

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.2.2015

CORAM:

THE HON'BLE MR.JUSTICE P.DEVADASS

Crl.O.P. No.4802 of 2015

1. M. Sivakumar
2. M.Sasikumar

... Petitioners

Vs.

The State, represented by
Sub Inspector of Police,
P.E.W. Vellore, Police Station,
Vellore District. (Crime No.415/14) ... Respondent/Respondent.

Criminal Original Petition filed under Section 439(1)(b) of Cr.P.C., praying to modify the condition imposed by the learned Principal Sessions Judge at Vellore that the petitioners shall appear before the learned Judicial Magistrate No.1, Madurai every day at 10.30 a.m. for a period of one month in Crl.M.P.No.205 of 2014 dated 11.09.2014..

For Petitioner : Mr.B. Sundarapandiyan

For Respondent : Mr.K. Prabakar
Govt. Advocate (crl.side)

O R D E R

Petitioner seeks modification of certain portions of bail condition imposed by the learned Principal Sessions Judge, Vellore in Crl.M.P.No.205 of 2014 dated 11.09.2014.

2. In the order stated supra dated 11.09.2014, the learned Principal Sessions Judge, Vellore was pleased to grant bail to the petitioners, however directed them to stay at Madurai and sign before the learned Judicial Magistrate No. I, Madurai daily at 10.30 a.m., for one month.

3. Aggrieved, the petitioners have come up to this Court.

4. I have heard both sides.

5. The offence alleged are under Sections 4(1) aaa, 4(1-A) ii of Tamilnadu Prohibition Act.

6. Learned counsel for the petitioner submitted that the petitioners are ordinary two-wheeler mechanic, they are permanently residing in Vellore, they are having their family in Vellore, in the circumstances asking them to stay in Madurai does not serve any purpose. It will cause much hardship.

7. Learned counsel for the petitioners frankly submits that the bail bond was executed, but they have not complied with the said condition. It is not a willful disobedience of court order, it is because of the practical difficulty in undergoing the conditions. Under these circumstances, petitioners approached this court.

8. I have anxiously considered the rival submissions.

9. Day in and day out, bail orders are passed. Passing bail order and dismissing the bail petition has become one of the essential functions of the criminal courts. There is no criminal court without dealing with the bail petitions.

10. While granting bail, Court can impose condition. Chapter 33 of Code of Criminal Procedure 1973, not only deal with granting of bail, but also deal with bail bonds. It also empowers the bail court to impose condition.

11. Imposition of bail condition must have some object to be achieved. Criminal Courts while granting bail, have started imposing condition directing the accused persons to stay away from their usual place of residence or even asked them to stay away far when there is a case of retaliation murder, there are enemies awaiting the petitioners' release, there are dangers, threat to the safety and security of the accused or there are possibility of accused having vengeance in their mind and in the habit of creating every problem.

12. There are group clash, trouble between two villages, communal clash and the scene village is very tensed in situation. The Courts started imposing a direction to stay away from the scene village or other places. Imposition of such condition is also based on the facts and circumstances of each case. They can be illustrated. They cannot be exhausted. All depends on the facts and circumstances of the case as well as typed of the accused.

13. There may be allegation of a man always following a lady. There are allegation of sexual offence. There are fear of victims. In such a case also, in order to assure safety and security to the victim and his family while granting bail, Criminal Courts may direct he accused persons to stay away. But such condition cannot be permanent in nature. It should be transient in nature, because freedom to move any where is one of the fundamental right of every persons guaranteed under Article 19(1) of Constitution of India , but under Article 19(5) of Constitution of India reasonable restriction can be imposed. Reasonable restriction must be partial and not total.

14. In this case, petitioners were alleged to have committed prohibition offence. It is a routine case from Magistrate's Court. Every day, considerable number of prohibition case appears. In the circumstances, asking the accused persons involving a prohibition case to stay away at a far off place is quite unnecessary. It will not serve any purpose. It is waste of time and energy.

15. Actually, it is causing harassment to the accused persons. Further, human elements are involved. Imposition of said condition also results in causing harassment to the family of the accused persons. In this case, petitioner is having his family in Vellore itself. His children are there, relatives are there. He has to work and earn and feed them. In the circumstances, unnecessarily condition is imposed and he is almost driven away from Vellore to Madurai.

16. Ordered as under:

In the bail order of the learned Principal Sessions Judge, Vellore passed in CrI.M.P.No.205 of 2014 dated 11.09.2014, the condition to stay in Madurai and report before learned Judicial Magistrate I, Madurai daily at 10.30 a.m. for one month is deleted .

17. With the above modification, this Criminal Original Petition is disposed of.

Sd/-
Asst. Registrar

/true copy/

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Sub Asst. Registrar.

MSR

To

1. The learned Principal Sessions Judge at Vellore
2. The Judicial Magistrate No.1,
Madurai
3. Do Thro the Chief Judicial Magistrate,
Madurai
4. The Sub Inspector of Police,
P.E.W. Vellore Police Station,
Vellore District.
5. The Public Prosecutor, High Court, Chennai.

+1cc to Mr.B.Soundarapandian, Advocate, S.R.No.1073

Cr1.O.P. No.4802 of 2015

JP(CO)
CA(11/03/2015)



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