

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.OP No.26629 of 2018

Mr.Thavaraja Bakirathan

..Petitioner

..Vs..

The State represented by
The Inspector of Police,
C.C.B., Chennai Police Station,
Chennai.

(Red: Cr.No.111/2018

..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 24.10.2018, passed in Crl.M.P.No.4593 of 2018, on the file of the Hon'ble Principal Sessions Judge of Kancheepuram District at Chengalpattu as illegal.

For Petitioner : Mr.I.Abdul Basith

For Respondent : Mr.C.Raghavan,

Government Advocate (Crl.Side)

ORDER

This Petition has been filed challenging the order of the Court below dismissing the modification petition filed by the petitioner, seeking to modify the conditions imposed by the Judicial Magistrate, Alandur, while granting bail to the petitioner by his order dated 14.08.2018.

2.The learned counsel for the petitioner would submit that the petitioner was arrested by the respondent Police in connection with Crime No.111/2018, and the petitioner filed a bail petition before the Judicial Magistrate Court, Alandur. The Judicial Magistrate Court, Alandur while granting bail to the petitioner, imposed certain conditions. The petitioner is aggrieved by the conditions wherein one of the surety was directed to be a close relative of the petitioner. According to the petitioner, no close relatives are living in Chennai, and the petitioner will never be able to comply with the said condition.

3. Aggrieved by the conditions, the petitioner filed a petition for modification before the Principal Sessions Judge, Kancheepuram. The learned District Judge by an order dated 24.10.2018, has dismissed the petition on the ground that the petitioner belongs to Sri Lanka and his father is residing at Sri Lanka, and his mother is residing at Thailand, and therefore, the Court below was not inclined to modify the condition.

4. The learned counsel for the petitioner submitted that the Passport belonging to the petitioner has already been seized by the Police, and has been taken custody by the Court below. The petitioner is also willing to comply with all the other conditions imposed by the trial Court. The petitioner is not in a position to bring a surety who is a close relative of the petitioner. Due to this condition, the petitioner in spite of getting an order of bail in his favour, is not able to come out on bail.

5. The learned counsel for the petitioner in this regard cited the judgment of this Court in *Sagayam .Vs. State* reported in [2017 (3) CTC 291], the relevant portion in the Order is extracted here under:

"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 Nepalis, 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.

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".

6. From the above, it is clear that this Court has given a guideline that the Courts should not insist for a blood relative or a close relative to be a surety. This Court has also further held that it becomes impossible for the accused persons belonging to different States or a Country to produce

such sureties. Therefore, this Court held that such condition should not be imposed by the Court below while granting bail. In short, this Court had held that conditions which are not capable of being complied with, should not be imposed, since it will defeat the very purpose of granting bail to the accused persons.

7. In view of the above, this Court is of the considered view that the Court below ought not to have imposed such a condition and the other conditions imposed against the petitioner, will ensure that the petitioner does not escape from the clutches of law, during the pendency of the case. The condition imposed by the Court below directing the petitioner to produce one surety who should be a close relative is hereby set aside.

8. Criminal Original Petition is allowed with the following directions:

a) The petitioner shall be released on bail on executing a bond for a sum of Rs.25,000/- with two sureties for a like sum, to the satisfaction of the Court below.

b) The petitioner shall reside within the jurisdiction of the Court, pending the investigation.

c) The petitioner shall report before the respondent Police daily at 10.00 a.m., until further orders.

-s/d-

Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

KP

To

1. The Principal Sessions Judge,
Kancheepuram District at Chengalpattu.

2. The Judicial Magistrate, Alandur

3. The Inspector of Police,
C.C.B., Chennai Police Station,
Chennai.

4. The Public Prosecutor,
High Court of Madras,
Madras

Cr1.OP No.26629 of 2018

KAN (CO)
SP (20/11/2018)