



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

Friday, the Tenth day of March Two Thousand Seventeen

PRESENT

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

CRL OP(MD) No.1710 of 2017

D.MATHANKUMAR

... PETITIONER / ACCUSED NO.3

Vs

STATE REP. BY
THE SUB INSPECTOR OF POLICE,
SIRUGANOOR POLICE STATION,
TRICHY DISTRICT.
CRIME NO.339 OF 2016.

... RESPONDENT / RESPONDENT

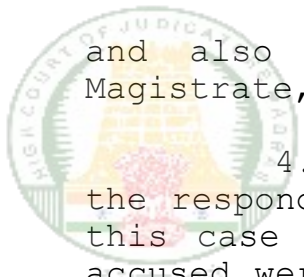
Petition praying that in the circumstances stated therein and in the affidavit filed therewith, the High Court will be pleased to modify the order in Cr.M.P.No.429 of 2017 in Cr.M.P.No.243 of 2017 dated 10.02.2017 by modify the depositing amount Rs.50,000/- and report before the respondent police or Judicial Magistrate, Lalgudi.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.V.Karuna Advocate for the petitioner and of Mr.P.Kandasamy Government Advocate(Crl.side) on behalf of the Respondent the court made the following order:-

The present petitioner is the 3rd accused, who filed this application seeking modification of the conditions imposed in Cr.M.P.No.429 of 2017 in Cr.M.P.No.243 of 2017, dated 10.02.2017, passed by the learned Principal Sessions Judge, Tiruchirappalli.

2. Admittedly, the petitioner / A3 herein moved the bail application in Cr.M.P.No.243 of 2017 before the learned Principal Sessions Judge, Tiruchirappalli and it was ordered on 03.02.2017, directing the petitioner to be released on bail on his deposit of Rs.50,000/- to the credit of Crime No.339 of 2016, on the file of the respondent Police and also directing the petitioner to appear before the respondent Police daily at 10.30 a.m., after the release, until further orders.

3. Without complying with the said condition, the petitioner filed Cr.M.P.No.429 of 2017, for modification of the above said conditions, under Section 439(ii) of Cr.P.C., and the same was dismissed on 10.02.2017, by the learned Principal Sessions Judge, Tiruchirappalli. Aggrieved by the order of dismissal, the petitioner / A3, who is now in custody, approached this Court by filing the present petition for modifying the deposit of Rs.50,000/-

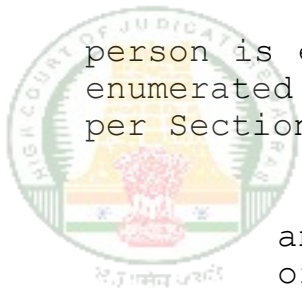


and also to report before the respondent Police or Judicial Magistrate, Lalgudi.

4. The learned Government Advocate (crl.side) appearing for the respondent would submit that there are totally three accused in this case and the petitioner herein is arrayed as A3 and all the accused were arrested on 03.01.2017 and the petitioner herein is in custody from 03.01.2017 onwards. He would further submit that the accused persons came to the cattle shed of defacto complainant on 17.12.2016 at about 11.00 p.m., and criminally brought the cattles (3 cows, 2 Calf, 14 Goats and 8 Sheep) of the defacto complainant to the weekly market at Manapparai by getting the vehicle and sold the above cattles to the unknown persons for a sum of Rs.85,000/- and left to their home and latter on 03.01.2017, the accused persons assembled in Siruganur Bus stop for sharing their theft money and at that time, they were arrested and a sum of Rs.70,000/- was recovered from them. It is admitted by the respondent that the above averments are the confession given by the 1st accused in this case. Since FIR was registered against the unknown persons, for the alleged offence under Section 380(c) of IPC., during the investigation, the three accused are implicated in this case. He would further submit that bail was ordered in respect of the petitioner subject to deposit of Rs.50,000/- in the Crime Number. The learned Government Advocate (crl.side) would further contend that while granting bail, the Court is entitled to put conditions at its discretion, considering the facts of the case.

