

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Fourth day of April Two Thousand Seventeen

PRESENT

The Hon`ble Dr. Justice P. DEVADASS

CRIMINAL MISCELLANEOUS PETITION No.3888 of 2017

IN CRL OP.2891/2017

SAGAYAM @ DEVASAGAYAM

[PETITIONER]

Vs

STATE REP. BY ,
THE INSPECTOR OF POLICE,
G-7, CHETPET POLICE STATION,
CHENNAI.
CR.NO.1077 OF 2011.

[RESPONDENT]

Petition praying that in the circumstances stated therein the High Court will be pleased to modify the conditional order that the petitioner shall execute a bond for a sum of Rs.15,000 with two sureties who shall be blood related each for a like sum to the satisfaction of the learned VI Additional Sessions Judge, Chennai passed by this Honourable Court in Crl.O.P.No.2891 of 2017 dated 21.02.2017 [IN CRL.MP.NO.3888 OF 2017]

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S.D.GOPI KRISHNAN, Advocate for the petitioner and of MR.P.MUTHUKUMAR, Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

This petition has been filed by the petitioner to modify certain portion of the bail condition imposed by this Court in Crl.O.P.No.2891 of 2017 on 21.02.2017.

2 In the order stated supra, while granting him anticipatory bail, among other conditions, this Court has imposed the following conditions:

''6(iv) Petitioner shall execute a bond for Rs.15,000/- (Rupees fifteen thousand only) with two sureties who shall be blood related, each for a like sum to the satisfaction of the said Magistrate.''

3 The learned counsel for the petitioner submitted that the learned VIth Additional Sessions Judge, Chennai, requires production of property documents for the value of Rs.15,000/-. He

submits that the sureties have no property. In the circumstances, the petitioner is not in a position to execute the bail bond. Thus, he seeks modification.

4 The learned counsel for the petitioner also submitted that persons who were granted bail, anticipatory bail, even statutory default bail are not in a position to execute the bail bond and the sureties are also not in a position to execute the surety bonds, because of certain practices being followed by the Courts. The learned counsel also added that these practices are wide prevalent in the criminal Courts. These practices did not have the sanction of law.

5 The learned counsel for the petitioner submitted that even for a bail bond or surety bond for Rs.5,000/, Rs.10,000/- , Rs.15,000/- Courts insists production of property documents. Because of present property value, it is very difficult to get property documents for such amount. Sometimes, in lieu of the same, Courts demand production of RC books of two-wheelers, four-wheelers, etc.

6 The learned counsel for the petitioner also submitted that there is no provision in the Code of Criminal Procedure to direct the accused and the surety to produce such documents. Such a direction is against Article 21, Constitution of India.

7 The learned counsel for the petitioner further submitted that in some cases, Courts require 'blood relatives', 'family members', 'Government servants', 'public servants' 'permanent employees', 'local residents as sureties. The accused could not get such sureties. Consequently, it leads to many malpractices.

8 The learned counsel for the petitioner further submitted that though the accused obtained bail order from the superior Court, yet he could not execute the bail bond and the surety could not execute the surety bond because of the onerous requirements insisted upon by the Courts. Those conditions could not be complied with by the accused. Consequently, the accused are languishing in jail.

9 The learned counsel for the petitioner further submitted that Courts are also insisting upon production of VAO certificate, sometimes counter signed by Tahsildar or Deputy Tahsildar, Residential/Nativity certificate, Solvency certificate, etc. It is a matter of common knowledge that getting these certificates from the Revenue Department involves delay and also certain untold miseries. Consequently, the accused and sureties could not execute the bonds.

10 The learned counsel for the petitioner also submitted that such direction to the accused or the surety is contrary to Article 21, Constitution of India and the judicial pronouncement in **Maneka Gandhi vs. Union of India (AIR 1978 SC 597)]**, it is against

fundamental right to personal liberty and personal freedom.

11 The learned counsel for the petitioner also submitted that a simple procedure not involving complications, complexities, illegalities ensuring genuineness of bail bonds and surety bonds is sufficient.

12 The learned counsel for the petitioner also submitted that directing production of property documents etc. is a curb on persons right to be released on bail. It also amounts to indirect denial of bail. It is a matter of safeguarding Human Rights and rights of the accused.

