition was adjourned to 13-6-1994. Suppressing the pendency of this application filed before the trial Judge the respondent came forward with another bail application in Crl. MP. No. 3238 of 1994 before II Additional Sessions Judge and obtained an order. Failure to disclose the pendency of the earlier bail application disentitled him from getting the discretionary relief of bail.
>
> (ii) Learned Sessions Judge has proceeded on the assumption that the respondent has voluntarily surrendered before the police without absconding.
>
> (iii) One of the factors which weighed with the Sessions Court in granting bail is its erroneous view that there was no possibility of tampering with the witness in this case.
>
> (iv) Respondent has misused the concession of bail granted to him and has indulged in commission of further grave offence.

(v) The previous application for bail was dismissed on 27-5-1994 by the Principal Sessions Court for the reason that he would flee from justice and tamper with the witnesses. But there is no change of circumstances within 10 days when the impugned order was passed on 13-6-1994.

(vi) Learned Sessions Judge has not taken into account the gravity of the offence charged.

(vii) Respondent and his associates are involved in group activities inside the Jail.

(viii) There is every posibility of revival of bootlegging activities in case respondent is released on bail.

(ix) Investigation reveals that the respondent is in control of three motorised speed boats and that he is likely to flee from justice.

(x) The series of offences committed by the respondent and his associates have created continuous law and order problems and the respondent has become a menace to the society.

(xi) In most of the cases against him trial is to begin soon and his enlargement on bail will not be conducive for the conduct of the trial.

6. It is now well settled by a catena of decisions of the Supreme Court that the power to grant bail is not to be exercised if the punishment before trial is being imposed. The only material considerations in such a situation are : whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. If there is no prima facie case there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence. The question of cancellation of bail under section 439(2), Cr.P.C. is certainly different from admission to bail under section 439(1), Cr.P.C. Under Section 439(2), Cr.P.C. the High Court or the Court of Session may direct any person who has been released on bail to be arrested and committed to custody. Rejection of bail when bail is applied for is one thing, cancellation of bail already granted is quite another. And very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case. Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if, by reason of supervening circumstances, it would he no longer conducive to a fair trial to allow the accused to retain his freedom during the trial.

7. As stated in Aslam Babalal Desai v. State of Maharashtra, rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and

hence it must not be lightly resorted to the grounds for cancellation of bail under sections 437(5) and 439(2) are identical, namely, bail granted under section 437(1) or (2) or 439(1) can be cancelled where (1) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. So the prosecution in order to succeed must show that the activities of the accused come under either one or more of these heads or under the head of a similar nature. Bearing these principles in mind let us now examine how far the conduct of the respondent/accused herein invites the cancellation of bail granted to him.

8. The first ground urged by learned Additional Public Prosecutor relates to the suppression of the earlier bail petition before the Assistant Sessions Judge while seeking an order in Crl. MP No. 3238 of 1994 in the Court of II Additional Sessions Judge. He also points out that when the accused was produced on 29-4-1994 before the II Assistant Sessions Court, the bail petition was adjourned to 13-6-1994. On that day Puliyur Udhayan the concerned Inspector of D 5 Marina Police Station had to leave for Delhi to brief the counsel there to file S.L.P. against the order in Crl.OP No. 1002 of 1994. During his absence another bail petition was presented before Principal Sessions Court on 6-6-1994 without mentioning about the bail application pending before the Assistant Sessions Court. The application was taken up for hearing on 10-6-1994. The prayer seeking time on the ground that the investigating officer was in Delhi was rejected. The II Additional Sessions Judge who was incharge of the Principal Sessions Court passed the order releasing the respondent on bail on 13-6-1994. In Mohan Singh v. Union Territory, bail granted by the Sessions Judge was cancelled by the High Court mainly for the reason that the accused had simultaneously moved for bail in the Sessions as well as in the High Court without disclosing to the Sessions Court that he had moved for bail in the High Court. This naturally made the High Court feel that the party was not straightforward in his dealing with the court. The consequence was that the bail already granted was reversed. This reversal was held improper by the Apex Court. So suppression of pendency of bail application in the Assistant Sessions Court by itself cannot be a ground for cancellation of bail granted by the Principal Sessions Court.

