

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.09.2017

PRONOUNCED ON : 24.10.2017

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

CRL.O.P.No. 20012 of 2017

Hameed Mansoor

...Petitioner

Vs

State rep. by
The Inspector of Police,
C.B.C.I.D Cyber Crime Cell,
Chennai.
(Crime No.1of 2012)

....Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to modify the condition imposed in Crl.MP. No.19754 of 2014 dated 17.12.2014 on the file of Principal Sessions Judge, Chennai by permitting the petitioner to withdraw the cash deposit of Rs.2,30,000/- and directs the petitioner to furnish additional solvent surety to the above cash security.

For Petitioner : M/s.C.V.Kumar

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

ORDER

The prayer sought for in the present petition is to modify the condition imposed in Crl.MP. No.19754 of 2014 dated 17.12.2014 on the file of Principal Sessions Judge, Chennai by permitting the petitioner to withdraw the cash deposit of Rs.2,30,000/- and directs the petitioner to furnish additional solvent surety to the above cash security.

2. Heard both sides.

3. It is submitted that by order dated 17.12.2014 passed in Crl.MP. No. 1975 of 2014, the learned Principal Sessions Judge, Chennai had directed the petitioner to deposit a sum of Rs.2,30,000/- before the lower Court as pre-condition for grant of bail. Accordingly, the petitioner had also deposited a sum of Rs.2,30,000/- on 18.12.2014.

4. It is the grievance of the petitioner that though he was released on bail on 17.12.2014 in connection with Crime No. 1 of 2012, no charge sheet has been filed till date. Since the petitioner had borrowed a sum of Rs. 2,30,000/- for the purpose of complying with the bail condition, he seeks for return of

amount and offers to furnish solvent surety in lieu of the same.

5. While dealing with the issue of the legality to impose an onerous pre-condition for grant of bail, I had, in the case of “M.Sivasubramanian Vs. The State of Tamil Nadu” in Crl.O.P. No. 19984 of 2017 observed in my order dated 24.10.2017 as follows:-

“ 11. Before answering the core issue, it would not be out of place to mention here that the learned Judicial Magistrate, at the first instance, was not justified in imposing an onerous condition to produce a solvent surety to the tune of Rs.14 lakhs for the purpose of releasing the vehicle. After having taken the decision to release of the vehicle, there was no necessity for the learned Judicial Magistrate to impose an onerous condition for release of the vehicle without any basis. There was no material before the learned Judicial Magistrate to arrive at an amount of Rs.14 lakhs as surety amount. Admittedly, the case is under investigation. The purpose of the seizure is to enable the prosecution to lead evidence in proving its case. During various circumstances, the Apex Court and this Court had observed that the seized vehicles should not be allowed to lie idle exposed to natural calamities and have ordered for return of the vehicles.

The police officer, seizing the vehicle, is empowered under Section 102 Cr.P.C to return the custody on the strength of a bond undertaking to produce the property before the Court, as and when required. While the code itself insists for an bond of undertaking, imposure of an onerous precondition for release is unwarranted and such a condition is not contemplated under the Code.

12. In this connection, the question of the powers of the trial Court imposing onerous condition while granting bail was elaborately discussed in the following judgements:

(i). **In Sandeep Jain Vs. National Capital Territory of Delhi (2000 (2) SCC 66)** the Hon'ble Supreme Court has held that any bail condition which is in the nature of onerous condition, is against law.

(ii). **In Ramathal & Others Vs. Inspector of Police & Another (2009 (12) SCC 721)** the Hon'ble Supreme Court did not approve a bail condition of the Subordinate Court to deposit huge amount.

(iii). **In Sakthivel Vs. Inspector of Police Belukurichi Police Station Namakkal District (2015 (2) MWN (Cr.) 438)**, this Court held that the bail condition

should be executable and it should not be onerous and oppressive in nature.

(iv). In Navaneetha Krishnan Vs. Inspector of Police Natrampalli Police Station Vellore District [2015 (2) MWN (Cr.) 53], this Court had observed that the 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."

6. Likewise, a learned brother Judge of this Court also had dealt on this issue in the case in *Sagayam @ Devasagayam Vs. The State of Tamil Nadu*, reported in 2017 (3) CTC 291. The relevant portion of the order goes to read as hereunder;-

"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 Crl.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 Crl.L.J. 229) *Afsar Khan vs. State of Karnataka* (1992 Crl.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 2015 (2) MWN (Cr.) 387 (Crl.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, 2015 (2) MWN (Cr.) 438 (Crl.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)."

7. From the aforesaid legal proposition, it is seen that the original condition imposed, directing the petitioner to deposit 2,30,000/- itself is illegal. As such, the petitioner's present request that he is willing to replace

the original condition with additional solvent surety deserves consideration. Further, in view of the fact that the charge sheet has not been laid in the present case, even after five years, will also be another ground for considering the petitioner's request to modify the condition.

8. In the result, the Criminal Original Petition stands allowed. The condition imposed in Crl.MP. Nos. 19754 of 2014, dated 17.12.2014 on the file of the learned Principal Sessions Judge, Chennai is modified by permitting the petitioner to withdraw the cash deposit of Rs. 2,30,000/-with a direction to the petitioner to furnish the additional solvent surety in lieu of the cash deposit.

24.10.2017

Index: Yes/No
Internet: Yes/No

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M.S.RAMESH. J.,
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To

- 1.The Principal Sessions Judge,
City Civil Court,
Chennai.
2. The Inspector of Police,
C.B.C.I.D Cyber Crime Cell,
Chennai.
3. The Public Prosecutor,
High Court, Madras.



Pre-Delivery Order
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