13 In support of his submissions, the learned counsel for the petitioner also cited the following decisions:

1. **Motiram and others vs. State of Madhya Pradesh [(1978) AIR 1594)**
2. **Sandeep Jain Vs. National Capital Territory of Delhi (CDJ 2000 SC 025)**
3. **Ramathal & Others Vs. Inspector of Police & Another (CDJ 2009 SC 443)**
4. **Sakthivel Vs. Inspector of Police, Belukurichi Police Station, Namakkal District [2015 (2) MWN (Cr.) 438]**
5. **Navaneetha Krishnan Vs. Inspector of Police, Natrampalli Police Station, Vellore District [2015 (2) MWN (Cr.) 53]**
6. **Sundar @ Ashok vs. State rep. by the Inspector of Police, T-16 Nazarathpet Police station (Cr1.O.P.No.993 of 2017 dated 18.1.2017)**

14 The learned Government Advocate (Cr1.side) submitted that availability of the accused is very important during investigation, for conducting and completing the trial and also for post trial eventualities. Any attempt by the accused to flee away from justice or from the jurisdiction of the Court will affect the progress of the trial.

15 The learned Government Advocate (Cr1.side) further submitted that in some cases the accused obtains bail by producing bogus sureties, escape from the jurisdiction of Court, they even abscond to some foreign countries. In such cases, it becomes very difficult to secure them, consequently, the trial get halted and speedy trial could not be offered.

16 I have given my thoughtful consideration to the rival submissions, perused the materials on record, relevant provisions of law and the decisions cited.

17 Though modification of the bail condition is being asked

for, the grievance expressed by the petitioner, by no means belittled or cannot be said to be of having little consequence.

18 The grievance expressed are very important because they are concerned with securing the liberty of the individual in pursuance of bail orders. They become more important because they are concerned with Human Rights of the accused. Human Rights of the accused cannot be reduced to shambles nor crushed.

19 'Right to life' and 'Right to live' with human dignity is very important for human existence. Less of that human beings becomes mere chattles, motionless machines and feelingless robots.

20 Dr.B.R.Ambedkar, the draftsman of the Indian Constitution, with so much foresightedness, knowing that in this country, people with power and money will simply rob the personal liberty of the people, introduced Article 21 in our Constitution.

21 Article 21 in our Constitution is Cinderella of the lovers of Civil liberties. It is a magnum opus and genius of our Founding Fathers. It is more than British Magna Kartha and Bill of Rights. Article 21 is the soul of the Indian Constitution. It exhibits the zeal of our Constitutional makers.

22 The bail provisions and the provisions relating to bail bonds and surety bonds cannot run counter to Article 21 of the Constitution of India. Thus, any bottle necks or curbs to secure the liberty of the accused in pursuance of a bail order, requires deep study.

23 Chapter 33 of the Code of Criminal Procedure, 1973 is the general provisions relating to bail and bail bonds. Though at several places, the word 'bail' has been employed, what it means has not been explained in any part of the Code. In general, it means securing the release of a person who is in custody on promise, to appear before the Court on a future date. It also means a person in custody applying or offering for his release.

24 Sections 436, 437 and 439 of Cr.P.C. deals with grant of bail while Section 438 Cr.P.C, deals with grant of anticipatory bail. Sections 440 to 450 Cr.P.C. deals with execution of bail bonds, both by the accused and by the sureties.

25 Criminal Courts generally consists of Judicial Magistrates, Metropolitan Magistrates, Chief Metropolitan Magistrate, Additional Chief Metropolitan Magistrates, Chief Judicial Magistrates, Additional Chief Judicial Magistrates, Assistant Sessions Judges, Additional Sessions Judges, Principal Sessions Judges and certain Special Courts such as CBI Courts, NDPS Courts, Special Courts under TNPID Act, Electricity Act, Essential Commodities Act, Mahila Courts, Fast Track Mahila Courts, Fast Track Courts for Cheque bouncing cases, Economic Offences Courts such as Additional Chief Metropolitan Magistrate (E.O. I, E.O.II), Special Court under Prevention of Corruption Act and High Court exercising criminal

jurisdiction.