9. A persual of the order Crl.M.P. No. 3238 of 1994 discloses that learned Public Prosecutor had endorsed the arguments put forward by the counsel for the petitioner and he had no serious objection for the release of the petitioner Rama v. Dattatraya, 1981 Crl LJ 1605 was cited in this court by learned Additional Public Prosecutor wherein a single Judge of Bombay High Court has cancelled the bail granted on the concession made by the Public Prosecutor. Learned Judge has held that public Prosecutor was not justified in telling the court that he did not oppose the application for bail because he had instrutions to that effect from the Investigating Officer. It is his duty to see whether the instructions given to him are proper and warranted by the materials collected in the course of investigation, and if he finds that instructions are not proper, it is his duty to place before the court in a fair manner the material that has been collected in the course of investigation and to request the court to pass such orders as are warranted by the materials on records. In Imamuddin v.

Ayub Khan, 1984 Crl LJ 117, a Single Judge of Jaipur Bench of Rajasthan High Court has held that ordinarily, the High Court will not exercise its discretion under Section 439(2) by cancelling a bail granted by the Sessions Judge in favour of an accused. But if bail has been granted to an accused in a manner which smacks of arbitrariness, capriciousness or perversity, on the part of the Court of Session granting such bail, the High Court has not merely the discretion but a duty laid on it under section 439(2), Cr.PC. to cancel the bail and order the accused to be re-arrested. However these two decisions cannot help the prosecution in any manner. In the instant case no such arbitrariness, capriciousness or perversity has been brought to my notice in ordering bail by the trial Court. Besides, even though the city Public Prosecutor had no objection, learned Principal Sessions Judge has passed the impugned order only after considering the merits of the claim. The factors which weighed with the Court in allowing the application were that the petitioner was in custody for more than one year, that the case was pending for trial after committal and that there was no possibility of tampering with the witnesses, since all the eye-witnesses were police officials and injured were discharged from the hospital long back. So the claim of learned Additional Public Prosecutor that the respondent was able to secure his release on bail by certain misrepresentation cannot be countenanced.

10. And it is also significant to note that this is not one of the instances illustrated by the Apex Court in the decision cited above for cancellation of the bail. Learned counsel for the respondent has brought to my notice the decision of a single Judge of the Orissa High Court in State of Orissa v. Jagannath Patel, 1991 (3) Crimes 858. There the Court erroneously looked at materials and came to a conclusion which on the face of it was contrary to the records. Held it amounted to non-application of mind and to improper and arbitrary exercise of Judicial discretion. Even then bail cannot be cancelled merely on the allegation of chance of tampering of evidence.

11. A major part of the affidavit in support of the application for cancellation of bail in this case deals with the past criminal record of respondent Veeramani. It narrates how when he was confined in Central Jail, Madras, he threatened the inmates and created a sense of insecurity in their minds. The affidavit states that in a raid Narcotics worth more than Rs. 1. crore were recovered from the associates of the respondent. The Principal Court has dismissed all his bail applications from February to May, 1994. As per the prosecution, respondent Veeramani is involved in 4 murder cases, 11 cases of attempt to murder and 9 cases of other offences. On earlier occasions he was involved in various anti-social activities, rowdism and group clash endangering public safety in and around Madras City. Learned Additional Public Prosecutor submits that Veeramani was convicted and sentenced to death in SC No. 10 of 1983 by the IV Additional Sessions Court, Madras. Later on, this was modified to R.I. for 7 years by this Court. After his completion of sentence in this case respondent has indulged in committing the other offences. This long record of criminal cases would itself go to show that he has misused the concession of bail granted to him and that his liberty has only paved way for some other grave offences. Considering the serious nature of offences in which he is involved it is unsafe to let him remain at large.

