

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2016

CORAM

THE HONOURABLE MS.JUSTICE R. MALA

CRL.O.P.No.3775 of 2016

Perumal

.. Petitioner/Accused

... Vs ...

The State Rep. by,
The Inspector of Police,
CCIW - CID,
Villupuram District.
Crime No.1 of 2016.

.. Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to modify the condition of depositing a title deed worth about Rs.5,00,000/- before the lower Court imposed in the Order dated 09.02.2016 in Crl.M.P.No.793 of 2016, by the learned Principal Sessions Judge, Villupuram Sessions Division, Villupuram.

For Petitioner : Mr.M.P.Saravanan

For Respondent : Mr.C.Emalias
Additional Public Prosecutor

ORDER

The petitioner has come forward with this petition seeking to modify the condition of depositing a title deed worth about Rs.5,00,000/- before the lower Court imposed in the Order dated 09.02.2016 in Crl.M.P.No.793 of 2016, by the learned Principal Sessions Judge, Villupuram Sessions Division, Villupuram.

2. The learned counsel for the petitioner would submit that the petitioner is a Junior Clerk in Ongur Primary Agricultural Co-operative Society. On the allegation of misappropriation, a case in Crime No.1 of 2016 has been registered against the petitioner along with other accused for the offences punishable under Sections 408, 468 and 477(A) r/w. 109 of IPC. In connection with the said crime, the petitioner was arrested and remanded to judicial custody and when he moved a petition for bail in Crl.M.P.No.793 of 2016, the learned Principal Sessions Judge, Villupuram Sessions Division, Villupuram, has passed the following order.

"The petitioner is ordered to be released on bail on his depositing a title deed worth about Rs.5,00,000/- before the lower Court as well as on his executing a bond for Rs.10,000/- with two sureties for a like sum each to the satisfaction of Judicial Magistrate No.1, Tindivanam and on condition that the petitioner shall appear before the respondent police daily at 10.00 a.m. until further orders".

3. The learned counsel for the petitioner would further submit that the petitioner is a poor and he is not able to arrange any Title Deed worth about Rs.5,00,000/- and therefore, he seeks modification of the said condition.

4. To substantiate his arguments, the learned counsel for the petitioner has relied upon a decision of Madurai Bench of this Court reported in (2015) 1 MLJ (Cri) 471 [Amaldoss and others Vs. State] and a decision of this Court reported in (2014) 2 LW (Cri) 666 [Naresh Kumar Vs. The State] and also the decisions of the Hon'ble Apex Court reported in (i) (2014) 1 SCJ 190 [Sumit Mehta Vs. State of N.C.T. of Delhi]; (ii) (2009) 3 SCR 981 [Ramathal and others Vs. Inspector of Police and another] and (iii) (2002) 1 ALT (Cri) 382 [Amarjit Singh Vs. State of NCT of Delhi] and submitted that the condition imposed on the petitioner is onerous in nature.

5. In the decision reported in (2015) 1 MLJ (Cri) 471 [Amaldoss and others Vs. State], the petitioners therein were directed to deposit a sum of Rs.15,000/- each before the learned Judicial Magistrate, Kumbakonam. It is useful to extract paragraph No.19 of the said decision which reads as follows:-

"19. Therefore, the practice of imposing condition for depositing of money for granting the bail has been deprecated by the High Courts and the Hon'ble Supreme Court. Of course, while granting the bail, the Court of law is entitled to put certain conditions at its discretion, however, it should not be ignored that such conditions must be reasonable and judicious and should not be arbitrary. In fact, no provision in Code of Criminal Procedure contemplates cash deposit as a condition precedent for grant of bail, but may permit the person to deposit a sum of money in lieu of executing a bond and giving surety of one or two persons. It is needless to state that granting or denying the bail depending upon the circumstances of each case, is within the exclusive discretion of the Court of law or authority, however, such discretion

should not be exercised arbitrarily. Once the court comes to the conclusion on the facts and circumstances of the case that a person is entitled to the benefit of bail, then no condition other than those enumerated in Section 437 (3) or 438(2) can be imposed. Imposition of such unreasonable condition is not only beyond the purview of the provisions of Code of Criminal Procedure but also beyond the powers of the court. Discretion does not mean that it has no arena or boundary. No Court having howsoever absolute power can traverse beyond the arena carved out for it. Even absolute discretion does not admit element of arbitrariness or whimsicality or capriciousness."