26 Section 436 Cr.P.C. deals with grant of bail in bailable offences. In bailable offences, 'Bail is the Rule and Jail is the Exception', only when the accused refuses to offer bail. In a bail order in a bailable offence, no condition could be imposed. The Magistrate has no power to cancel the bail order in bailable offences.

27 Of course, the Sessions Court under Sections 397, 439 of Cr.P.C. and the High Court under Sections 439, 397, 482 Cr.P.C. can cancel or set aside the bail order even in bailable offences. The conditions, such as appear before the Court or appear before the Police Station for certain days or period, shall not be imposed in a bail order in bailable offences. The power under Section 436 Cr.P.C. Can also be exercised by any Court, including the High Court.

28 Section 437 Cr.P.C. deals with grant of bail in non-bailable offences. 'Non-bailable does not mean not bailable', it is bailable upon satisfaction of certain requirements of law. This provision enables the Magistrates to deal with bail in non-bailable offences. Similar power has been conferred upon the Sessions Courts, as well as the High Court, under Section 439 Cr.P.C. Section 439 Cr.P.C. cannot be invoked by the Magistrates.

29 Under Section 438 Cr.P.C., the Sessions Courts and the High Court have the concurrent power to grant anticipatory bail. Actually, the word 'Anticipatory bail' has not been employed anywhere in the Code. It is a 'direction' by the said Courts, to grant bail to the accused in the event of his arrest by the police or acceptance of his surrender by the Court. Under Sections 436, 437 Cr.P.C. and under Section 439 Cr.P.C. bail comes after arrest, after jail or surrender. However, under Section 438 Cr.P.C. bail comes before jail.

30 In default of police not completing the investigation within 60 days of arrest in certain heinous offences and within 90 days of arrest certain serious offences, the accused is statutorily entitled to bail. Such bails also have all the characteristic features of a regular bail granted under other provisions of law relating to bail.

31 Sections 440 to 450 Cr.P.C. deals with furnishing of bail bonds. Bail bonds are offered by accused and surety bonds are offered by the sureties (See Section 441 Cr.P.C.). Bail bonds are of two types viz., personal bond and property bond. This can be offered by the accused and also by the surety. There is one more category. It is Cash surety (See Section 445 Cr.P.C.

32 Section 440 Cr.P.C. deals with amount of bail bond. Section 440 of Cr.P.C. runs as under:

'Amount of bond and reduction thereof--

(1) The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2) The High Court or Court of Session may direct that the bail required by a police officer or Magistrate be reduced.'

[Emphasis supplied by me]

33 While fixing the bail amount the Court must take into account the circumstances of the case. But in any case, it should not be excessive. This provision has been judicially interpreted by the Courts in various cases. The bail bond amount should 'not be onerous'. Bail condition should not be a 'harsh condition'.

34 Before the criminal Courts, either in pursuance of the bail/anticipatory bail order passed by the same Court or by the Sessions Court or by this Court, sureties are being produced to obtain the release order. (See Section 442 Cr.P.C.).

35 When a surety is to be produced, how the Court has to deal with it has been stated in Section 441 of Cr.P.C.

36 The Section 441 Cr.P.C. runs as under:

441. Bond of accused and sureties -

(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4). For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold enquiry itself or cause an inquiry to be made by a

Magistrate subordinate to the Court, as to such
sufficiency or fitness.'

[Emphasis supplied by me]

37 It is clear that the surety should be a fit person and the sureties are expected to file surety affidavits. If the Court consider it necessary, it can conduct enquiry by itself or it can direct a Subordinate Court to conduct enquiry as to the fitness of the person to stand as surety. It is called surety verification. This enquiry is to ascertain the fitness of a person, who files surety affidavit, who came to execute the surety bond. Only if the Court needs or consider it necessary this enquiry can be conducted. Under the garb of conducting surety verification, there cannot be a crueing exercise. There cannot be indignation to a surety, which will make him to run away from the Court without offering surety. The only thing the court is expected is to ascertain, whether the surety is willing to stand as a surety for the accused. A person coming as a surety shall not be made to feel, why he should stand as a surety for the accused.