12. However, in Aslam Babalal Desai's case prior involvement in serious crimes and criminal background of the accused and his notoriety are not given as instances where bail granted could be rescinded. We have to bear in mind that considerations for cancellation of the bail are different from

those to be taken into account for grant of bail. While allowing a bail application, nature of the crime, circumstances in which it was committed, the background of the accused, the possibility of his jumping bail, the impact that his release may make on the prosecution witnesses, its impact on society and the possibility of retraction are all factors to be weighed. Bhagirath Singh Judeja v. State of Gujarat, lays down that the approach of court in the matter of bail is not that he should be detained by way of punishment but whether his presence could be readily available for trial or that he is likely to abuse the discretion granted in his favour. But Krishna Iyer, J. has observed in Narasimhulu v. Public Prosecutor, A.P., that bail discretion, on the basis of evidence about the criminal record of defendant, is not an exercise in irrelevance. Bad record of police prediction of Criminal prospects to invalidate the bail plea are admissible in principle but shall not stampede the Court into a complacent refusal. However, as laid down by the Apex Court, Cancellation of bail could be made mainly where the accused misuses his liberty by indulging in similar criminal activity or tampers with evidence and interferes with investigation and there is chance of his jumping bail.

13. Learned counsel for the respondent submitted that prosecution was given ample opportunity to place before court all relevant materials about the background of accused at the time of consideration of his bail application. Once accused is released on bail, the order granting bail cannot be cancelled on the ground of his past criminal record. Nabachndra v. Manipur Administration, AIR 1964 Manipur 39 : (1964 (2) Cri LJ 307 relied on by learned counsel for the respondent, has held that vague allegations as to his prior involvement in criminal cases that he was a man of desperate character and that he was likely to indulge in further commission of offence are not sufficient to cancel the bail.

14. Yet another contention put forward by learned Additional Public Prosecutor is that in ordering bail learned II Additional Sessions Judge has proceeded on the basis that the respondent has promptly surrendered before the police without absconding. He has failed to notice that on the earlier occasions when respondent was granted interim bail, he was escorted by Armed Reserve Sub Inspector of Police and 8 Policemen with sten gun throughout the day. But we find from the impugned order that this is not the sole ground for the trial Court to order the bail application. It might have been one of the factors which weighed with him in granting bail. But we have already seen that the cretiria for ordering of bail and cancellation are not identical and this contention of learned Additional Public Prosecutor has no substance.

15. Learned Additional Public Prosecutor further submits that one Udhaya wife of the respondent and Kalaimani his brother are actively engaged in I.D. arrack trade and there has been no attempt to reform themselves. If the respondent is enlarged on bail, there is every possibility of revival of his unlawful activities with their assistance. On the face of it, this claim is unacceptable and does not deserve even mentioning.

16. Learned Additional Public Prosecutor also argues that the trial Court has granted bail on an erroneous view that the eye-witnesses to the occurrence being police officials there was no question of tampering of witnesses by the present respondent. He submits that there are five independent witnesses in Crime No. 61/93. In an earlier case relating to murder of one Durairaj police personnel alone were eyewitnesses. The respondent was able to secure acquittal for the reason that these

witnesses were tampered with and they re-traced their version. There are still three murder cases and 11 attempt to murder cases and many other cases of lesser offences pending against the respondent. There is every possibility of his tamparing with the witnesses therein. It is true that it is inherent nature of bail pending trial that it is always liable to be cancelled for good reasons such as that the accused is tampering with the prosecution evidence or threatening the witnesses. In Tahir v. Shaukat, 1986 Cri LJ 1815 the Allahabad High Court had laid down that if it is proved beyond reasonable doubt that the accused who was granted bail has misused it by interfering with the course of justice and fair trial and he had made efforts to tamper with the prosecution witnesses, that would be a sufficient ground for cancellation of bail. In Delhi Administration v. Sanjay Gandhi, the Supreme Court has pointed out that the prosecution can establish its case in an application for cancellation of bail by showing on a preponderance of probabilities that the accused has attempted to tamper or has tampered with its witnesses. Proving by the test of balance of probabilities that the accused has abused his liberty or that there is a reasonable apprehension that he will interfere with the course of justice is all that is necessary for the prosecution to do in order to succeed in an application for cancellation of bail. But this argument is of no avail for cancellation of bail in this case because there is no material to hold that after securing his release on 14-6-1994 Veeramani has made any endeavour to tamper with the witnesses in these three cases.

