IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY,THE 5TH DAY OF MAY, 2020/15TH VAISAKHA, 1942

B.A TMP NO.122 OF 2020

(RC01(S)/2020CBI/TVPM OF CBI originally Crime No.349/2019 of Peermade Police Station which is re-numbered as Crime No.390/CBI/IDK/R/19 Idukki District)

PETITIONER/1ST ACCUSED:

K.A.SABU, AGED 46 YEARS, S/O.ANTONY,

KURUPPASSERY HOUSE, PERUMPILLY KARA,

MANJAPETTY, NJARACKAL VILLAGE, KOCHI TALUK,

ERNAKULAM DISTRICT.

BY ADV.THOMAS J.ANAKKALLUNKAL

RESPONDENT/STATE & COMPLAINANT:

CENTRAL BUREAU OF INVESTIGATION, SPECIAL CRIMES BRACH,

TC76/17557/5 MUTHATHARA, VALAKKADAV P.O,

THIRUVANANTHAPURAM, REPRESENTED BY

SPECIAL PROSECUTOR, CBI, HIGH COURT OF KERALA,

ERNAKULAM.

By SRI.SASTHAMANGALAM S.AJITHKUMAR, SC FOR CBI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28.04.2020, THE COURT ON 05.05.2020 PASSED THE FOLLOWING:

"C.R"

C.S DIAS,J.

B.A (TMP) No.122 of 2020

Dated this the 5th May, 2020.

The question that emerges for consideration in this bail application is whether an accused who has undergone custody in two spells in the same crime is entitled to get the two spells combined to claim "default bail" under proviso (a) (i) to sub-section (2) of Section 167 of the Code of Criminal Procedure.

2. The undisputed antecedent facts for the disposal of this bail application are:

(i) The petitioner is arrayed as the first accused in RC01(S)/2020CBI/SCB/TVPM of CBI registered by the Central Bureau of Investigation (in short "'CBI".) - the respondent. The crime was originally registered by the Peerumedu Police Station as Crime No.349 of 2019, which was subsequently renumbered as Crime No.390/CBI/IDK/R/2019, for offences punishable under Sections 343, 348, 323, 324, 330, 331, 302 read with 34 of the Indian Penal Code

(i) The First Information Report (FIR) in Crime No.349/2019 was initially registered by the Peerumedu Police Station under Section 174 of the Code of Criminal Procedure (for brevity, hereinafter referred to as “Code”), on 21.06.2019, before the Sub-Divisional Magistrate Court, Idukki. Later, the case was taken over by the Crime Branch and renumbered as Crime No.390/CBI/IDK/R/2019. The offence was altered to Sections 343, 348, 323, 324, 330, 331, 302 read with 34 of the Indian Penal Code. The FIR was transferred to the Judicial First Class Magistrate, Peerumedu (in short "learned Magistrate”). The petitioner (then a Sub-Inspector of Police, Nedumkandam Police Station) and his team, accused two to seven , were arrayed as accused.

(ii) The prosecution allegation, in brief, is that: the petitioner and accused two to seven had taken custody of one Sri.Raj Kumar, the accused in Crime No.302/2019 of Nedumkandam Police Station, on 12.06.2019, and kept him in their illegal custody till 15.06.2019. They subjected him to physical torture. Sri.Raj Kumar was produced before the learned Magistrate on 16.06.2019, with the remand report purportedly stating that he was arrested on 15.06.2019. On 16.6.2019, the learned Magistrate remanded Sri.Raj Kumar to Sub-Jail, Peerumedu. Sri.Raj Kumar underwent treatment at the Taluk Hospital, Peerumedu and the Medical Hospital, Kottayam. On 21.06.2019, he succumbed to the injuries.

(iv) On a complaint lodged by the Assistant Prison Officer, Sub-Jail, Peerumedu, Crime No 390/CB/IDK/R/2019 was registered by Crime Branch, as against the petitioner

and the other accused, for the custodial death of Sri.Raj Kumar. The petitioner was arrested on 03.07.2019. This Court, by order dated 13.08.2019 in B.A.No.5570 of 2019, enlarged the petitioner on bail.

