

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2017
C O R A M

THE HONOURABLE Dr.JUSTICE P.DEVADASS

Crl.O.P.No.994 of 2017

Sundar @ Ahsok

.. Petitioner

Vs.

State rep. by

The Inspector of Police,
T-16, Nazarathpet Police Station,
Poonamalee, Chennai.

.. Respondent

Prayer: Criminal Original Petition filed under Section 439(1)(b) of Criminal Procedure Code, praying to modify the condition imposed in Crl.M.P.No.5624 of 2016 dated 05.11.2016, in Cr.No.272 of 2016 on the file of the learned Judicial Magistrate No.1, Poonamalee.

For petitioner : Mr.S.Senthil Vel
For respondent : Mr.K.Mathan
Govt. Advocate (Crl. Side)

O R D E R

This petition has been filed by the petitioner to modify certain portions of the bail condition imposed in Crl.M.P.No.5624 of 2016 dated 05.11.2016, in Cr.No.272 of 2016, passed by the learned Judicial Magistrate No.1, Poonamalee.

2.The petitioner has been made as an accused for having been committed theft. This case has been booked for an offence under Section 379 IPC. He is remanded to judicial custody on 15.07.2016. He could not get bail. But law came to his help. The petitioner has been granted bail under Section 167(2)(1)(ii) Cr.P.C. It is a default bail.

3.The learned Magistrate is very gracious enough to grant him the mandatory bail, however, imposing the following conditions:

"The petitioner shall execute a bond for Rs.10,000/- together with two sureties each for a likesum. One surety shall be blood relatives and one surety shall possess immovable property (not mentioned about to what extent he shall possess) and also to produce the proof of residence and title deed also to be produced for verification".

4.The learned Magistrate granted him bail on 05.11.2016. In spite of getting bail order, he could not celebrate pongal along with his family. It is because of the unreasonable, impracticable condition imposed by the learned Magistrate. So far as the petitioner is concerned, in effect, it is denying him bail.

5.It is not that the learned Magistrate has no power to impose condition. It is also a judicial condition. But the condition must be reasonable, fair and it should not be in the nature of harassing the petitioner.

6.Imposing of bail condition is an individual exercise and the same shall be reasonable. Now, the petitioner got bail on 05.11.2016. But he could not come out of jail because he is not able to comply with the bail condition.

7.Actually, our bail system is not based on any cash system. It is not property oriented. It is all our own creation. Persons with money, property come out of jail but those who have no money languish in jail. The present case is one such case.

8.In criminal matters, the imposition of harsh condition is not recognised (see Motiram & others Vs. State of Madhya Pradesh [1978 (4) SCC 47]). Granting bail or imposing of bail condition also should be done in a fair manner. Fairness will be the touchstone to assess the bail order including imposition of bail condition. Justice is to be tempered with mercy. Justice must be delivered with compassion.

9.In view of the foregoing, the following order is passed:
Bail condition imposed by the learned Judicial Magistrate-I, Poonamalee, in CrI.M.P.No.5624 of 2016 dated 05.11.2016 is modified to the effect that the petitioner shall be released on his own bond for a sum of Rs.5000/- and further, he shall appear before the respondent police as and when required for interrogation.

8.Accordingly, this Criminal Original Petition is ordered.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

dp

To

- 1.The Principal Sessions Judge,
Tiruvallur.
- 2.The Chief Judicial Magistrate,
Tiruvallur.
- 3.The Judicial Magistrate-I,
Poonamalee.
- 4.The Superintendent of Central Prison,
Puzhal-II Chennai
- 5.The Government Advocate (Crl. Side),
High Court, Chennai.
- 6.The Inspector of Police,
T-16, Nazarathpet Police Station,
Poonamalee, Chennai.

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