38 The word 'surety', although comes in several places in Chapter 33 of the Code has not been explained anywhere in the Code. In general English, 'surety' means, a person giving assurance for another person. In Civil law, a surety is also known as 'guarantor'. Under Civil law, 'the liability of the surety is co-extensive with that of the principal debtor'. If the principal debtor fails to pay the assured amount, the surety will have to pay the amount. Under Criminal law, the person, who offers surety cannot be sent to jail if the accused fails to attend the Court.

39 Actually, the surety bond is given to the Court. It is not a bond between the accused and the surety. It is a bond between the surety and the Court. The surety undertakes, assures, guarantees the appearance of the accused in the Court. If the accused fails to appear, surety cannot be punished. The surety amount given by him could be forfeited to the State after a due enquiry (see Section 446 Cr.P.C.). Further, if the surety has doubt on the appearance of the accused, or he do not likes to stand as a surety, he can apply to the Court for discharging himself from the surety bond. When a surety makes such a request, the Court cannot compel the surety to continue as a surety. In such an event, liberty should be given to the accused to substitute the surety. If any fraud is practiced upon the Court in furnishing surety bond, the Court has the power to cancel the surety bond (See Section 446-A Cr.P.C.).

40 Under the Code, there is provision for offering Cash surety (See Section 445 Cr.P.C.). Even in fixing the cash surety, the amount should not be excessive. (See Section 440(1) Cr.P.C.). In the first instance, Court cannot demand Cash surety from the accused. The offer to make cash surety must come from the accused.

41 Some times an accused, who is an utter stranger to the area or he has no friends or relatives in the area or he could not secure a person to stand as surety can offer cash surety. The Court can accept cash surety, instead of personal surety. But the Court cannot demand personal surety, property surety and cash surety, at a time. It is not cumulative. It is alternative.

42 There is a system of granting bail by the police. It is called 'Station bail'. In a bailable offence under section 436 Cr.P.C., the police is bound to release the accused on bail. In such circumstances, police can obtain bail bond from the accused. Police cannot demand any property document from him. A station bail cannot be cancelled by the police. Cancellation of bail is the exclusive power of the Court.

43 Form No.45 appended to Schedule II to the Code of Criminal Procedure, 1973 is the form for execution of bail bond by the surety wherein there is column for fixing the amount. The amount should not be excessive. (See Section 440(1) Cr.P.C.). It should not be onerous. It should not be in the nature of causing hardship to the accused. Nowhere in Form No. 45, production of property document has been mentioned.

44 Universal Declaration of Human Rights has been declared in 1948 by the United Nations General Assembly. It is world Constitution. It also deals with the rights of the accused. This declaration is in recognition of personal liberty of the human being. The influence of this international document is found in the subsequent basic document of India viz., Constitution of India, 1950. The shades of general principles in the U.N. Declaration of Human Rights can be seen in various Constitutional provisions. (See Article 14, 19, 21, 22, Constitution of India).

45 In order to safeguard the personal liberty of the human being, there are certain international conventions. Convention on civil and political rights is very important in this area. One of the internationally accepted basic principle is that there shall not be any discrimination, prohibition, curbing of personal liberty of the person.

46 This is what also stated in Article 21 of the Constitution. The Indian Constitution proclaims that 'no one shall be deprived of his life and liberty'. It also says that liberty of the individual can be curtailed only by a procedure established by law. The said procedure must be 'fair', 'reasonable' and not 'unjust'. (See **Maneka Gandhi vs. Union of India (AIR 1978 SC 597)**).

47 A person who has been arrested under section 41 of Cr.P.C., or a person whose surrender has been accepted by the Court can be granted bail in accordance with the provisions contained in Chapter 33 of the Code. Thus, in granting bail, anticipatory bail, as the case may be and also in imposing condition in the bail orders should be 'fair', 'reasonable' and should 'not be unjust'. Otherwise, it will run counter to Article 21, Constitution and

also **Maneka Gandhi** (supra) principle.

48 In **Motiram vs. State of Madhya Pradesh [(1978) AIR 1594]** the Hon'ble Supreme Court has held that imposition of harsh condition in bail orders is against law.