17. However learned Additional Public Prosecutor forcefully pleaded that by misusing present liberty enjoyed by him the respondent is instigating commission of other offences. This would terrorise the witnesses to come and depose fearlessly in the instant case as well as other cases. In most of the cases pending against him the trial has to begin shortly and the continued remaining at large of the respondent wherever he might be would not be a conducive atmosphere for the conduct of the trial. He also brings to my notice the additional affidavit filed by Puliyur Udhayan the Inspector of Police, D5, Marina Law and order Police Station wherein he mentions two instances. As per this affidavit, on 27-6-1994 at about 4-30 a.m. one Irudhaya Mary has given a statement before Sub Inspector of Police, D1 Triplicane Police Station in Crime No. 2678/94 under sections 302 and 307, IPC. The investigation in this case reveals that the murder concerned has taken place only on the inducement of the present respondent. Hence, he has been a arrayed as an accused in that case. Yet another instance is that on 28-8-1994 at about 5-45 p.m. two Police Constables of Flower Bazaar Police Station stopped one Sivakottai Reddi at Devaraja Mudali Street and examined his bag. It contained five country made bombs. The investigation reveals that these bombs have been purchased only as per the direction of the respondent. So he was arrayed as accused No. 3 in Flower Bazaar Police Station Crime No. 1123/94 registered under section 5, of Explosive Substances Act, 1908 and Section 25(1)(A) of Arms Act of 1959, Sri Venugopal, the investigating officer in D1 Triplicane Crime No. 2678/94 swears in his affidavit dated 18-8-1994 that as per the statement of Irudhaya Mary her husband Ramesh was murdered by three persons with patta knife. During the course of investigation three persons were arrested and remanded to custody. They have given confessional statement admitting that they had committed the murder of Ramesh while he was sleeping in his hut on 27-6-1994 at about 4-30 a.m. on instructions from the respondent.

18. Learned Counsel for the respondent took exception to the locus standi of Puliyur Udhayan and Venugopal in filing these affidavits. According to him, the instances mentioned in these affidavits are not supported by any record and they are no grounds to cancel the bail. Such charges could be

made even if the respondent is behind the bars. There is nothing to hold that the respondent was involved in these two cases and no specific overt act is attributed to him. Learned Counsel submits that in the absence of any materials regarding the likelihood of the accused fleeing from justice and his tampering with prosecution witnesses which are the two paramount considerations in a case like this, there is no warrant for cancellation of the bail granted to the respondent.

19. In Gurdip Singh v. State of Punjab, 1971 Cri LJ 496 : AIR 1971 P&H 98 it was contended that conclusion regarding misuse of the privilege granted to the accused had to be arrived at on the basis of the materials which are evidence. A learned single Judge of the Punjab and Haryana High Court has held that the decision on an application for cancellation of bail is not a trial and proof is not being sought of the facts stated in the application for the purpose of convicting or acquitting the accused. All that is required in such a situation is to ensure that the material placed before the Court is such as to enable the Court to come to a conclusion that there was strong prima facie case that if the accused were to be allowed to be at large, they would tamper with the prosecution witnesses and impede the course of justice. There is nothing in the language of sub-section (5) of Section 497 and sub-section (2) of Section 498, Code of Criminal Procedure, to warrant such a conclusion. On the other hand, what appears from these provisions is that the Court is making only a discretionary order while cancelling the bail and in doing so can make use of any material from which facts necessary to infer that the accused were tampering with evidence could be concluded. In State of Maharashtra v. Tukaram Shiva, 1977 Cri LJ 394 relied on by learned Additional Public prosecutor it has been laid down that it is the well established practice in bail matters to receive affidavits and consider their contents where in support of the prosecution application for cancellation of bail the affidavit sworn states above the threat given out by the accused. The Division Bench of the Bombay High Court has laid down that the trial court was not justified in characterising the affidavit as hear-say and therefore no evidence. So there is nothing wrong in acting on the strength of these affidavits. Under Section 497, the High Court has cancelled bail when allegations have been made similar to those being made here and the cancellation has always been on a consideration of affidavits filed in Court. We have to bear in mind that we are not seeking for proof of facts in order to convict the accused. We are being asked to make a discretionary order and we have to be satisfied that the materials placed before us are such as to lead us to the conclusion that there is a strong prima facie case that if the accused were to be allowed to be at large he would impede the course of justice.

