

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.27153 of 2018

Suresh Kumar

... Petitioner/Accused

Vs.

State rep. by
The Inspector of Police,
R-1, Mambalam Police Station,
Chennai.
(Crime No.397 of 2018)

... Respondent /Complainant

Criminal Original Petition filed under Section 439(1)(b) Cr.P.C. praying to modify the condition imposed in Crl.M.P.No. of 2018 dated 29.10.2018 by the XVII Metropolitan Magistrate, Saidapet, Chennai-15, in so far as in respect of deposit a sum of Rs.3,00,000/- as deposit amount pending investigation in Crime No.397 of 2018 on the file of the respondent.

For Petitioner : Mr.C.V.Kumar

For Respondent : Mrs.M.Prabhavathi
Additional Public Prosecutor

O R D E R

This petition has been filed for modification of the conditions imposed in Crl.M.P.No. of 2018 dated 29.10.2018 by the XVII Metropolitan Magistrate, Saidapet, Chennai-15.

2. The learned counsel for the petitioner would submit that the petitioner was arrested and remanded to judicial custody on 09.06.2018 and thereafter he was detained under Tamil Nadu Act 14, 1982 on 27.07.2018 and subsequently the same was set aside by this Court in HCP.No.1768 of 2018 dated 26.10.2018. Thereafter, statutory bail was granted under Section 167(2) Cr.P.C by the trial Court. Unfortunately, the learned trial Judge had imposed the following conditions:

"(i)The petitioner shall execute a bond for a sum of Rs.5,000/- with two sureties to

the like sum each. (One document and one Blood relative sureties).

(ii)The petitioner shall deposit the sum of Rs.3,00,000/- as deposit amount. Regarding deposit amount the order will be passed at the end of criminal proceedings.

(iii)The petitioner shall appear before the respondent police daily at 10.00 am for 15 days."

Therefore, he sought for modification of the conditions imposed by the Court of XVII Metropolitan magistrate, Saidapet, Chennai.

3. The learned Additional Public Prosecutor would submit that the petitioner involved in huge and grave crime. She would also submit that already the petitioner was detained under Act 14 and subsequently, his detention order was set aside by this Court. 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 09.06.2018. Subsequently, this Court also had set aside the detention order in HCP.No.1768 of 2018 by order dated 26.10.2018. The respondent 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 Court of XVII Metropolitan magistrate, Saidapet, Chennai granted bail and released the petitioner on condition that the petitioner shall deposit Rs.3,00,000/-. 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 No.3(i) and 3(ii) imposed by the Court of the XVII Metropolitan magistrate, Saidapet, Chennai. Accordingly, the condition No.3(i) of the order dated 29.10.2018 on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai is modified to the effect that instead of one blood relative surety it could be two solvent sureties and the condition No.3(ii) of the order dated 29.10.2018 on the file of the Court of the XVII Metropolitan magistrate, Saidapet, Chennai

stands deleted. Thus, the modified conditions now reads as follows:

“(i)The petitioner shall execute a bond for a sum of Rs.5,000/- with two sureties to the like sum each. (One document and two solvent sureties).

(ii)The petitioner shall appear before the respondent police daily at 10.00 am for 15 days.”

7. This Criminal Original Petition is ordered accordingly.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
R-1, Mambalam Police Station,
Chennai.

2.The Public Prosecutor,
High Court of Madras, Chennai.

3.The XVII Metropolitan Magistrate,
Saidapet, Chennai-15.

4.do Thro The Chief Metropolitan Magistrate,
Egmore, Chennai-8

+1cc to Mr.C.V.Kumar, Advocate sr.no.80196(03/12/2018)

CRL.O.P.No.27153 of 2018

rj(co)
nr 27/11/2018

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