49 During investigation stage or during trial stage, 'presumption of innocence of the accused' is intact and it is so till he is convicted either under section 255 Cr.P.C. (summons case), Section 248 Cr.P.C. (warrant-case) and under section 235 Cr.P.C. (Sessions case). But once he is convicted, his such presumption of innocence has been replaced by a judgment of conviction. Thus, there is a marked difference between an accused seeking bail or anticipatory bail as the case may be, under Chapter 33 of the Code and a convict seeking bail under section 439 Cr.P.C.

50 Section 489 Cr.P.C. also deals with bail. An accused who has been convicted upto 3 years can avail of bail from the trial Court, pending appeal. He can obtain bail from the appellate Court. The appellate Court has got the power to grant bail by suspending the sentence. It is also called 'appeal bail'. In fact, under section 489 Cr.P.C., the appellate Court can grant bail on own bond. (See **Motiram vs. State of Madhya Pradesh** (supra). When such is the position in respect of undertrials, similar power can also be exercised by the trial Court.

51 In **Sandeep Jain Vs. National Capital Territory of Delhi (CDJ 2000 SC 025)** the Hon'ble Supreme Court has held that any bail condition which is in the nature of onerous condition is against law.

52 In **Ramathal & Others Vs. Inspector of Police & Another (CDJ 2009 SC 443)** the Hon'ble Supreme Court did not approve a bail condition of the Subordinate Court to deposit huge amount.

53 In **Sakthivel Vs. Inspector of Police, Belukurichi Police Station, Namakkal District [2015 (2) MWN (Cr.) 438]**, this Court also held that the bail condition should be executable and it should not be onerous and oppressive in nature.

54 In **Navaneetha Krishnan Vs. Inspector of Police, Natrampalli Police Station, Vellore District [2015 (2) MWN (Cr.) 53]** this Court had an occasion to go deep into the nature of bail condition being imposed by the courts.

55 It is profitable to note the following from the said judgment:

'12. Now, 'Bail is the Rule and Jail is the Exception'. Generally, grant of bail is to be considered because it is in furtherance of liberty of the individual guaranteed under Article 21, Constitution of India. However, in certain circumstances such as seriousness of the offence

alleged, habituality in criminality, tendency of abscondence etc., bail will be refused (see Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav {2004 (7) SCC 528}, State of U.P. vs. Amarmani Tripathi {2005 (8) SCC 21}, Sanjay Chandra vs. C.B.I. {2012 (1) SCC 40} and Arnesh Kumar vs. State of Bihar and Another {2014 (8) SCC 273}.

13. Chapter XXXIII of the Code of Criminal Procedure, 1973 is a self-contained Code dealing with bail and bail bonds. While granting bail, Courts have the power to impose conditions. It is with a view to ensure the availability of the accused during investigation and also during the trial of the case and it is not at all for harassing the accused persons.

14. Grant of bail is an exercise of judicial discretion by the Court based on consideration of several factors. Imposition of bail condition is also part of such exercise. It should be based on sound judicial principles. It should not be arbitrary, mechanical. Imposition of bail condition should not be for the sake of imposition of bail-condition.

15. Under the guise of imposition of bail-condition, there shall not be imposition of any onerous condition. Conditions which are in the nature of and which could not be complied with by the accused would be like granting bail by one hand and taking it away by another hand.

16. Imposition of onerous and stringent conditions amount to denial of bail. Actually, our bail system is not based on any cash system. If it is so then poor people have to spend rest of their life in jail itself. That is not the objective of a bail system. The object of bail is to enable the accused to send him out of jail with an assurance to return to the Court to put up an effective defence.

17. While granting bail, the Court can direct the accused to execute bail bond. As per Section 440 Cr.P.C., the bond amount should not be excessive. When a person so directed to execute the bond either with surety or without surety is not able to furnish the sureties, then under Section 445 Cr.P.C., he has the option to offer cash security. But even then, it must be a reasonable amount. It should not be an arbitrary, excessive amount. It should not be in the nature of deprivation of grant of bail by fixing an heavy

amount as surety amount. If heavy amount is directed to be deposited as cash security, the bailee/accused will not be in a position to comply it. If heavy amount is demanded from the surety, then the bailor will not be forthcoming. And 'haves' will go out, while 'have nots' will remain in jail.

