

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.29165 of 2018

B.N. Mohan

...Petitioner/Accused

Vs.

The State represented by
Sub-Inspector of Police,
EDE-II, Team-IV,
Central Crime Branch-I,
Vepery, Chennai.
(Crime No.242 of 2017)

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to pass an order to set aside the 1st and 2nd bail conditions imposed in Crl.M.P.No. 4902 of 2018 in Crime No.242 of 2017 vide order dated by the learned CCB & CBCID Metropolitan Magistrate Court, Egmore at Allikulam, Chennai.

For Petitioner : Mr.G.Prabhakaran

For Respondent : Mr.C.Raghavan

Government Advocate (Crl.Side)

O R D E R

This petition has been filed challenging the condition imposed by the Court below while granting statutory bail to the petitioner.

2 The petitioner was remanded to Judicial Custody on 21.07.2018 in Crime No.242 of 2017, registered by the respondent police for the offences under Section 465, 467, 468, 471, 419 and 420 of IPC. The petitioner has been arrayed as A1. Since, the petitioner was in Judicial custody for more than 60 days, he filed a petition in Crl.M.P.No.4902 of 2018 before the Court below seeking statutory bail on the ground that the respondent police did not file the final report within a period of 60 days.

3 The Court below while allowing the petition, took into consideration the allegations made against this petitioner in the FIR and thought it fit to impose a condition that the petitioner should deposit a sum of Rs.50 lakhs as cash security. It is against this condition, the present Criminal Original Petition has been filed before this Court.

4 It is now a settled law that normally the Courts must desist from imposing condition by way of cash security. This Court had an occasion to consider the issue in detail in Shenbagan Vs. State rep.by the Inspector of Police, Team I, Central Crime Branch reported in 2014 -2-MLJ (CrI.) 203, wherein this Court has held that the imposition of the condition must not be so onerous to the extent that it virtually prevents the accused from coming out on bail.

5 The Court below seems to have imposed this condition since the total amount that has been cheated according to the defacto complainant Rs.1,40,00,000/-.

6 The learned counsel for the petitioner would submit that such a condition cannot be imposed more particularly in a case where the petitioner has been released on statutory bail and statutory bail is a matter of right to the accused to be released on bail, in view of the fact that, the prosecution has not filed the Final Report within a period of 60 days. The learned counsel would further submit that since, the condition imposed by the Court below could not be complied by the petitioner, the petitioner has been inside the jail for a period of 140 days. Therefore, the learned counsel would request this Court to consider relaxing the said condition.

7 This Court has carefully considered the submissions made by the learned counsel for the petitioner as well as the materials placed on record.

8 The petitioner has been released on statutory bail under Section 167(2) of Cr.P.C. Statutory bail is a matter of right to the accused to be granted bail. Such right of statutory bail cannot be defeated by imposing a onerous condition which is incapable of being complied with by the accused person. The fact that the petitioner is inside the jail for the last 140 days shows that the petitioner is not capable of complying with the condition imposed by the Court below. Therefore, this Court has to necessarily interfere with the order passed by the Court below.

9 In the result, the first condition imposed by the Court below directing the petitioner to deposit a sum of Rs.50 lakhs to the credit of Crime No.242 of 2017 is hereby set aside. The other conditions imposed by the Court below shall stand as it is. Accordingly, this Criminal Original Petition is allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mpa/rpl

To

- 1.The Sub-Inspector of Police,
EDE-II, Team-IV,
Central Crime Branch-I,
Vepery, Chennai.
- 2.The CCB & CBCID,
Metropolitan Magistrate Court,
Egmore at Allikulam,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.G.Prabhakaran, Advocate, S.R.No. 86374

Crl.O.P.No.29165 of 2018

KK(CO)
GN(17/12/2018)