20. Learned Additional Public Prosecutor next argued that the High Court while considering the question of cancellation of bail can also examine the propriety and legality of the order passed by the Court of Session. If it is found that the bail to the accused has been granted improperly and arbitrarily, the same can be cancelled. In Shahzad Hasan Khan v. Ishiaq Hasan Khan, relied on by him the bail application of an accused involved in a case of murder which took place in broad day light and to which there was a number of eye-witnesses was granted on the grounds that there was delay in trial and a citizen's liberty was involved but the affidavit filed by the Complainant showed that the accused persons obtained adjournment after adjournment on one pretext or the other and they did not allow the court to proceed with the trial and there were also serious allegations of tampering of evidence on behalf of accused persons. Held the order granting bail was liable to be set aside. However, we have already seen that the Sessions Court has passed the impugned order only

on merits in this case. That the prosecution at that time appears to have sailed with the accused is a different story.

21. It is true that once an accused has been enlarged on bail, his liberation from custody cannot be lightly interfered with, but this does not mean that even in a proper case where ends of justice would be defeated unless the accused is committed to custody. Power of the High Court to cancel the bail cannot be exercised. Though in the Supreme Court indicated seven grounds mostly based upon the activities of an accused after the grant of bail to him, at the same time it observed that these grounds were illustrative and not exhaustive and where there are strong grounds, cancellation of bail can be ordered in a proper case. So the larger interests of the State and community including the consideration that parties do not lose faith in the system and take law into their own hands to wreak vengeance by private retribution is certainly a relevant factor to be taken into account while considering cancellation of the bail. The two instances mentioned in the affidavit prima facie establish the misuse of the liberty enjoyed by the respondent and his potentiality to indulge in terrorising persons even while residing at the farthest point from Madras. Besides, although it may not be possible for a Court hierarchically subordinate to the High Court, which granted bail to the accused, to consider cancellation thereof without the intervention of a supervening circumstance it is competent in law for the High Court to cancel bail in a proper and suitable case as a superior court, while examining the propriety and legality of the order granting bail and interfere accordigly. The principles which flow from the decisions of the courts in the matters of grant or cancellation of bail cannot be put in a strait-jacket and facts of each case would govern the matter. As regards the submission of learned counsel for the respondent that on merits learned Additional Sessions Judge was justified in granting bail to the petitioner is concerned, I am of the opinion that it was not the right stage for learned Additional Sessions Judge to have exercised his discretion in grating bail to the present respondent. Perhaps he was carried away by the 'no serious objection' on the part of learned Public Prosecutor. But learned Additional Sessions Judge failed to take into consideration that the allegations against the accused are very serious. There is no doubt that the liberty of the accused has to be safeguarded in accordance with law but while keeping in mind the interest of the accused, the collective interest of the community cannot be lost sight of so that the parties do not lose faith in the administration of justice. For this reason, Cr.M.P. No. 5253 of 1994 is to be allowed and bail granted to the respondent by the Principal Sessions Judge, Madras on 13-6-1994 in Crl.M.P. No. 3238 of 1994 in S.C. No. 96 of 1994 on his file is to be cancelled.

22. In the other two applications viz. Crl.M.P. Nos. 1740 and 2114 of 1994 bail granted on failure to lay charge sheet within 90 days is sought to be cancelled. There is no doubt that subsequent to the passing of the order releasing the respondent on bail charge sheets were laid. In Islam Bablal Desai's case the Apex Court has categorically laid down that once an accused has been released on bail under Section 167(2), Cr.P.C. his liberty cannot be interfered with lightly on the ground that the prosecution has subsequently submitted a charge-sheet. Such a view would introduce the sense of complacency in the investigating agency and would destroy the very purpose of instilling a sense of urgency expected by Sections 57 and 167(2), Cr.P.C.

