



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

Thursday, the Eighteenth day of May Two Thousand Seventeen

PRESENT

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

CRL MP(MD) No.605 of 2017
IN
CRL OP(MD) No.23109 of 2016

1 M.RAJA,
2 M.RAVIKUMAR,

... PETITIONERS/ACCUSED

Vs

STATE REPRESENTED BY IT'S
THE INSPECTOR OF POLICE,
USILAMPATTI TALUK POLICE STATION,
MADURAI DISTRICT.

... RESPONDENT/RESPONDENT

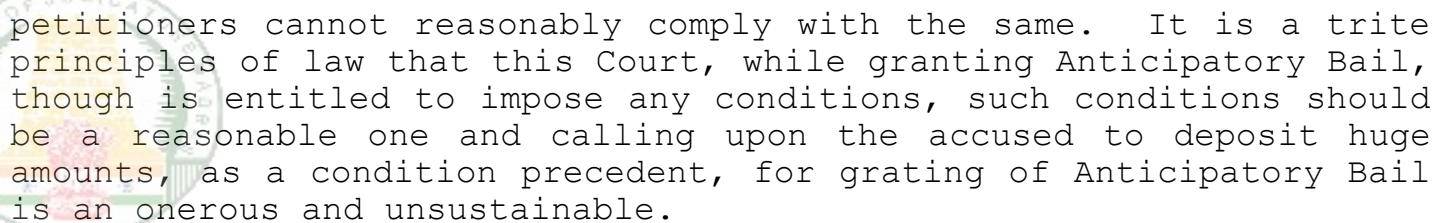
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to modify the condition imposed by this Honourable Court by its order in Crl.OP(MD)No.23109 of 2016 dated 03.01.2017 in so far as it warrants deposit of Rs.19,00,000/- by the 1st petitioner and Rs.30,00,000/- by the 2nd petitioner is concerned.

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

This Criminal Miscellaneous Petition has been filed praying to modify the condition imposed by this Court by its order in Crl.O.P (MD)No.23109 of 2016, dated 03.01.2017, insofar as it warrants deposit of Rs.19,00,000/- by the 1st petitioner and Rs.30,00,000/- by the 2nd petitioner are concerned.

2. Mr.M.Ajmalkhan, the learned Senior Counsel appearing for the petitioner would submit that while granting anticipatory bail whether the Court can impose a condition for depositing of the amount or not, is the *no longer resintegra* and that was considered by this Court as well as by the Hon'ble Supreme Court of India. In fact, in the course of argument, the condition for depositing of the amount was not raised.

3. Adding further, the learned Senior Counsel would submit that warranting the petitioners to deposit such a huge amount, as a pre-condition for granting Anticipatory Bail, would amount to virtually denying Anticipatory Bail, as the same is an onerous one and the



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"3. We are of the view that the condition imposed by the High Court that the appellant shall make payment of Rs one lakh per month after his release on bail is not justified in the facts and circumstances of the case. It is ofcourse, open to a court to grant or refuse bail, but to assume that an offence has been committed even at the stage of granting bail and to direct repayment of any amount is both onerous and unwarranted. In the instant case, the liability of the appellant has yet to be determined is an appropriate proceeding.

4. In the facts and circumstances of the case, we are satisfied that the High Court was justified in granting bail to the appellant but we do not uphold the condition imposed in the order granting bail that he should continue to deposit a sum of Rs one lakh per month. That condition is deleted."

5. The learned Senior Counsel also relied on the Judgment of The Hon'ble Supreme Court in **Sumit Mehta Vs. State** reported in **(2013 (15) SCC 570)**, wherein in paragraphs 6 to 12 it has been held as follows:-

"6) The only point for consideration in this appeal is whether the condition of depositing an amount of Rs. 1,00,00,000/- in fixed deposit for anticipatory bail is sustainable in law and whether such condition is outside the purview of Section 438 of the Code?

7) In order to answer the above question, it is useful to refer Section 438 of the Code which reads as under:

"438. Direction for grant of bail to person apprehending arrest:- (1) Where any person has reason to believe that he may be arrested on accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-



- i) the nature and gravity of the accusation;
- ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii) the possibility of the applicant to flee from justice; and

iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.



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(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub- section (1)."

A reading of the above provision makes it clear that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. The grant of bail under Section 438(1) of the Code is dependent on the merits and circumstances of a case.

