

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV.on 27.3.2015

DATED: 06-04-2015

Coram

The Honourable Mr. Justice P.DEVADASS

Crl.O.P.No.4707 to 4715 of 2015

Navaneetha Krishnan ... Accused/Petitioner in  
Crl.O.P.No.4707 to 4709/2015  
Vinoth Kumar ... Accused/Petitioner in  
Crl.O.P.No.4710 to 4712/2015  
Sathish Kumar ... Accused/Petitioner in  
Crl.O.P.No.4713 to 4715/2015

Vs.

State rep. by  
The Inspector of Police,  
Natrampalli Police Station  
Vellore District. ... Respondent/Complainant  
(in all Crl.O.Ps.)

These petitions are filed under section 439(1)(b) of Cr.P.C. to modify the bail-condition to deposit Rs.25,000/- as cash security in each case as directed by the learned Assistant Sessions Judge (Sub-Judge), Tirupattur, Vellore District in Crl.M.P.Nos.52, 53 and 54 of 2014 dated 21.8.2014 in SC.Nos.14/13, 15/13, 13/13, 13 to 15/13, 14/13, 15/13, 13/2013 in Crime Nos.42/11, 55/11, 41/11, 41/11, 42/11, 55/11, 42/11, 55/11, 42/11 respectively.

For Petitioner in all Crl.OPs : Mr.Sathish Kumar  
For Respondent in all Crl.OPs : Mr.M.Mohamed Riyaz,  
Govt. Advocate (Crl.Side).

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COMMON ORDER

As these petitions are connected on factual matrix and are directed as against the similar orders of the trial Court, they are tagged together and are being disposed of by this common order.

2. These petitions are filed under section 439(1)(b) of Cr.P.C. seeking modification of the bail-condition imposed by the learned Assistant Sessions Judge (Sub-Judge), Tirupattur.

3. The Natrampalli Police in Vellore District registered these cases under Sections 395 and 397 I.P.C. as against the petitioners.

4. Petitioners have sought for bail in these cases in the Court of Assistant Sessions Judge, Tirupattur, Vellore District.

5. On 21.8.2014, in all these cases, the Trial Court passed prototype order granting them bail, however, directing them to deposit Rs.25,000/- as cash security in each case.

6. Aggrieved, the petitioners have directed these Criminal Original Petitions to modify the said bail condition.

7. The details of the petitions are as under:

| SL. No. | Name of the accused | Crime No. | Crl.M.P. No. (Trial Court) | S.C.No  | Crl.O.P.No. (High Court) |
|---------|---------------------|-----------|----------------------------|---------|--------------------------|
| 1       | Navaneetha Krishnan | 42/2011   | 52/2014                    | 14/2013 | 4707/2015                |
| 2       | Navaneetha Krishnan | 55/2011   | -do-                       | 15/2013 | 4708/2015                |
| 3       | Navaneetha Krishnan | 41/2011   | -do-                       | 13/2013 | 4709/2015                |
| 4       | Vinoth Kumar        | 41/2011   | 53/2014                    | 13/2013 | 4710/2015                |
| 5       | Vinoth Kumar        | 42/2011   | -do-                       | 14/2013 | 4711/2015                |
| 6       | Vinoth Kumar        | 55/2011   | -do-                       | 15/2013 | 4712/2015                |
| 7       | Sathish Kumar       | 42/2011   | 54/2014                    | 14/2013 | 4713/2015                |
| 8       | Sathish Kumar       | 55/2011   | -do-                       | 15/2013 | 4714/2015                |
| 9       | Sathish Kumar       | 42/2011   | -do-                       | 13/2013 | 4715/2015                |

8. The learned Assistant Sessions Judge, Tirupattur granted them bail in the following terms and conditions:

"ORDER

2. This court issued notice to the Respondent/Complainant and the Additional Public Prosecutor in Dis.No.1719/2014, dated 19.08.2014.