(v) During this interregnum period, the Government of Kerala by notification issued under Section 6 of the DSPE Act, bearing G.O (Ms) No.122/2019/Home dated 16.08.2019 [SRO No.545/2019], ordered the handing over of the investigation to the CBI. Likewise, this Court by order in W.P (c) No.19978 of 2019, directed the CBI to take over the investigation. The CBI took over the investigation, and re-registered the crime as RC01(S)/2020CBI/SCB/TVPM of CBI.

(vi) The Government of Kerala challenged the order dated 13.08.2019 passed by this Court in B.A.No.5570 of 2019, enlarging the petitioner on bail, before the Honourable Supreme Court in SLP (Crl) No.8818/2019. The Honourable Supreme Court granted leave. By order dated 13.08.2019, Crl. Appeal No.1902 of 2019 was allowed.

(vii) The order of the Honourable Supreme Court in Crl.A No.1902 of 2019 reads as follows:

"Heard the learned counsel for the Parties.

Leave granted.

Considering the nature and the number of injuries to be 22 and considering the fact that the accused was in police custody and the previous report indicates that there was no such injury on his person, in the facts and circumstances of the case, we feel that the High Court has illegally granted the privilege of bail to the accused persons. Since the case was registered under section 302 IPC with respect to custodial death, it is not a case were the benefit of bail could have been granted to the accused persons. Hence, we have no hesitation in setting aside the impugned order passed by the High Court. Ordered accordingly.

Without commenting on the merits of the case, the impugned order is set aside and the appeal is allowed. Let the police officers concerned be arrested forthwith. Pending interlocutary application (s) if any is/are disposed of."

(viii) Thereafter, the petitioner was arrested by the CBI on 16.02.2020. He was produced before the Chief Judicial Magistrate Court, Ernakulam. He was remanded to police custody for six days from 17.02.2020 to 22.02.2020. On the expiry of the police custody period, the petitioner was remanded to judicial custody.

(ix) The petitioner filed Bail Application.Temp.12/2020 before the Court of Session, Ernakulam, invoking proviso (a)(i) to sub-section (2) of Section 167 of the Code, seeking "compulsive/'default bail", on the ground that the petitioner was in custody for 43 days from 03.07.2019 to 14.08.2019 and again for 47 days from

16.02.2020 to 02.04.2020. As the local police or the CBI have not filed the charge-sheet within the statutory period of 90 days, the petitioner was entitled for 'default bail'.

(x) The learned Sessions Judge by order dated 08.04.2020 dismissed the bail application. The learned Sessions Judge held that the period of police/judicial custody undergone by the petitioner during local police investigation cannot be clubbed with the period of police/judicial custody that the petitioner is undergoing, pursuant to the arrest made by the CBI. Therefore, the petitioner has not completed the statutory period of 90 days to claim 'default bail'.

3. It is aggrieved by the order passed by the Court of Session, that the present bail application is filed.

4. Section167 of the Code of Criminal Procedure reads thus:

"167. Procedure when investigation cannot be completed in twenty-four hours-

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this Section may, whether he has or has no jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or

commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

PROVIDED that,--

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,--

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence,and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this Sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this Section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.-For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.-If any question arises whether an accused person was produced before the Magistrate as required under Clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be

(the other sub-sections are not extracted, as they are relevant for this case)."

5. In ***Rakesh Kumar Paul vs. State of Assam*** *[(2017) 15 SCC 67],* the Honourable Supreme Court after tracing the legislative history of Section 167 of the Code dating back from the Code of 1898 to the 41st Report of The Law Commission of India, in paragraph 12 observed as follows:

"12. The recommendations of the Law Commission of India were carefully examined and then accepted. The basic considerations for acceptance, as mentioned in the Statement of Objects and Reasons dated 7th November, 1970 for introducing the (new) Code of Criminal Procedure, 1973 were:

3. The recommendations of the Commission were examined carefully by the Government, keeping in view among others, the following basic considerations:

(i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;

(ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and

(iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer Sections of the community.

The occasion has been availed of to consider and adopt where appropriate suggestions received from other quarters, based on practical experience of investigation and the working of criminal Courts".

6. Elaborating further in paragraphs 16, 17, 38 and 39 in *Rakesh Kumar Paul v. State of Assam (supra)* it is laid down as follows:

"16. Generally speaking therefore, it could be said that the legislative intent is and always has been to complete the investigation into an offence within twenty-four hours,

failing which within 15 days (Code of Criminal Procedure of 1898). The period of 15 days was later extended to 60 days (Code of Criminal Procedure of 1973) and eventually it was extended to 90 days if the investigation was relatable to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years. In respect of all other offences, the period of 60 days remained unchanged.