8) A Bench of five-Judges of this Court in Shri Gurbaksh Singh Sibbia & Ors. vs. State of Punjab (1980) 2 SCC 565, while dealing mainly with the question of considerations that can validly weigh with the courts while granting bail under Section 438, examined various facets of the issue and held as under:

"26. We find a great deal of substance in Mr. Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the Court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on, compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in Maneka Gandhi [1978]2SCR621 that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it; is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by leading words in it which are not be found therein."



The aforesaid decision gives an abundant clarity as to the intention and the scope of Section 438 of the Code. Certainly, the power conferred must be exercised very sparingly and judiciously. However, this Court has always frowned on onerous condition being imposed as a condition precedent for granting anticipatory bail.

9) In *Amarjit Singh vs. State of NCT of Delhi* (2009) 13 SCC 769, this Court ruled as under:

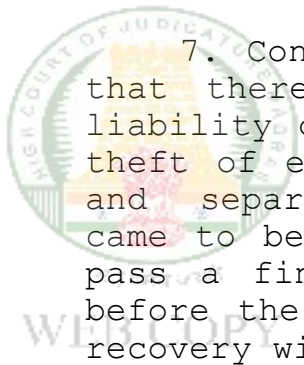
"7. Having regard to the facts and circumstances of the present case, we have no hesitation in coming to the conclusion that the imposition of condition to deposit the sum of Rs. 15 lacks in the form of FDR in the Trial Court is an unreasonable condition and, therefore, we set aside the said condition as a condition precedent for granting anticipatory bail to the accused/appellant."

10) In *Sheikh Ayub vs. State of M.P.* (2004) 13 SCC 457, it was held that a direction to pay a portion of the amount misappropriated by the accused to the complainant as a condition for bail is unwarranted. Similar view was adopted by this Court in *I. Glaskasden Grace and Ors. vs. Inspector of Police and Anr.* (2009) 12 SCC 769, *Ramathal and Ors. vs. Inspector of Police and Anr.* (2009) 12 SCC 721 and *Sandeep Jain vs. National Capital Territory of Delhi Rep. by Secretary, Home Deptt.* (2000) 2 SCC 66.

11) While exercising power under Section 438 of the Code, the Court is duty bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. For the same, while granting relief under Section 438(1), appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation. The object of putting such conditions should be to avoid the possibility of the person hampering the investigation. Thus, any condition, which has no reference to the fairness or propriety of the investigation or trial, cannot be countenanced as permissible under the law. So, the discretion of the Court while imposing conditions must be exercised with utmost restraint.

12) The law presumes an accused to be innocent till his guilt is proved. As a presumably innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution.

6. The learned Senior Counsel drew the attention of this Court to an yet another Judgment of the Hon'ble Supreme Court in ***Keshab Narayan Banerjee and Another Vs. The State of Bihar*** reported in **(AIR 1985 SC 1666)** for the proposition that imposing of onerous condition like depositing of amount as a condition for grant of anticipatory bail cannot be sustained.



7. Continuing further, the learned Senior Counsel would submit that there are separate Forums for adjudication to assess the liability of the petitioner / accused whether they involved in the theft of energy and the liability of quantum of payment of amount and separate proceedings were initiated and assessment order also came to be issued and it is a pre-assessment order then they will pass a final assessment order against which, an appeal will lie before the appellate authority and they will agitate the same and recovery will be made under the provision of the Act.

8. The learned Senior Counsel further submitted that once the Court was pleased to inclined to grant Anticipatory Bail then, this Court may impose condition for appearing of the petitioner before the Investigation Agency for proper investigation. For depositing of the amount, in fact, it is an onerous one and they are not in a position to deposit the amount and in such event, automatically the anticipatory bail will be cancelled and they will be put behind the bar and it amounts to infringement of Fundamental Right guaranteed under Article 21 of the Constitution of India. Therefore, praying to modify the condition imposed by this Court on 03.01.2017.

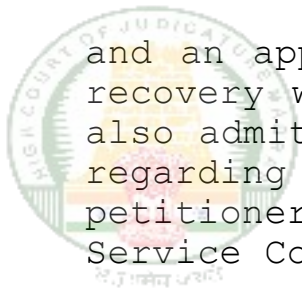
9. Mr.P.Kandasamy, the learned Government Advocate (Crl.Side) appearing for the Respondent would submit that taking note of the dispute the condition imposed for grant of anticipatory bail cannot be construed as an onerous one.