3. There is no reply from the respondent/complainant and the Additional Public Prosecutor and this court passed the following order:

No reply from police and Additional Public Prosecutor. The accused is in

custody from 25.2.2011. The case is under trial stage. There is no necessity arise to detain the accused in prison and no any explanation from the side of State with reasonable cause to retain the accused in judicial custody. This court inclined to release the accused on bail with following conditions.

1. Accused should deposit a sum of Rs.25,000/- as cash security for each case separately and execute a bond for the likesum to forfeit the same to the State if he failed to appear in court without any reasonable cause.

2. Accordingly, this bail application allowed."

9. According to the learned counsel for the petitioners, petitioners are very poor. They have no money even to engage a lawyer. In the bail petitions, they themselves have appeared before the Trial Court. In the circumstances, the Trial Court directing them to deposit Rs.25,000/- in each case as cash security is onerous and causes them much hardship. They have no money to deposit. That is how they are suffering in jail, inspite of the bail orders. The Trial Court cannot straightaway direct them to make cash security. In the circumstances, the said bail condition may be modified.

10. The learned Government Advocate submitted that since the accused are involved in property offences, such a condition has been imposed on them.

11. I have anxiously considered the rival submissions, perused the impugned bail orders and also the several decisions cited by the learned counsel for the petitioners.

12. Now, 'Bail is the Rule and Jail is the Exception'. Generally, grant of bail is to be considered because it is in furtherance of liberty of the individual guaranteed under Article 21, Constitution of India. However, in certain circumstances such as seriousness of the offence alleged, habituality in criminality, tendency of abscondence etc., bail will be refused (see Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav {2004 (7) SCC 528}, State of U.P. vs. Amarmani Tripathi {2005 (8) SCC 21}, Sanjay Chandra vs. C.B.I. {2012 (1) SCC 40} and Arnesh Kumar vs. State of Bihar and Another {2014 (8) SCC 273}).

13. Chapter XXXIII of the Code of Criminal Procedure, 1973 is a self-contained Code dealing with bail and bail bonds. While granting bail, Courts have the power to impose conditions. It is with

a view to ensure the availability of the accused during investigation and also during the trial of the case and it is not at all for harassing the accused persons.

14. Grant of bail is an exercise of judicial discretion by the Court based on consideration of several factors. Imposition of bail condition is also part of such exercise. It should be based on sound judicial principles. It should not be arbitrary, mechanical. Imposition of bail condition should not be for the sake of imposition of bail-condition.

15. Under the guise of imposition of bail-condition, there shall not be imposition of any onerous condition. Conditions which are in the nature of and which could not be complied with by the accused would be like granting bail by one hand and taking it away by another hand.

16. Imposition of onerous and stringent conditions amount to denial of bail. Actually, our bail system is not mainly based on any cash system. If it is so then poor people have to spend rest of their life in jail itself. That is not the objective of a bail system. The object of bail is to enable the accused to send him out of jail with an assurance to return to the Court to put up an effective defence.

17. While granting bail, the Court can direct the accused to execute bail bond. As per Section 440 Cr.P.C., the bond amount should not be excessive. When a person so directed to execute the bond either with surety or without surety is not able to furnish the sureties, then under Section 445 Cr.P.C., he has the option to offer cash security. But even then, it must be a reasonable amount. It should not be an arbitrary, excessive amount. It should not be in the nature of deprivation of grant of bail by fixing an heavy amount as surety amount. If heavy amount is directed to be deposited as cash security, the bailee/accused will not be in a position to comply it. If heavy amount is demanded from the surety, then the bailor will not be forthcoming. And 'haves' will go out, while 'have nots' will remain in jail.

18. Reading Sections 440, 441 and 445 Cr.P.C. together, it is clear that straightaway a Court cannot direct the accused to deposit cash security. First of all, the Court has to direct execution of bail bond by the sureties in case if the release is not on his own bond. Only in lieu of that deposit of cash security could be directed (see Section 445 Cr.P.C.). Thus, the Court cannot straightaway direct the accused to deposit cash security.