17. The significance of the period of 60 days or 90 days, as the case may be, is that if the investigation is not completed within that period then the accused (assuming he or she is in custody) is entitled to 'default bail' if no charge sheet or challan is filed on the 60th or 90th day, the accused applies for 'default bail' and is prepared to and does furnish bail for release. As can be seen from the narration of facts, no charge sheet or challan was filed against the petitioner on the 60th day but was filed before the conclusion of 90 days. Consequently, was the petitioner entitled to 'default bail' after 60 days? According to the petitioner the answer is in the affirmative since he had not committed an offence punishable with imprisonment for not less than ten years, but according to the State he had committed an offence punishable with imprisonment for ten years.

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38. This Court also dealt with the decision rendered in Sanjay Dutt and noted that the principle laid down by the Constitution Bench is to the effect that if the charge sheet is not filed and the right for 'default bail' has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The accused can avail his liberty by filing an application stating that the statutory period for filing the charge sheet or challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the accused is prepared to furnish the bail bond.

39. This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right. Reference was made to *Mohamed Iqbal Madar Sheikh v. State of Maharashtra [(1996) 1 SCC 722]* wherein it was observed that some courts keep the application for 'default bail' pending for some days so that in the meantime a charge sheet is submitted. While such a practice both on the part of prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the indefeasible right of the accused for

'default bail' during the interregnum when the statutory period for filing the charge sheet or challan expires and the submission of the charge sheet or challan in court."(emphasis added)

7. The Constitution Bench of the Honourable Supreme Court in ***Sanjay Dutt v.State through C.B.I., Bombay*** *[(1994) 5 SCC 410]* after laying down the principles, recorded its conclusions, of which conclusion 53 (2) (b) is relevant for this case, which is reproduced below:

"53.(2)(b) The "indefeasible right" of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167 of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. The right of the accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage."

8. A three-Judge Bench of the Honourable Supreme Court in ***Uday Mohanlal Acharya v. State of Maharashtra*** *[(2001) 5 SCC 453],* reiterated the legal proposition in *Sanjay Dutt v.State through C.B.I., Bombay (supra).* In paragraph 13 (3) it was opined thus:

"" 13. (3) <u>On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation</u>

within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate." (emphasis added)

9. The law governing the province of 'compulsive bail' under the proviso to sub-section (2) of Section 167 of the Code is categorically laid down in (i) *Sanjay Dutt v.State through C.B.I., Bombay* (ii) *Uday Mohanlal Acharya v. State of Maharashtra* (iii) *Rakesh Kumar Paul vs. State of Assam,* and in a plenitude of precedents of the Hon'ble Supreme Court.

10. It is the case of the petitioner in the bail application that he is innocent of the allegations levelled against him. He was initially arrested on 3.7.2019. He was released on bail on 14.8.2019 as per the order of this Court in B.A No.5570/2019. He was in custody for a period of 43 days on the first occasion. The order in B.A No.5570/2019 was set aside by the Hon'ble Supreme Court. He was again arrested on 16.2.2020 and he continues to be in judicial custody. He filed B.A (TMP) No.12/2020 on 2.4.2020 before the Court of Session, claiming the benefit of 'default bail' under the proviso to Section 167 (2) of the Code, on the ground that he is in custody for a period of 90 days, combining the two periods of detention that he has undergone.

11. The respondent in the written objection has, inter alia, contended that there is no change of circumstance and that the petitioner is not in judicial custody for 90 days. The petitioner is not entitled for 'default bail'. The order of the learned Sessions Judge is judicious. There is no scope or need for any interference. The

investigation by the CBI is at its initial stage. The investigation is being carried out to unearth the conspiracy and custodial torture. Preliminary investigation by the CBI indicates involvement of more Police officials, including senior officials in the conspiracy and custodial torture of the deceased. Hence the bail application may be dismissed.

12. Heard the Sri.P.Vijaya Bhanu, the learned Senior Counsel for the petitioner, assisted by Sri.Thomas J.Anakkallunkal, and Sri.Sasthamangalam S Ajithkumar, learned Standing Counsel for the CBI, via video conferencing. The Counsel also filed written submissions.