10. I have heard the learned counsel appearing on either side and also perused the materials available on record.

11. The petitioners / A1 and A2 herein have been granted anticipatory bail by this Court in its order, dated 03.01.2017 in Crl.O.P(MD)No.23109 of 2016, on further condition that the first Petitioner / A1 was directed to deposit a sum of Rs.19,00,000/- in respect of the Service Connection No.232 and the second petitioner / A2 was directed to deposit a sum of Rs.30,00,000/- in respect of Service Connection No.294, by way of Demand Draft in favour of the learned Judicial Magistrate, Usilampatti, to the credit of Crime No.218 of 2016.

12. The petitioners filed the present petition, seeking modification of the said condition directing them to deposit the amount is an onerous, unreasonable and unwarranted condition and they are not in a position to deposit such amount by referring the decisions of the Hon'ble Apex Court, cited supra.

13. Admittedly, the condition for depositing the amount was not raised in the course of arguments by both sides. Considering the alleged way of theft of energy in both Service Connections owned by the petitioners herein and also the alleged loss of Rs.98,04,509/-, as stated in the FIR, caused to the Electricity Board, this Court has passed the conditional order of depositing the said amount in Crime No.289 of 2016, for granting anticipatory bail to the petitioners herein. It is also not disputed that there are separate Forums for adjudication to assess the liability of the petitioners



and an appeal will lie against the final assessment order and recovery will be made under the provisions of the Act. It is also admitted that provisional assessment order was also passed regarding the alleged theft of energy. The contention of the petitioners is that defective meters were installed in the Service Connection, which recorded erroneous consumption.

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14. The contention of the respondent is that it was found on inspection that the coils in the C.T.Box leading to the meters in respect thereof were tapped so that the meter would record a lower reading. As per Section 438(2) of Cr.P.C., the Court makes a direction under sub-section (1), granting anticipatory bail it may include such other conditions, as may be imposed under sub-section (3) of Section 437 as if the bail were granted under that Section. Section 437(3), reads that "the Court may also impose in the interest of justice such other conditions as it considers necessary in addition to the conditions mentioned in (a) to (c) of Section 437(3). Hence, this Court can invoke and can impose such other condition as if it considers necessary in the interest of justice.

15. Considering the nature of the offence alleged to be committed in this case and also the contention raised by both sides in respect of theft of energy and also in the interest of justice this Court has passed the conditional order of deposit by the petitioners in granting anticipatory bail. However, the petitioners contend that the order for deposit of huge amount is an onerous one and unreasonable and they are not in a position to deposit the said amount. Conditional order of deposit of amount / Fixed Deposit is also considered by the Apex Court in **J.T. 2017 (4) SC 425 (B.N.Srivastava Vs. C.B.I, EOU-IV, New Delhi)** and in **J.T. 2017 (4) SC 487 (Deepak Chandratan Pareek Vs. Union of India through CBI)** and modified reducing the amount in Bail Petitions.

16. Considering the above facts and circumstances of the case, this Court is inclined to modify its condition directing the petitioner to deposit a sum of Rs.1,00,000/- each to the credit of Crime No.218 of 2016, before the learned Judicial Magistrate, Usilampatti, to show their bonafides and also without prejudice to their contention in this case by deleting the sentence directing the first petitioner to deposit a sum of Rs.19,00,000/- in respect of Service Connection No.232 and the second petitioner to deposit a sum of Rs.30,00,000/- in respect of Service Connection No.234, by way of Demand Draft, in favour of the Judicial Magistrate, Usilampatti. Except the said condition of deposit of the amount, the other conditions passed by this Court in Crl.O.P(MD)No.23109 of 2016 are remain unchanged.



17. In the result, this Criminal Miscellaneous Petition is ordered as above. The petitioners are directed to appear before the concerned Magistrate within a week from the date of receipt of a copy of the order.

sd/-
18/05/2017

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

MPK

TO

- 1 THE JUDICIAL MAGISTRATE,
USILAMPATTI
- 2 THE CHIEF JUDICIAL MAGISTRATE
MADURAI DISTRICT
- 3 THE INSPECTOR OF POLICE
USILAMPATTI TALUK POLICE STATION,
MADURAI DISTRICT
- 4 THE DISTRICT MUNSIF
USILAMPATTI
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. C.C. to M/S.AJMAL ASSOCIATES Advocate SR.No.22528

GJM/PM/PN/SAR-1-7.6.17-8P-7C

ORDER
IN
CRL MP(MD) No.605 of 2017
IN
CRL OP(MD) No.23109 of 2016
Date :18/05/2017