23. Thiru A. Natarajan, learned counsel for the respondent submits that even though the respondent has been released under Sec. 167(2) Cr. PC, the bail once granted can be cancelled only on merits. In

other words, cancellation of the bail could only be as per the provisions of Section 437(5) or 439(2), Cr.P.C. In support of his contention he places reliance on Aslam Bablal Desai's case wherein it is pointed out that the order passed under section 162(2), Cr.P.C. on failure of the prosecution to lay the charge sheet in time would be an order under section 437(1) or (2) or 439(1) Cr.P.C. Since Sec. 167, does not empower cancellation of the bail, the power to cancel the bail can only be traced to Section 437(5) or Section 439(2). However, we have found elsewhere that as per the affidavits placed before this Court, after securing his release the respondent appears to have indulged in further crimes either directly or by instigation and this would be a ground for cancellation of the bail.

24. Learned counsel for the respondent argued that even though the respondent was ordered to be released in these two crime numbers under section 167(2). Cr.P.C. even in May, 1993, his actual release was secured only on 14-6-1994. And the present applications for cancellation which were filed on 16-3-1994 and 29-3-1994 respectively much earlier to the actual release are not maintainable as premature. In Rawat v. Leidomann Heinrich 1991 Crl LJ 552 relied on by him the accused was arrested on 10-3-1989. The charge-sheet was not filed against him within a period of 90 days. He filed an application for bail on 19-7-90 under Section 167(2), Cr.P.C. In the meanwhile, the charge-sheet was filed on 26-6-1989. The Sessions Court rejected the bail application on the ground that it would not be proper for him to pass an order in view of a reference to the Division Bench regarding the applicability of Section 167(2), Cr.P.C. to the persons accused of an offence under the N.D.P.S. Act. Feeling aggrieved, the accused preferred the criminal application in the High Court. In the meanwhile, the Assistant Collector of Customs filed an application for cancellation of the bail. Both these applications were disposed of by a common judgment. The question arose whether the prosecution can apply for cancellation of bail even before the accused was released on bail. The learned single Judge of the Bombay High Court held that as per the language used in sub-section (5) of Section 437, or sub-section (2) of Section 439 of Cr.P.C. unless the accused is actually released on bail there is no question of his arrest and committing him to custody. The expression "any person who has been released on bail" occurring in Section 439(2) Cr.P.C. would mean that the accused is not only granted bail but has availed of the same and is released from jail custody. It is only then that this Court can direct a person to be arrested and committed to custody as provided in Section 439(2) Cr.P.C. In fact, no question of his rearrest or recommittal to custody can arise unless accused is actually released on bail granted to him. So long as he is in custody, there can be no arrest and committing to custody again.

25. However, there is yet another factor in this case. We have already seen that though the respondent was ordered to be released under section 167(2) Cr.P.C. in the month of May itself, he had actually furnished surety and came out only on 14-6-1994 after the order of his release on bail in Crl. MP No. 3238 of 1994. It is the argument of learned Additional Public Prosecutor that since he has not availed the order of release in his favour under section 167(2) Cr. PC till the filing of the charge sheets, his actual release on 14-6-1994 which is subsequent to the said filing of the charge sheets is liable to be revoked. In support of his contention he placed reliance on Chaitu Sahni v. State of Bihar, 1994 (1) Crimes 174 wherein a Single Judge of the Patna High Court has held that when the accused is granted bail under section 167(2) proviso Cr.P.C. but before he furnished bail bonds the charge sheet was filed, the bail order is deemed to have extinguished. Under the

provisions of Section 167(1) Cr.P.C., the Magistrate has no power to detain an accused in custody after expiry of 90/60 days if the accused is prepared to and does furnish bail. Taking into consideration this mandate of the Legislature, it is clear that even after that order is passed for releasing the accused on bail, the accused would be released only when he furnished bail bond and not before that. In this case, the respondent admittedly did not avail the opportunity of getting himself released by furnishing surety on the basis of the order of bail granted to him in May 1994.