18. Reading Sections 440, 441 and 445 Cr.P.C. together, it is clear that straightaway a Court cannot direct the accused to deposit cash security. First of all, the Court has to direct execution of bail bond by the sureties in case if the release is not on his own bond. Only in lieu of that deposit of cash security could be directed (see Section 445 Cr.P.C.).

19. As already stated even if the cash security is ordered under Section 445 Cr.P.C., the Court must pay regard to the circumstances of the case and the amount should not be excessive (see Section 440 Cr.P.C. Also see State of Mysore vs. H.Venkatarama Kotaiyah (1968 Cr.L.J. 696), Moti Ram and Others vs. State of Madhya Pradesh [(1978) 4 SCC 47], Babu Singh and Others vs. The State of U.P. (AIR 1978 SC 527), Gokul Das vs. The State of Assam (1981 Cr.L.J. 229), Afsar Khan vs. State of Karnataka (1992 Cr.L.J. 1676), Bhikhabhai Udesinh Darbar vs. State of Gujarat [(1998) 1 GLR 315], Parades Patra and Another vs. State of Orissa (1993 II OLR 452), Sandeep Jain vs. National Capital Territory of Delhi [(2000) 2 SCC 66], Amarjit Singh vs. State of NCT of Delhi (JT 2002 (1) SC 291), Sheikh Ayub vs. State of Madhya Pradesh [(2004) 13 SCC 457], Ramathal and Others vs. Inspector of Police and Another [(2009) 12 SCC 721], Amaldoss and others vs. The Inspector of Police, Patteeswaram Police Station, Thanjavur District (Cr.L.O.P.(MD) Nos.19196 and 19197 of 2014 dated 5.2.2015) and Sakthivel and Another vs. The Inspector of Police, Belukurichi Police Station, Namakkal District (Cr.L.O.P.Nos.835 and 836 of 2015 dated 4.2.2015).

20. Article 3 of Universal Declaration of Human Rights, 1948 declares that 'everyone has the right of life, liberty and security of person'. Article 21, Constitution of India, 1950 proclaims that 'no one shall be deprived of his life or personal liberty except by procedure established by law'. And Article 6 of International Covenant on Civil and Political Rights, 1966 declares that no one shall be arbitrarily deprived of his life'.

21. The Hon'ble Supreme Court in *Maneka Gandhi vs. Union of India* (AIR 1978 SC 597), held that any law, procedure depriving a person's life or liberty, which is 'unjust', 'unreasonable' and 'inequitable' militates against the Constitutional mandate in Article 21, Constitution of India. It is also in abridgment of human right of accused persons.

22. Thus, directing a poor man to deposit Rs.25,000/- in each case is against Article 21, Constitution of India and *Maneka Gandhi* (supra) principle and also the said International Covenants, which have been ratified by our country.''

56 In **Sundar @ Ashok vs. Inspector of Police, T-16 Nazarathpet Police station (Crl.O.P.No.993 of 2017 dated, 18.1.2017)** this Court held that Court cannot expect accused or surety to be a propertied person. (Also see **Raghubir Singh & Others vs. State of Bihar (1986 SCC (Crl.) 511)**).

57 In **Motiram** (supra) and in **Raghubir Singh** (supra) it was held that the bail condition should not be imposed in such a way that a rich man can go out of the jail on bail while a man who has no money, no property, who is unable to produce such surety shall suffer in jail.

58 Actually, our bail system is not based on any cash system. (See **Motiram** (supra), **Raghubir Singh & Others** (supra), **Navaneetha Krishnan** (supra) and **Sundar @ Ashok** (supra)).

59 From the above, it is very clear that a Court cannot demand production of property documents from the accused, surety. Nowhere in Section 436 or 437 or 439 or 438 Cr.P.C. or in Form No.45 appended to Schedule II to the Code of Criminal Procedure, 1973, production of property document, title deeds, etc. either by surety or by the accused has been contemplated.

60 So a Magistrate or a Sessions Judge or any Court, demanding production of property documents or R.C. book or any other document to show proof of property either movable or immovable with respect to the bail bond or surety bond amount is against law. It is against Article 21 of Constitution of India. It is against the dictum of the Hon'ble Supreme Court judgment laid down in **Maneka Gandhi vs. Union of India** (supra).

