

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.1.2017

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

Cr1.O.P.No.993 of 2017

Sundar @ Ashok

...

Petitioner/Accused

.. Vs ..

State

rep. by The Inspector of Police,
T-16 Nazarethpet Police station.
(Crime No.265 of 2016)

...

Respondent/Complainant

PRAYER: This petition filed under Section 439(1) (b) r/w 482 of Criminal Procedure code seeking modification of the condition imposed on him by the learned Judicial Magistrate No.1, Poonamallee in C.M.P.No.5622 of 2016 dated 5.11.2016 in Cr.No.265/16 with the condition that the petitioner shall execute a bond for sum of Rs.10,000/- with two sureties one surety shall be blood relatives and one shall possess immovable property and produces the proof of residence and produce the title document for verification.

For Petitioner : Mr.E.Kannadasan for
Mr.S.Senthilvel

For Respondent : Mr.K.Mathan
Govt. Advocate (Cr1.side)

O R D E R

Petition for modification of the bail condition imposed by the learned Judicial Magistrate No.1, Poonamallee in C.M.P.No.5622 of 2016 on 5.11.2016.

2 Petitioner is accused of having committed an offence under Section 379 I.P.C.

3 In this connection, petitioner has been arrested and remanded on 15.7.2016.

4 On 5.11.2016, the learned Magistrate was pleased to grant him default bail under section 167(2) Cr.P.C. on the following terms and conditions:

"In the result, this petition is allowed on conditions that the petitioner shall execute a bond for Rs.10,000/- together with two sureties each for a like sum. One surety shall be blood relatives and one surety shall possess immovable property and produce the proof of residence and

produce the title document for verification. Further, the petitioner shall appear and sign before the concerned police station daily at 10.00 a.m. for a period of 30 days.''

5 In spite of having obtained bail, petitioner is inside the jail. He did not celebrate Pongal along with his family although he has been granted bail. If we raise a question why, the answer is very pathetic. It is because of his inability to comply the said bail conditions.

6 It is not that a Court while granting bail has no power to impose conditions in the bail order. But the conditions must be reasonable. It should not be harsh. It should not be oppressive. It should be based on the facts and circumstances of each case.

7 Imposing condition in the bail order is also a judicial function. The Court is bound to exercise its judicial discretion in a fair and reasonable manner. There is no cut and dried formula. Judge's consciousness is the formula.

8 So far as the petitioner is concerned, the bail conditions are impossible to perform. It is as good as denying, dismissing or refusing him bail. It is in the nature of giving him bail by one hand and taking it away in another hand by imposing harsh conditions. This is not proper way of delivering justice.

9 Bail orders also including orders imposing conditions in the bail order should be passed in a fair manner. It should not be unreasonable, unjust and arbitrary. [see Maneka Gandhi vs. Union of India (AIR 1978 SC 597)].

10 If the petitioner had money or property (surety), he could have easily come out of jail on bail as early as on 5.11.2016 itself. But he could not because he is poor. [see Raghubir Singh & Others vs. State of Bihar (1986 SCC (Cri.) 511)].

11 Actually, our bail system is not based on any cash system or is it property oriented. (See Motiram and others vs. State of Madhya Pradesh [(1978) 4 SCC 47]). It is all our own creation. Innovation which are good in nature should be encouraged. But creation which are hindrance to the individual liberty should be deprecated. It is a poor man's case. It appeared to be a cry in wilderness. A Judge should deliver justice passionately.

12 Even today, petitioner is innocent because he has not been convicted after a fair trial. He is innocent like any other person till he is convicted in a manner known to law. 'His such presumption of innocence itself is his basic human right.''

13 The Court which grants bail should pass orders in such a way that the petitioner/accused should enjoy the benefit of the bail order. There is no point in passing mere paper (bail) orders.

14 In the present case, I am at pain to note that the learned Magistrate while granting him bail mechanically imposed unbearable, impracticable conditions.

15 I am led to believe that rich have cake walk while poor suffer in silence in jail. Our bail system should be revamped. Our bail system is outmoded. It leans much towards the rich. It is against poor.

16 Justice must be tempered with mercy. Those who are incharge of delivering of justice should be more cautious as well as conscious while delivering justice also keeping in mind the common man the little Indian.

17 In view of the foregoing, I pass the following order:

In the bail order passed by the learned Judicial Magistrate No.1, Poonamallee in C.M.P.No.5622 of 2016, dated 5.11.2016, the bail condition is modified to the effect that the petitioner shall be released on his own bond for Rs.5000/- and he shall appear before the respondent police as and when required for interrogation. All other conditions are deleted.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

- 1.The Principal Sessions Judge, Tiruvallur
- 2.The Chief Judicial Magistrate, Tiruvallur
- 3.The Judicial Magistrate No.I, Poonamallee
- 4.The Government Advocate (Crl.side),
High Court, Madras.
- 5 The Inspector of Police,
Nazarathpet Police station,
Poonamallee.

Copy to

The Director,
Tamilnadu State Judicial Academy,
Greenways Road,
R.A.Puram,
Chennai 600 028.

rp(co)

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<https://hcservices.ecourts.gov.in/hcservices/>

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