19. As already stated even if the cash security is ordered under Section 445 Cr.P.C., the Court must pay regard to the circumstances of the case and the amount should not be excessive (see

Section 440 Cr.P.C. Also see State of Mysore vs. H.Venkatarama Kotaiyah (1968 CrL.L.J. 696), Moti Ram and Others vs. State of Madhya Pradesh [(1978) 4 SCC 47], Babu Singh and Others vs. The State of U.P. (AIR 1978 SC 527), Gokul Das vs. The State of Assam (1981 CrL.L.J. 229), Afsar Khan vs. State of Karnataka (1992 CrL.L.J. 1676), Bhikhabhai Udesinh Darbar vs. State of Gujarat [(1998) 1 GLR 315], Parades Patra and Another vs. State of Orissa (1993 II OLR 452), Sandeep Jain vs. National Capital Territory of Delhi [(2000) 2 SCC 66], Amarjit Singh vs. State of NCT of Delhi (JT 2002 (1) SC 291), Sheikh Ayub vs. State of Madhya Pradesh [(2004) 13 SCC 457], Ramathal and Others vs. Inspector of Police and Another [(2009) 12 SCC 721], Amaldoss and others vs. The Inspector of Police, Patteeswaram Police Station, Thanjavur District (CrL.O.P.(MD) Nos.19196 and 19197 of 2014 dated 5.2.2015) and Sakthivel and Another vs. The Inspector of Police, Belukurichi Police Station, Namakkal District (CrL.O.P.Nos.835 and 836 of 2015 dated 4.2.2015).

20. Article 3 of Universal Declaration of Human Rights, 1948 declares that 'everyone has the right of life, liberty and security of person'. Article 21, Constitution of India, 1950 proclaims that 'no one shall be deprived of his life or personal liberty except by procedure established by law'. And Article 6 of International Covenant on Civil and Political Rights, 1966 declares that no one shall be arbitrarily deprived of his life'.

21. The Hon'ble Supreme Court in Maneka Gandhi vs. Union of India (AIR 1978 SC 597), held that any law, procedure depriving a person's life or liberty, which is 'unjust', 'unreasonable' and 'inequitable' militates against the Constitutional mandate in Article 21, Constitution of India. It is also in abridgment of human right of accused persons.

22. Thus, directing a poor man to deposit Rs.25,000/- in each case is against Article 21, Constitution of India and Maneka Gandhi (supra) principle and also the said International Covenants, which have been ratified by our country.

23. In the circumstances, the learned Sessions Judge, Tirupattur straightaway directing the petitioners to deposit Rs.25,000/- in each case as cash security is totally not in accordance with law. Further, petitioners are languishing in jail nearly for five years. Further, they are poor. They have no money not even to engage a counsel to file bail petitions. Although bail was granted to them as early as on 21.8.2014, they could not come out of jail indicates that the bail-condition imposed by the Trial Court is onerous and it causes them much hardship.

24. In such circumstances, actually, the Trial Court in its capacity as Chairman of the Taluk Legal Services Committee, Tirupattur should have nominated Legal Aid Panel Advocates to file the bail petitions on behalf of the petitioners. It is its

Constitutional duty to do so (see Articles 14, 21, 22, 39-A, Constitution of India and also see Sections 303, 304 Cr.P.C). But the Trial Court did not discharge its Constitutional duty.

25. In the facts and circumstances, the interference of this Court is called for and set at naught the onerous bail-condition imposed by the learned Assistant Sessions Judge, Tirupattur.

26. Ordered as under:-

- (i) These Criminal Original Petitions are allowed ;
- (ii) The direction of the learned Assistant Sessions Judge, Tirupattur, Vellore District passed in Crl. M.P.Nos.52, 53 and 54 of 2014 in S.C.Nos.13 of 2013, 14 of 2013 and 15 of 2013 issued on 21.8.2014, directing each petitioner to deposit a cash security of Rs.25,000/- in each case are set aside ;
- (iii) Petitioners shall be released on their own bond of Rs.5,000/- each to the satisfaction of the Superintendent, Central Prison, Vellore ;
- (iv) Petitioners shall appear before the Trial Court on all the hearing dates unless their absence is condoned by a petition filed under Section 317 Cr.P.C. ;
- (v) The Trial Court shall address the Superintendent of Police, Vellore District to execute the NBWs pending against the absconding accused at an early date.
- (vi) The Chairman/Sub-Judge, Taluk Legal Services Committee, Tirupattur will engage Legal Aid Panel Advocates to defend the petitioners, if they have not engaged defence counsels.
- (vii) The Trial Court shall take all out efforts to dispose of these cases at an early date.