61 The Courts demanding production of V.A.O. certificate, Residence certificate, Solvency Certificate or Tahsildar Certificate are not mentioned in the Code of Criminal Procedure. These are all creations and inventions of certain Courts. It is clear that these are all not out of any judicial thinking. It is

out of an useless thinking curbing the liberty of the individual.

62 Some Courts insists that the surety should be a Government servant or a public servant or a person permanently employed in a reputed concern. This is not at all mentioned in the Code of Criminal Procedure. These are all inventions not by the Code but by some courts. It cannot be said that all Government servants, public servants are Buddas. There are many Government servants who are cheats. In many cases under Section 420 I.P.C., many Government servants are figuring as accused.

63 There are many private individuals having sterling qualities. Mahatma Gandhi is not a Government servant. But he is Father of our Nation. Yet, as per the present practice being adopted by certain criminal Courts, even Mahatma Gandhi cannot be accepted as a surety. Simply because a person is poor, who has no property, no money, no job, it cannot be said that he is disqualified to stand as a surety.

64 Chapter 33 of the Code does not say that the surety should be a member of the family or a blood relative. Court cannot insist that the sureties should be local surety. Suppose if the accused belongs to a different district, different State or even a foreigner or the accused is a business man or working here such as Nepalties, Biharies, etc. who will not have local sureties, their relatives are also in Bihar etc., it will be difficult for them to secure local sureties.

65 In **Motiram** (supra), the Hon'ble Supreme Court stated that India is a Bharat, any person, from anywhere in India can stand as surety.

66 As per section 441(4) of Cr.P.C. a surety should be a fit person. Who is a fit person has not been defined or explained anywhere in the Code. Generally, a surety must be a genuine person. He should not be a bogus person. A surety comes to the Court and gives undertaking to the Court that he will ensure the appearance of the accused. If the accused fails to appear before the Court, the surety bond executed by the surety will be forfeited.

67 Court can ascertain the genuineness of the sureties. A surety should have a genuine address. He may be asked to produce residential proof. He should not be a vagabond. He should establish his identity. A poor man can be a voter. Likewise, a poor man can be a surety. A surety can be a person without having own house. He can be a tenant. Even a person living in a platform, living in a slum having an acceptable address proof can also stand as a surety.

68 It cannot be denied that a bogus person should not be accepted as a surety. A person who is offering surety must have acceptable residential proof. He may be a tenant, licensee. A beggar can also stand as surety provided he should have some

acceptable residential proof.

69 Sometimes, one person may come forward to stand as surety for more than one accused. For example, if two sons or two brothers stand as sureties to an accused, his father, brother, mother, sister etc. may come forward to stand as surety. In such circumstances, question may arise whether the father can chose any one of his son and stand as surety and exclude his other son.

70 In this connection, Section 441-A Cr.P.C. contains guidance. It runs as under:

'Declaration by sureties- Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars.'

[emphasis supplied by me]

71 This court and other Courts while granting bail, directs the accused to execute bail bond for Rs.5000/-, Rs.10,000/- Rs.15,000/-, Rs.20,000/- etc. and also produce sureties who should also execute a bond for similar amount. In view of the present value of the properties, it is very difficult to get property document for such value.

72 When superior Courts grants bail directs the accused to execute bail bond by himself as well as by the sureties. Unless otherwise stated, in the bail or anticipatory bail order, as the case may be, 'bond' means personal bond. In such circumstances, the Courts directing the sureties to produce property documents is beyond the scope of the bail order of the superior court.

73 Court should be satisfied as to the genuineness, identity of the surety and his residential address. It is equally applies to the accused. For this purpose, the Court can accept copy of anyone of the following documents after verification.