6. In the decision reported in (2014) 2 LW (Cri) 666 [Naresh Kumar Vs. The State], for the alleged misappropriation of Rs.2.40 crores, the petitioner therein was directed to deposit a sum of Rs.10 lakhs by the learned Magistrate. It is appropriate to incorporate paragraph No.24 of the said decision which reads as follows:-

"24. The imposition of condition in a Bail order is also a judicial function of the Court. There shall not be arbitrary imposition of the condition. The discretion so vested in the Courts must be exercised in a manner known to law. It should not be in the nature of imposing Onerous Conditions. It should not be in the nature of causing hardship to the accused. It should not be in the nature of impossible to perform. It should not be in the nature of giving bail by one hand and taking it way by other hand by imposing Onerous Conditions. Conditions for the sake of conditions should not be imposed. It should be meaningful, reasonable, understandable and performable."

7. In the decision reported in (2014) 1 SCJ 190 [Sumit Mehta Vs. State of N.C.T. of Delhi], the appellant/petitioner therein was directed to deposit an amount of Rs.1,00,00,000/- (One crore) in fixed deposit in the name of the complainant. It is appropriate to extract paragraph Nos.15 and 16 of the said decision, which read as follows:-

"15. Thus, in the case on hand, fixed deposit of Rs.1,00,00,000 for a period of six months in the name of the complainant and to keep the FDR with the investigating officer as a condition precedent for grant of anticipatory bail is evidently onerous

and unreasonable. It must be remembered that the Court has not even come to the conclusion whether the allegations made are true or not which can only be ascertained after completion of trial. Certainly, in no words are we suggesting that the power to impose a condition of this nature is totally excluded, even in cases of cheating, electricity pilferage, white-collar crimes or chit fund scams, etc.

16. The words "any condition" used in the provision should not be regarded as conferring absolute power on a Court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed."

8. In the decision reported in (2009) 3 SCR 981 [Ramathal and others Vs. Inspector of Police and another], the appellants therein were directed to deposit an amount of Rs.32,00,000/- to the credit of Crime No.56 of 2008 before the learned Judicial Magistrate No.1, Coimbatore, and in the decision reported in (2002) 1 ALT (Cri) 382 [Amarjit Singh Vs. State of NCT of Delhi], the appellant therein was directed to deposit a sum of Rs.15 lakhs.

9. All the decisions relied on by the learned counsel for the petitioner are related to deposit of cash either by way of fixed deposit or by way of cash. But, in the present case, the petitioner was directed to deposit only a title deed worth about Rs.5,00,000/- before the lower Court. So, all the decisions relied on by the learned counsel for the petitioner are not applicable to the facts of the present case.

10. Now, considering the value of the property, the amount of Rs.5 lakhs is immaterial. Furthermore, it is pertinent to note that the petitioner is a Junior Clerk in Ongur Primary Agricultural Co-operative Society and during his tenure, misappropriation has been noted and enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act has been conducted and surcharge proceedings have also been initiated. Then only, the complaint has been given.

11. In such circumstances, I am of the view that the condition viz., imposition of deposit of title deed worth about

Rs.5,00,000/- before the lower Court is neither arbitrary nor extraordinary. Hence this Petition deserves to be dismissed and accordingly, this Criminal Original Petition is dismissed.

12. At this juncture, the learned counsel for the petitioner would submit that the petitioner has produced a title deed before the trial Court and it was returned.

13. Once bail has been granted to the petitioner with a condition to deposit a title deed worth about Rs.5,00,000/- before the lower Court, he has to deposit the same along with the valuation report. But without doing so, the petitioner cannot take shelter under Section 482 of the Code of Criminal Procedure. It is left open to the petitioner to deposit a title deed worth about Rs.5,00,000/- before the lower Court and also to comply with the other conditions imposed by the learned Principal Sessions Judge, Villupuram Sessions Division, Villupuram, in the order dated 09.02.2016 made in Crl.M.P.No.793 of 2016.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Principal Sessions Judge,
Villupuram Sessions Division, Villupuram.
2. The Inspector of Police,
CCIW CID, Villupuram District.
3. The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.M.P.Saravanan, Advocate SR 10829

jsv(co)
prk1/3

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