13. The learned Senior Counsel argued that the order passed by the learned Sessions Judge is erroneous. The findings in the impugned order that the arrest made by the CBI was a fresh one and that 90 days time period has not elapsed since the date of arrest of the petitioner are wrong. The learned Senior Counsel relied on the decisions of the Hon'ble Supreme Court in ***Chaganti Satyanarayana v. State of AP*** *[(1986) 3 SCC 141] and* ***CBI v. Anupam Kulkarni*** *[(1992) 3 SCC 141]* to drive home his contention that an accused can be given in police custody only once during the first 15 days of remand under Section 167(2) of the Code. The petitioner was given in police custody on the first arrest by the local Police on 3.7.2019. Therefore, the granting of police custody to the CBI on the second arrest is against the law laid down by the Hon'ble Supreme Court in the afore-cited decisions, and the same is inconsequential or rather irrelevant. He also relied on the decision in ***Gurucharan***

Singh v. State (Delhi Admn) *[(1978) 1 SCC 118]* to buttress his contention that the aim and object of the proviso to Section 167(2) of the Code is to speed up the investigation. He also relied on the decision in ***Pragyana Singh Thakur v. State of Maharashtra [****(2011) 10 SCC 445]* and contended that the relevant date for counting the 90 days period under the proviso to Section 167(2) of the Code is not the date of arrest, but the date of first order of remand. He also contended that the decision relied on by the learned Sessions Judge in ***Devendrakumar v. State of M.P.*** *[1992 KHC 1396]* rendered by the Madhya Pradesh High Court, is irrelevant and not applicable to the facts of the case. The question in the said case was whether an accused released on interim bail for a few days could add those days he was on interim bail for claiming 'default bail'. He prayed that the order of the learned Sessions Judge be set aside and the petitioner may be enlarged on bail.

14. The learned Standing Counsel for the respondent vehemently opposed the application. He reiterated the contentions in the written objection filed by the respondent. According to him, the petitioner and the other accused have committed the heinous crime of custodial torture. The learned Standing Counsel argued that the learned Sessions Judge has rightly dismissed the bail application, on a correct finding that the petitioner is not entitled to get the two spells of detention clubbed together to claim the benefit under the proviso to Section 167(2) of the Code. He contended that the investigation by the CBI is only at its nascent stage. Enlarging the petitioner on bail

would be detrimental to the investigation, as the petitioner is an influential Police Officer. Moreover, the Hon'ble Supreme Court after considering the matter in detail, set aside the order passed by this Court enlarging the petitioner on bail. Hence he prayed that the bail application be dismissed.

15. Going by the language of Section 167 of the Code, the petitioner ought to have moved the learned Magistrate for 'default bail'. Nevertheless, considering that the Courts are closed due to the National lockdown in view of the Covid-19 pandemic, and also taking note of the observation made in paragraph 41 of *Rakesh Kumar Paul vs. State of Assam (supra),* that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. Therefore, I am considering this bail application on its merits.

16. It is by now trite that, when an application for "default bail" is filed, the merits of the matter are not to be looked into, as held by the Honourable Supreme Court in ***Union of India v. Thamisharasi and others*** *[(1995) 4 SCC 190].* Paragraph 11 is reproduced below:

> "11. xxxx xxxx. By its very nature the provision is not attracted when the grant of bail is automatic on account of the default in filing the complaint within the maximum period of custody permitted during investigation by virtue of Sub-section (2) of Section 167 CrPC. The only fact material to attract the proviso to Sub-section (2) of Section 167 is the default in filing the complaint within the maximum period specified therein to permit custody during investigation and not the merits of the case which till the filing of the complaint

are not before the court to determine the existence of reasonable grounds for forming the belief about the guilt of the accused."

17. The learned Sessions Judge dismissed the bail application on the findings that, the petitioner to acquire the statutory right, as envisaged under the proviso to Section 167 (2) of the Code, has to be in continuous detention for 90 days. The petitioner, who was initially arrested on 03.07.2019, was enlarged on bail on 14.08.2019. Pursuant to the direction of this Court, the respondent took over the investigation. The petitioner was again arrested on 16.02.2020, as directed by the Hon'ble Supreme Court. The arrest made by the respondent was a 'fresh one'. Therefore, the 90 days period has not elapsed since the petitioner's re-arrest. The period of custody undergone by the petitioner during local police investigation cannot be clubbed with the period of custody that the petitioner is presently undergoing. The decision in *Devendrakumar v. State of M.P* (supra) was relied on.