- 1 Passport
- 2 Ration Card
- 3 PAN card
- 4 Driving license
- 5 Voter's ID
- 6 Aadhaar Card
- 7 Photo ID issued by a recognised Educational Institution
- 8 Photo credit card
- 9 Kissan Photo Passbook
- 10 Pensioner's Photo card
- 11 Freedom fighter photo card
- 12 Identity Certificate with photo issued by a Gazetted officer or Tahsildar
- 13 Address card with photo issued by the Postal Department
- 14 Disability ID card or handicapped medical certificate issued by the Government
15. NREGS Job Card

16. CGHS/ECHS/State Government/ESIC Medical Card
17. Marriage Certificate issued by the Government
18. Post Office Statement or Passbook
19. Water Bill
20. Electricity Bill
21. Property Tax Receipt
22. Landline Telephone Bill
23. Credit Card Statement
24. Income-tax assessment order
25. Arms License
26. Certificate of Address issued by the head, Village Panchayat or an equivalent authority
27. Registered Lease/Sale/Rent Agreement
28. Caste and Domicile Certificate that has photo issued by the State Government
29. Gas Connection Bill
30. Insurance Policy

74 From the above analysis, we come to the conclusion that when the accused executes bail bond, when the surety executes surety bond, Court cannot insist production of property documents, surety need not be a Government servant or a blood relative or a local surety.

75 In view of the foregoing analysis, the following directions and orders are issued:

(i) In para 6(4) of the anticipatory bail order, it is made clear that the word bond means 'personal bond'.

(ii) The word 'blood surety' shall be deleted.

(iii) Within 15 days from the date of receipt of a copy of this order, the petitioner shall execute the bail bond as per the terms and conditions of this Court order in CrI.O.P.No.2891 of 2017, dated 21.2.2017 and as per the directions of this order.

(iv) The amount of bail bond, surety bond shall not be excessive and it should be reasonable.

(v) It is made clear that production of property documents or V.A.O. Certificate, Tahsildar Certificate, Solvency Certificate, R.C.book shall not be insisted upon from the accused or from the sureties.

(vi) Copies of anyone of the documents mentioned in para 73 in this order can be accepted.

(vii) Sureties need not be a Government servant or a public servant or a permanent employee or related by blood to the accused or a member of the family but he should be a genuine person.

(viii) One person can be a surety for more than one accused.

(ix) In the first instance, cash surety cannot be insisted upon.

(x) When the accused is not in a position to produce personal surety and offers cash surety, it can be accepted.

76. It is made clear that as these directions are concerned with the liberty of the individual and the personal freedom guaranteed in Article 21, Constitution of India and the dictum of the Hon'ble Supreme Court laid down in **Maneka Gandhi vs. Union of India (AIR 1978 SC 597)]**, **Motiram and others vs. State of Madhya Pradesh [(1978) AIR 1594]** and **Raghubir Singh & Others vs. State of Bihar (1986 SCC (Crl.) 511)**, any deviation of the above directions by the Subordinate Courts shall be viewed very seriously.

77. Accordingly, this Criminal Miscellaneous Petition is disposed of.

-sd/-
24/04/2017

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL JUDGE,
CITY CIVIL & SESSIONS COURT, CHENNAI.

2 THE VI ADDITIONAL SESSIONS JUDGE,
CITY CIVIL COURT, CHENNAI

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE GOVERNMENT ADVOCATE [CRL.SIDE]
HIGH COURT, MADRAS.

5 THE ADDITIONAL PUBLIC PROSECUTOR,
UNION TERRITORY OF PUDUCHERRY.

6 THE GOVERNMENT ADVOCATE [CRL.SIDE]
UNION TERRITORY OF PUDUCHERRY.

7 THE INSPECTOR OF POLICE,
G-7, CHETPET POLICE STATION,
CHENNAI.

COPY TO

1 THE REGISTRAR-GENERAL,
HIGH COURT, MADRAS.

2 THE REGISTRAR-(JUDICIAL)
HIGH COURT, MADRAS.

3 THE ASSISTANT REGISTRAR (CRL.SIDE)
HIGH COURT, MADRAS.

4 THE SECTION OFFICER,
(CRL.SECTION) HIGH COURT, MADRAS.

5 ASSISTANT REGISTRAR RULES,
THE SECTION OFFICER,
F SECTION, HIGH COURT, MADRAS.

6 THE DIRECTOR,
TAMILNADU STATE JUDICIAL ACADEMY,
GREENWAYS ROAD, R.A.PURAM,
CHENNAI-28.

+1C.C. to M/S.D.GOPI KRISHNAN Advocate on payment of
necessary charges SR NO.7691

Order

in
CRL MP.3888/2017

in
CRL OP.2891/2017

Date :24/04/2017

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

MK:05/05/2017