5. The learned counsel appearing for the petitioner / A3 would contend that the petitioner is a coolie worker, he is a sole breadwinner of his family and he is unable to deposit Rs.50,000/- and he was implicated falsely in this case, as an accused. He would further contend that once the Court concludes that the person is entitled to the benefit of bail, no condition other than those enumerated in Section 437(3) or Section 438(2) can be imposed and imposition of unreasonable condition not only beyond the purview of the Court, but beyond the powers of the Court. In support of the above contention, the learned counsel for the petitioner relied on the decision of this Court in **Amaldoss and Others Vs. The Inspector of Police, Patteeswaram Police Station, Thanjavur District** reported in **(2015) 1 MLJ (Crl.) 471** in which, it is held that "In fact, no provision in Code of Criminal Procedures contemplates cash deposit as a condition precedent for grant of bail" and in this case, while granting anticipatory bail, the conditions imposed by the learned Sessions Judge to deposit a specific sum is onerous and unreasonable and the same is liable to be set aside. This Court also considered several Judgments of the Hon'ble Apex Court in the above said decision.

6. On perusal of the counter filed by the respondent would reveal the fact that there is no specific allegation regarding recovery of Rs.70,000/- that is, from whom it was recovered in this case. Admittedly, an FIR was registered against unknown persons and only during the investigation, on the basis of confession of A1, the petitioner's name is implicated as an accused in this case. If a



person is entitled to benefit of bail, then no condition other than enumerated in Section 437(3) or 439 of Cr.P.C., can be imposed. As per Section 439(i), A High Court or Court of Sessions may direct:-

"(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in subsection (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;"

7. As per Section 437(3) of Cr.P.C., The Court shall impose the conditions:-

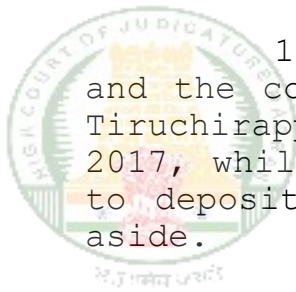
" (a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter;

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such 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 or tamper with the evidence and also impose, in the interest of justice, such other conditions as it considers necessary."

8. In fact, there is no provision in the Code of Criminal Procedure contemplating the cash deposit as a condition precedent for granting of bail, but may permit the person to deposit a sum of money in lieu of executing a bond and giving surety of one or two persons, as per Section 445 of Cr.P.C. Granting or denying the bail depends upon the circumstances of each case and is also within the exclusive discretion of Court of Law or Authority. However, such discretion should not be exercised arbitrarily and unreasonably. The practice of imposing conditions for deposing of money for granting bail has been deprecated by this Courts and also the Hon'ble Apex Court.

9. Considering the above facts and circumstances of the case, this Court is of the view that the condition imposed by the learned Principal Sessions Judge, Tiruchirappalli in its order dated 10.02.2017 in CrI.M.P.No.429 of 2017, while granting bail to the petitioner to deposit a sum of Rs.50,000/- as a pre-condition is unreasonable and also arbitrary and hence, the above condition alone is liable to be set aside.



10. Accordingly, this Criminal Original Petition is allowed and the condition imposed by the learned Principal Sessions Judge, Tiruchirappalli, vide order dated 10.02.2017 in CrI.M.P.No.429 of 2017, while granting bail to the petitioner, who is now in custody, to deposit a sum of Rs.50,000/- as a pre-condition alone is set aside.

sd/-

10/03/2017

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

TO

- 1 THE PRINCIPAL SESSIONS JUDGE,
TIRUCHIRAPPALLI.
- 2 THE ADDL.PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 3 STATE REP. BY
THE SUB INSPECTOR OF POLICE,
SIRUGANOOR POLICE STATION,
TRICHY DISTRICT.

+1. CC to M/S.V.KARUNA Advocate SR.No.13680

ORDER

IN

CRL OP(MD) No.1710 of 2017

Date :10/03/2017

MKV-SV-MMS-SAR 2/10.3.2017/4P-5C