

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.11.2018
CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.26139 of 2018

Dinesh

... Petitioner

Vs.

The State of Tamil Nadu,
rep. by the Inspector of Police,
CCB, Egmore, Chennai
(CCB Cr.No.309 of 2018)

... Respondent

Criminal Original Petition filed under Section 439(1)(b) Cr.P.C. praying to modify the condition imposed in Crl.M.P.No.1937 of 2018 dated 30.10.2018 by the learned Magistrate, XI Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.B.Vijay

For Respondent : Mrs.M.Prabhavathi
Additional Public Prosecutor

O R D E R

This petition has been filed for modification of the conditions imposed by the learned Magistrate, XI Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.1937 of 2018 dated 30.10.2018.

2. The learned counsel for the petitioner would submit that the petitioner was arrested and remanded to judicial custody on 20.08.2018. Thereafter, the petitioner was granted statutory bail under Section 167(2) Cr.P.C by imposing the following conditions:

"(i) The petitioner shall execute a bond for a sum of Rs.1,00,000/- with two sureties to the like sum each.

(ii) The petitioner shall deposit a sum of Rs.5,00,000/- to the credit of the crime number and in the event of deposit of the amount it shall be invested in the fixed deposit scheme in a nationalized bank.

(iii) The petitioner shall appear before the respondent police daily at 10.00 a.m until further orders.

(iv) The petitioner shall produce the copy of address cum ID proof before this Court at the time of producing sureties."

Thereafter, the petitioner had filed a petition for modification of the above said condition No.(ii). The said petition was ordered by the learned XI Metropolitan Magistrate, Saidapet, Chennai on 30.10.2018 by extending the time for deposit of Rs.5,00,000/- within a period of two weeks. The said modified order in CrI.M.P.No.1937 of 2018 reads as follows:

"The petitioner shall deposit a sum of Rs.5,00,000/- to the credit of the crime number within a period of two weeks and in the event of deposit, it shall be invested in the fixed deposit scheme in nationalized bank "

Now, the petitioner has come up with this petition for modification of the said condition.

3. The learned Additional Public Prosecutor would submit that the petitioner involved in huge and grave crime. Therefore, she sought for dismissal of this petition seeking modification.

4. It is seen from the records that the petitioner was arrested and remanded to judicial custody on 20.08.2018. The respondent police has not laid the charge sheet in this case. Therefore, he is entitled for the statutory bail under Section 167(2) Cr.P.C. Therefore, the learned XI Metropolitan Magistrate, Saidapet, Chennai granted bail and released the petitioner on condition that the petitioner shall deposit Rs.5,00,000/- to the credit of the crime number. Section 167(2) Cr.P.C reads as follows:-

"167(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-

(a) ¹ the Magistrate may authorise the detention of the accused person, otherwise

than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.¹ Explanation I.-

For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;].²

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.]”

5. It is the right of the accused for statutory bail for non-filing of the charge sheet by the respondent police. Therefore, the said right cannot be extinguished by imposing conditions.

6. In view of the above discussions, this Court is inclined to modify the condition 5(ii) imposed by the learned XI Metropolitan Magistrate, Saidapet, Chennai. Accordingly, the

condition 5(ii) of the order dated 30.10.2018 on the file of the Court of the learned XI Metropolitan Magistrate, Saidapet, Chennai stands deleted.

7. This Criminal Original Petition is ordered accordingly.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dsa

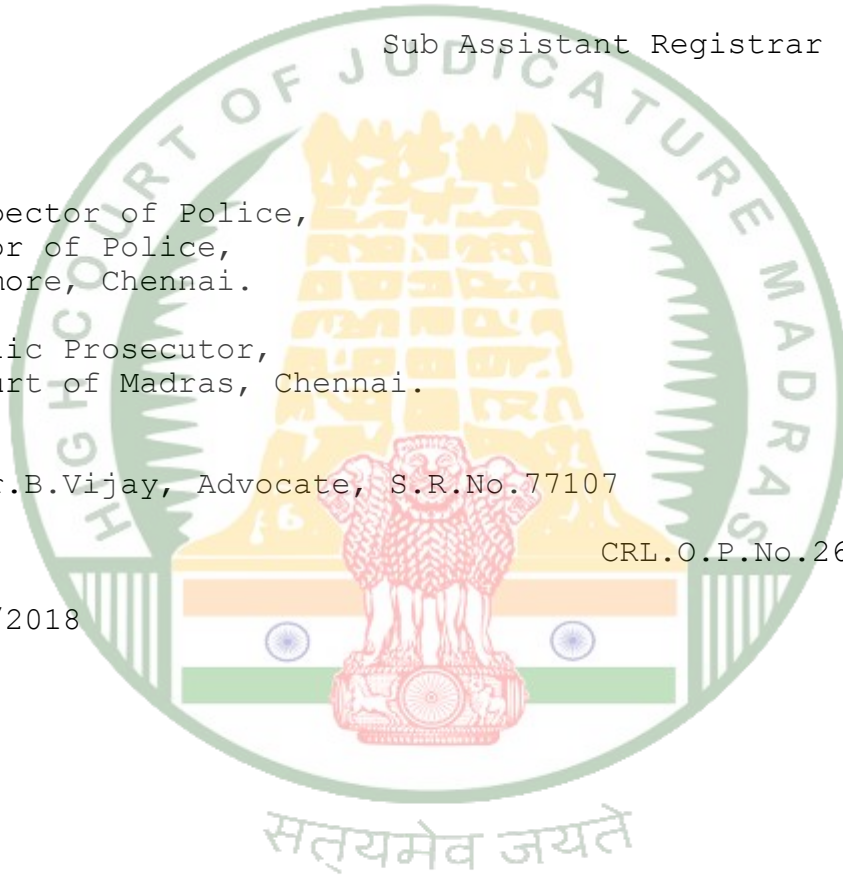
To

- 1.The Inspector of Police,
Inspector of Police,
CCB, Egmore, Chennai.
- 2.The Public Prosecutor,
High Court of Madras, Chennai.

+1cc to Mr.B.Vijay, Advocate, S.R.No.77107

CRL.O.P.No.26139 of 2018

rrs 14/11/2018



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