



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Twenty Third day of December Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL OP(MD) No.23280 of 2016

1 MURUGAN,
2 MARIAMMAL,

... PETITIONERS / ACCUSED NO.1 AND 2

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE,
MARTHANDAM POLICE STATION,
NAGERCOIL DISTRICT.

(IN CR.NO.484/2016)

... RESPONDENT / COMPLAINANT

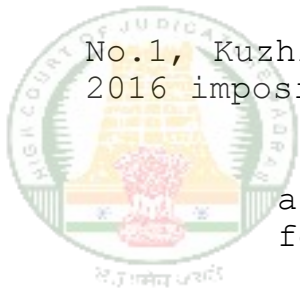
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to modify the condition imposed on the petitioners in the order dated 27.08.2016, made in Crl.M.P.(MD)No.7636 of 2016 by the Judicial Magistrate Court No.1, Kuzhithurai, Kanniyakumari District.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.R.KARUNANIDHI, Advocate for the petitioner and of MR.P.KANDASAMY, Government Advocate (Crl.Side) for the Respondent the court made the following order:-

This Petition has been filed praying to modify the condition imposed on the Petitioners in the order dated 27.08.2016, made in Crl.M.P.(MD)No.7636 of 2016 by the learned Judicial Magistrate No.1, Kuzhithurai, Kanyakumari District.

2. Material on records are perused. Rival submissions made by either side is also considered.

3. The Petitioners are A1 and A2 respectively in this case. They were arrested by the respondent Police for the alleged offence under Section 379 of IPC., and sent to the Judicial custody on 04.07.2016. The FIR was registered on 03.07.2016 stating that when the complainant was getting inside the bus at Marthandam, the Accused No.2 has taken the purse from the bag of the complainant and given to the same to Accused No.1. The said bag contained 3 sovereigns of gold chain and a sum of Rs.200/- and it was recovered from them. The charge sheet was laid and pending as C.C.No.136 of 2016, before the learned Judicial Magistrate No.1, Kuzhithurai. After considering the above facts, the learned Judicial Magistrate



No.1, Kuzhithurai, ordered bail on 27.08.2016 in CrI.M.P.No.7636 of 2016 imposing the following conditions:-

(i) Both the accused shall execute a bond for a sum of Rs.10,000/- each with two sureties each for a like sum.

(ii) One of the surety should be the Government Servant.

(iii) Both the accused should appear at 10.00 a.m., for a period of 20 days before the Court, after released on bond.

(iv) They should appear on all the date of hearing of the case.

4. According to the Petitioners, the condition No.2 imposed by the learned Judicial Magistrate No.1, Kuzhithurai is an onerous one.

5. The learned counsel appearing for the petitioners would submit that the Condition No.2, i.e., one of the surety should be a Government Servant is an onerous one and in fact, the imposition of the said condition is amount to denial of bail. He would further submit that in number of decisions the Hon'ble Apex Court as well as this Court held that while enlarging the accused on bail, onerous conditions should not be imposed. In support of his contention, the learned counsel referred to an unreported decision of this Court in **CrI.O.P. (MD)No.14364 of 2016**, dated 11.08.2016. Therefore, prayed for setting aside the said condition .

6. In the case on hand, the accused were caught red handed by the complainant in the presence of passengers and the said back containing jewels and amount and that the accused were handed over to the respondent police and the FIR was registered on that date itself. Furthermore, there is no records or submission by the respondent police that the accused has any previous case of similar nature.

7. Considering the above facts, the Condition No.2 imposed on the Petitioners in CrI.M.P.(MD)No.7636 of 2016, dated 27.08.2016 by the learned Judicial Magistrate No.1, Kuzhithurai, Kanyakumari District, is set aside. In respect of other conditions imposed in the said order are confirmed.

8. Accordingly, this Criminal Original Petitions are disposed of.

sd/-
23/12/2016

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1 THE JUDICIAL MAGISTRATE NO.I, KUZHITHURAI

2 THE CHIEF JUDICIAL MAGISTRATE
KANYAKUMARI AT NAGERCOIL

3 THE INSPECTOR OF POLICE,
MARTHANDAM POLICE STATION, NAGERCOIL DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

GJM/CK/SAR-3-28.12.16-2p-5c

ORDER

IN

CRL OP(MD) No.23280 of 2016

Date :23/12/2016