26. On the other hand, learned counsel for the respondent brought to my notice the decision of Allahabad High Court in Dharmanand alias Mahato v. State, 1994 (1) Crimes 397. There the learned Single Judge took the view that the right of an accused to be released on bail if the chargesheet is not filed within the stipulated time continues till the accused is released on his furnishing bail bonds. etc. In default of non-filling of charge sheet by prosecution within the prescribed period the Magistrate should pass an order enlarging the accused on bail, irrespective of the fact whether an application for bail is or is not moved by the accused and should call upon the accused to furnish bail bonds. If the accused is prepared and does furnish bail then he has to be released on bail. If the accused fails to furnish bail bonds, then only he should be remanded under the provisions of Section 309(2) Cr. PC. But if after remand the accused furnishes bail bonds, even after receipt of charge-sheet, then he has to be released from custody because the order of bail survives even after filing of charge-sheet.

(27) Learned counsel for the respondent also placed reliance on Raghubir Singh v. State of Bihar 1988 LW Crl. 304 : 1987 Cri. LJ 157. There Chinnappa Reddy and Dutt, JJ. have held that an order for release on bail is effective until an order is made under Section 437(5) or Section 439(2) Cr.P.C. There is no limit of time for execution of bond, after order for release is made. The effect of the new proviso to Section 167(2) Cr.P.C. introduced in 1973, is to entitle an accused person to be released on bail if the investigating agency fails to complete the investigation within 60 days. A person released on bail under the provision to Section 167(2) for the default of the investigating agency is statutorily deemed to be released under the provisions of Chapter 33 of the Code for the purpose of that chapter. That is provided by the Proviso to Section 167(2) itself. This means, first, the provisions relating to bond and sureties are attracted. Sections 441 and 442, to borrow the language of the Civil Procedure Code, are in the nature of provisions for the execution of orders for the release on bail of accused persons. What is of importance is that there is no limit of time within which the bond may be executed after the order for release on bail is made. Very often accused persons find it difficult to furnish bail soon after the making of an order for release on bail. However, in Sanjay Dutt v. The State through C.B.I., Bombay, a Bench of five Judges of the Supreme Court had occasion to consider the scope of Section 167 Cr.P.C. in relation to Section 20(4) of TADA Act. There the Apex Court pointed out that Section 20 of the TADA Act prescribes the modified application of the Code of Criminal Procedure indicated therein. One of the modifications made in Section 167, of the Code by Section 20(4) of the TADA Act is to require the investigation in any offence under the TADA Act to be completed within a period of 180 days with the further proviso that the Designated Court is empowered to extend that period up to one year if it is satisfied that it is not possible to complete the investigation within the said period of 180 days. The Bench has categorically laid down that the indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already, not

availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167, Cr.P.C. ceases to apply. The ratio laid down in this recent decision of the Supreme Court wholly applies to the facts herein also. The argument of Thiru A. Natarajan that this judgment has no bearing on the facts of the present case since it was rendered under the provisions of TADA Act is untenable. Under the provisions of TADA Act only the period prescribed in Section 167 is modified and nothing more. Though the present respondent was ordered to be released under Section 167(2) Cr.P.C. in May 1994 itself, on his failure to furnish surety and avail the order in his favour, the right accrued had extinguished the moment the charge-sheets were filed on 16-8-1993 and 3-11-1993 respectively. So the actual release of the respondent on 14-6-1994 pursuant to the orders passed on 25-5-1993 in Crl. OP. No. 6275 of 1993 and on 14-6-1993 in Crl. OP No. 6271 of 1993 is not valid and liable to be set aside.

(28) In the result, Crl. MP Nos. 1740, 2114 and 5253 of 1994 are allowed and the respective impugned orders of granting bail are set aside. The accused is directed to surrender before the concerned court fortwith.

(29) Petition allowed.