Sd/-  
Assistant Registrar

True Copy

Sub Assistant Registrar

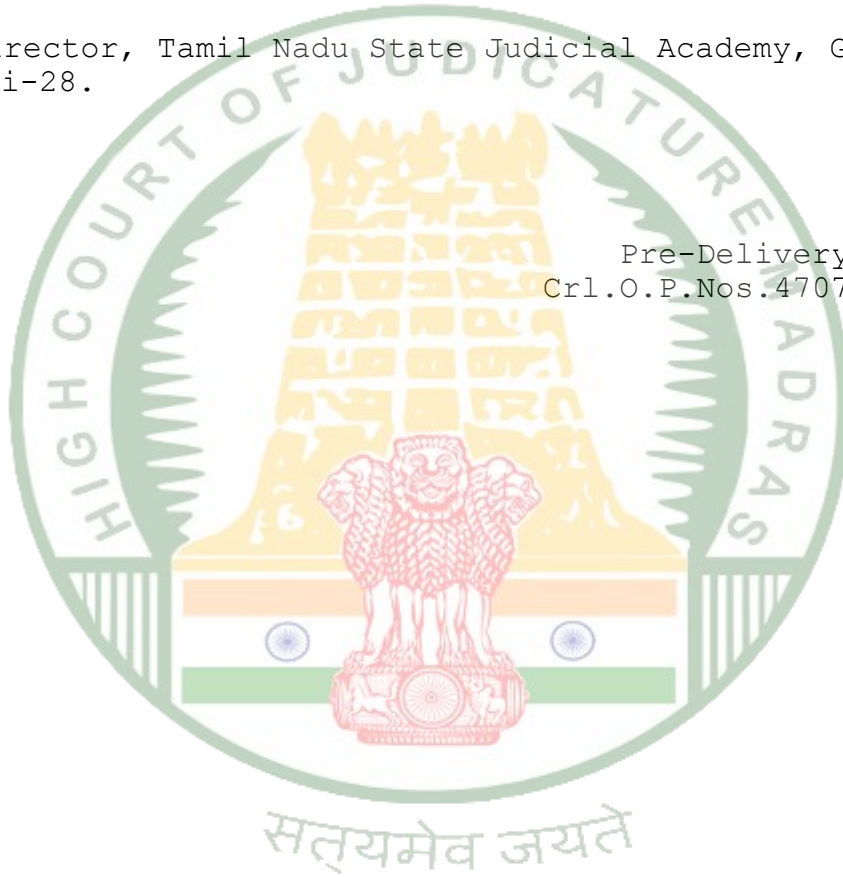
Copy to:

- (1) The Principal Sessions Judge, Vellore.
- (2) The Assistant Sessions Judge (Sub-Judge), Tirupattur, Vellore District.
- (3) The Superintendent, Central Prison, Vellore.
- (4) The Chairman / Sub Judge, Taluk Legal Services Committee, Thirupattur.

- (5) The Superintendent of Police, Vellore District.
- (6) The Inspector of Police, Natrampalli Police Station, Vellore District.
- (7) The Public Prosecutor, High Court, Madras.
- (8) The Section Officer, Criminal Section, High Court, Madras.
- (9) The Member Secretary, Tamil Nadu State Legal Services Authority, High Court Campus, Chennai-104.
- (10) The Director, Tamil Nadu State Judicial Academy, Greenways Road, Chennai-28.

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Pre-Delivery Common Order in  
CrI.O.P.Nos.4707 to 4715 of 2015



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