

S. MANIKUMAR, CJ,
C.T. RAVIKUMAR, J.
&
SHAJI P. CHALY, J.

W.P (C) No. 9400 OF 2020 (Suo Motu)

Dated this the 18th day of May, 2020

ORDER

S. Manikumar, CJ.

On 25.3.2020, a Hon'ble Full Bench of this Court, after considering the submissions of learned counsel for the parties, at paragraph Nos. 4 and 5, passed the following order:

“4. We are informed that the High Court as well as the Courts in the District Judiciary and Tribunals have granted interim orders for a limited period and inasmuch as the litigants, their respective counsel, will not be in a position to approach the Courts/Tribunals for filing an application for extension, during this total lock down period of 21 days, necessary orders have to be issued, so as to enable the litigants not to suffer on account of their inability to approach the Courts in the Districts/Tribunals, as the case may be. Therefore, in exercise of the powers conferred under Articles 226 and 227 of the Constitution of India, all the interim orders passed by all the Courts/Tribunals upon which High Court exercises supervisory jurisdiction under Article 227, which are due to expire during the lock down period of 21 days, are extended by this Court by one month from today.

5. We also make it clear that, if any application is filed for extending/vacating an interim order and pending for orders in this Court, the interim orders will be extended for one month.”

2. Subsequently, another Full Bench of this Court on 30.3.2020 at paragraph 8, passed the following order:

“8. Before parting with, it is made clear that the extension granted to the interim orders, through order of this court dated 25-03-2020 will stand further extended upto 18-05-2020, the date of re-opening of the courts after mid-summer vacation. However the aggrieved party will be at liberty to move for vacating such orders, before the appropriate court. All other directions contained in the order of this court dated 25-03-2020, will continue to be in force.”

3. On this day, when the matter came up for hearing, we heard Mr. Ranjith Thampan, learned Additional Advocate General, Mr. Jaishankar V. Nair on behalf of learned Assistant Solicitor General, representing the Government of India and Public Sector undertakings owned and controlled by the Government of India, and Mr. R. Lakshmi Narayan on behalf of the Kerala High Court Advocates' Association.

4. With the consent of all concerned, interim order granted in respect of orders passed by Courts/ Tribunals upon which High Court exercises supervisory jurisdiction under Article 227, which are due to expire during the lock down period, are extended till 30.6.2020. However, as stated supra, the aggrieved party is at liberty to move for vacating such orders before the appropriate Courts/Tribunals, as the case may be.

5. Insofar as recovery proceedings under State Laws are concerned,

taking note of the submissions of Mr. Ranjith Thampan, learned Additional Advocate General, Government of Kerala, on 25.3.2020 at paragraph No.6, we recorded the submission as hereunder:

“6. In so far as recovery proceedings under the State Laws are concerned, Shri Ranjith Thampan, learned Additional Advocate General submitted that, in all recovery matters, such as electricity, water, Abkari and other matters, Council of Ministers, Government of Kerala has already taken a decision that payment will be deferred upto 30.04.2020, and therefore, no recovery proceedings would be initiated or recovery proceedings already initiated, would not be proceeded further until 30.04.2020. The submission of the learned Additional Advocate General is placed on record.”

Thereafter, at paragraph 23, we passed the following order:

“23. Shri Ranjith Thampan, learned Additional Advocate General also submitted that, in so far as Local Self Government Institutions are concerned, Government have issued instructions not to take any coercive action. It is sincerely expected that, due to the outbreak of COVID-19, State Government, LSG Institutions, Government of India, and Public Sector Undertakings owned and controlled by the State/Central Governments that no coercive action be taken since there is no opportunity to the persons to approach the Courts at present.”

6. Having regard to the continuous pandemic situation, and also the limited staff employed in different institutions and lack of transport facilities

difficulties continue to subsist and, therefore, in exercise of the powers conferred under Articles 226 and 227 of the Constitution of India, we hereby direct that the State Government, LSG Institutions, Government of India and Public Sector Undertakings owned and controlled by the State/Central Governments, that no coercive action be taken till 30.6.2020. However, liberty is given to the State Government/LSG Institutions, Government of India and others stated supra, to approach this Court, seeking necessary permission for initiating/proceeding with recovery proceedings.