18. In *Vipul Shital Prasad Agarwal v. State of Gujarat and another [(2013) 1 SCC 197]* Justice J.Chelameswar, in his concurring judgment, which is relevant for this case, held as follows:

> "21. In my opinion, the mere undertaking of a further investigation either by the Investigating Officer on his own or upon the directions of the superior police officer or pursuant to a direction by the concerned Magistrate to whom the report is forwarded does not mean that the report submitted Under Section 173(2) is abandoned or rejected. It is only that either the investigating agency or the concerned Court is not completely satisfied with the material collected by the

investigating agency and is of the opinion that possibly some more material is required to be collected in order to sustain the allegations of the commission of the offence indicated in the report.

22. Therefore, the submission of Mr. Sushil Kumar, learned senior advocate appearing for the Petitioner, that the directions given by this Court earlier in Narmada Bai v. State of Gujarat would necessarily mean that the charge-sheet submitted by the police stood implicitly rejected is without any basis in law and misconceived. Even the fact that the CBI purported to have registered a "fresh FIR", in my opinion, does not lead to conclusion in law that the earlier report or the material collected by the Gujarat Police (CID) on the basis of which they filed the charge-sheet ceased to exist. It only demonstrates the administrative practice of the CBI.

23. In my view, notwithstanding the practice of the CBI to register a "fresh FIR", the investigation undertaken by the CBI is in the nature of further investigation under Section 173 (8) CrPC pursuant to the direction of this Court."

19. Recently, the Honourable Supreme Court in ***Pradeep Ram vs. The State of Jharkhand and Ors.*** *[AIR 2019 SC 3193]* laid down the following:

"37.This Court has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. In T.T. Antony, this Court has categorically held that registration of second FIR (which is not a cross-case) is violative of Article 21 of the Constitution."

20. It is undisputed fact that the petitioner was in custody from 03.07.2019 to 14.08.2019, i.e., for 43 days in the first spell. Thereafter, he was arrested on 16.02.2020 and is in custody since then. As on the date of filing the bail application before the Court

of Session, i.e., on 02.04.2020, he is in custody from 16.02.2020 to 02.04.2020 i.e., for 47 days in the second spell. Thus, the petitioner has been in custody for a total period of 90 days, in the two spells.

21. The Honourable Supreme Court, while setting aside the order of this Court in B.A.No.5570 of 2019, as extracted in paragraph 2 (vii) of this order, held that it was not commenting anything on the merits of the case.

22. Similarly, the Government of Kerala by notification G.O (Ms) No.122/2019/Home dated 16.08.2019 [SRO No.545/2019], and this Court by order in W.P (c) No.19978 of 2019, dissatisfied with the investigation by the local Police and the Crime Branch, ordered the handing over of the investigation of the crime to the respondent. There was no direction to re-investigate the crime.

23. The respondent, for its administrative purposes, after taking over the investigation, filed the FIR before the Chief Judicial Magistrate, Ernakulam, against the petitioner and other accused for allegedly committing the same offences in respect of the same incident. It is specifically mentioned in the FIR as follows:

> "After receiving the judgment of this Court in W.P (c) No.19978 of 2019, Crime No.349/2019 registered by the Peerumedu Police Station on 21.06.2019 (Cr.No.390/CB/IDK/R/2019 of CB Kottayam) is re-registered on 24.01.2020."

24. It is admitted fact that neither the Police nor the CBI has filed the charge-sheet in the crime.

25. In view of the categoric declaration of law in Vipul Shital Prasad Agarwal v. State of Gujarat and another (supra), the registration of RC01(S)/2020CBI/SCB/TVPM by the respondent is only a continuation of the investigation of Crime No.349/2019 of the Peerumedu Police Station and Cr.No.390/CB/IDK/R/2019 of Crime Branch Kottayam. The investigation now being continued by the respondent does not set to naught, wipe out, or wash away the investigation that was carried out by the earlier investigating agencies. On completion of further investigation, the present Investigating Agency has to forward to the jurisdictional Magistrate a further report, but not a fresh report, regarding the further evidence obtained during such investigation. The practice of the CBI to re-number the FIR and undertake investigation is only in the nature of further investigation. Equally, the re-registration of the crime cannot be treated as a new FIR, as a second FIR is impressible as held in *Pradeep Ram vs. The State of Jharkhand and Ors.(supra).* Therefore, the finding of the learned Sessions Judge that the arrest of the petitioner was a fresh one is erroneous. The decision in *Devendrakumar v. State of M.P.* (supra) is not applicable to the facts of this case. Furthermore, if such an interpretation is permitted, just prior to the expiry of the statutory time period under the proviso to sub-section (2) to Section 167 of the Code, if another investigating agency is entrusted with the investigation of the crime, it would render Section 167 of the Code a dead letter