7. In respect of anticipatory bail, arrest and bail on 25.3.2020, at paragraphs 21 and 22, we passed the following order:

“21. Therefore, taking note of the above said situation, we are of the firm view that, right of personal liberty guaranteed under Article 21 of the Constitution of India should not, at any rate, be infringed by arresting an accused, except in matters where arrest is inevitable. However, the State is at liberty to take appropriate decision in respect of heinous/serious offences and in rest of the cases, State may act accordingly.

22. In the event of any arrest, the Constitutional obligation under Article 20(2) shall be followed in letter and spirit. Over-crowding in prisons is one of the issues taken up by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.1/2020. Therefore, learned Magistrates/Judges before whom the accused is produced, depending upon the nature of offence, shall consider as to whether judicial/police

custody is required or not. Needless to state that, bail is the rule and jail is an exception. We make it clear that, the above said directions stand excluded to subjects relating public order/law and order and any action taken by the State Government to combat the outbreak of COVID-19 and actions taken thereof.”

8. At paragraph 21, the Full Bench said that arresting an accused should be made, only if it is inevitable. Reservations are expressed regarding recovery of material objects, which according to the prosecution cannot be done without arrest. In respect of cases relating to recovery of material objects used in the commission of offences and such cases, State is at liberty to take appropriate decisions.

9. Directions contained in paragraph 21 of the order dated 25.3.2020 and modified directions issued today in respect of anticipatory bail applications shall also be taken note of by the Hon'ble Magistrates and Judges.

10. On 30.3.2020, after hearing learned counsel for the parties, Hon'ble Full Bench of this Court at paragraphs 5 and 6, has issued the following directions :

“(v) We also make it clear that, the person released on interim bail as above shall be liable to be arrested and produced before the jurisdictional court, in case of violation of any of the conditions stipulated as above or in case they are found indulging in any activity endangering law and order or breach

of public order and tranquility, or in any manner intimidating or influencing the witnesses.

6. We take note of the fact that for the consideration of extremely urgent cases already filed or to be filed before this court, including bail applications, the Hon'ble Chief Justice had constituted a Division Bench comprising of two Hon'ble Judges of this court. Necessary instructions have been issued by the Registry for dealing with such cases through e-filing and through Video-conferencing. The sitting of the Division Bench in this court for considering such matters will continue during the period of lock down on the basis of those instructions.

7. We further make it clear that for the purpose of considering bail applications of under-trial/remanded prisoners, who will not fall within the category for which interim bail is granted through this order, as well as for moving for statutory bail under Section 167 (2) Cr.P.C, the Sessions Judges in the State are hereby authorised to consider such bail applications submitted through e-mail and to dispose of such applications through Video-conferencing, after hearing the Advocate concerned as well as the public prosecutor. The modalities with respect to consideration of such bail application and its disposal will be prescribed by the Registry of this court and will be circulated through Office Memorandum to all the courts. Instructions in this regard will also be uploaded in the website of this court. The Principal Sessions Judge or any Additional Sessions Judge authorised in this behalf or to whom such bail applications are made over, shall deal with such bail applications in accordance with the above said directions and on the basis of the modalities which will be prescribed. those instructions.”

As per clause (v) of order dated 30.3.2020, time granted for prisoners released on interim bail to appear before the jurisdictional Court is within three days from 30.4.2020 or till the end of the lock down period. The lock down period is extended up to 31.5.2020. Considering the rush in filing the bail applications of those persons released on interim bail, we deem it fit to extend the period to seven days and the prisoners to appear and file bail applications before the concerned jurisdictional courts within seven days from the end of the lock down period.

Order dated 25.3.2020 and 30.3.2020 are modified as indicated above.

Sd/-
S. Manikumar, Chief Justice.

Sd/-
C.T. Ravikumar, Judge.

Sd/-
Shaji P. Chaly, Judge

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