and otiose; which is not the intention of the legislature going by the ratio decidendi in *Sanjay Dutt; Uday Mohanlal Acharya and; Rakesh Kumar Paul. (supra) .*

26. The Honourable Supreme Court in ***Gurchan Singh and others v. State (Delhi Administration*** *[(1978) 1 SCC 118]* held that the intention of insertion of S.167 (2) in the Code, is to speed up investigation by the police so that a person does not have to languish unnecessarily in prison facing trial.

27. A three Judge Bench in ***Aslam Babalal Desai vs. State of Maharashtra*** *[(1992) 4 SCC 272]* laid down as under:

> "15. Even where two views are possible, this being a matter belonging to the field of criminal justice involving the liberty of an individual, the provision must be construed strictly in favour of individual liberty since even the law expects early completion of the investigation. The delay in completion of the investigation can be on pain of the accused being released on bail. The prosecution cannot be allowed to trifle with individual liberty if it does not take its task seriously and does not complete it within the time allowed by law. It would also result in avoidable difficulty to the accused if the latter is asked to secure a surety and a few days later be placed behind the bars at the sweet will of the prosecution on production of a charge-sheet."

28. Thus, from a conspectus of all the precedents referred to above and on a consideration of the peculiar facts of this case, I am of the considered opinion that the petitioner is entitled to get the two periods of custody that he has undergone, i.e., 43 days (03.07.2019 to 14.08.2019) and 47 days (16.02.2020 to 02.04.2020), combined

for the purpose of claiming 'compulsive bail' under the proviso (a) (i) of sub-section (2) to Section 167 of the Code.

29. In view of my aforesaid findings that the petitioner is entitled for 'default bail', I allow this Bail Application. I direct the petitioner to be enlarged on bail. Nevertheless, considering the fact that the petitioner was a Sub Inspector of Police and that the investigation in the crime has not been completed, I impose stringent conditions for enlarging the petitioner on bail. Thus, this Bail Application is allowed, subject to the following conditions.

(i) Due to the present National lock-down and the closure of Courts, the Jail Superintendent where the petitioner is incarcerated, is directed to release the petitioner on him furnishing his permanent address and phone number and the addresses and phone numbers of his proposed sureties/immediate relatives. The petitioner shall also file an undertaking before the Jail Superintendent that he and his sureties will execute the bail bond before the jurisdictional Court within two days of its re-opening if not already re-opened. The Jail Superintendent after ensuring the compliance of the above conditions, shall release the petitioner to the present

Investigating Officer of the respondent, who shall after noting down the above details, release the petitioner. The Investigating Officer shall keep a close vigil on the whereabouts of the petitioner.

(ii) The petitioner shall within two days on the re-opening of the jurisdictional Court, if not already re-opened, execute a bond for a sum of Rs.2,00,000/- (Rupees Two lakhs only) with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Court.

(iii) The petitioner shall appear before the Investigating Officer on all Tuesdays and Fridays between 10.00 a.m and 12 p.m till final report is filed, and also appear as and when required by the Investigating Officer.

(iv) The petitioner shall not enter the Districts of Kottayam and Idukki for a period of four months from today.

(v) The petitioner shall not leave the Ernakulam District, without the previous permission of the jurisdictional court.

(vi) The petitioner shall not tamper with the evidence or influence the witnesses in the case, in any manner, whatsoever.

(vii) The petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the

case so as to dissuade him from disclosing such facts to the Court or to any Police officer

(viii) The petitioner shall not commit any offence while on bail.

(ix) Needless to mention that, if the petitioner violates any of the above conditions, the Station House Officer shall be at liberty to approach the jurisdictional Court and file appropriate application seeking for cancellation of the bail.

ma/05.05.2020 SD/-C.S.DIAS, JUDGE

/True copy/

P.S to Judge