



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.37 of 2018

P.Tinesh Alagu

... Petitioner/Petitioner

Vs.

The Inspector of Police,
Manapparai Police Station,
Trichy District.

(Crime No.559 of 2017)

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 439(1) (b) of the Code of Criminal Procedure, to modify the condition imposed in the order dated 24.08.2017 made in Crl.M.P.No.2614 of 2017 on the file of the Principal Sessions Court, Trichirappalli, insofar as imposing the condition to pay the sum of Rs.1,86,010/- by the petitioner.

For Petitioner : Mr.B.Jameel Arasu

For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to modify the condition imposed in the order dated 24.08.2017 made in Crl.M.P.No.2614 of 2017 on the file of the Principal Sessions Court, Trichirappalli, insofar as imposing the condition to pay the sum of Rs.1,86,010/- by the petitioner.

2.The case of the prosecution is that the petitioner misappropriated a sum of Rs.2,86,010/- from the de-facto complainant firm.

3.The learned counsel for the petitioner submitted that during the pendency of the FIR, the petitioner has moved anticipatory bail petition before the Principal Sessions Court, Trichy, under Section 438 Cr.P.C. While considering the said anticipatory bail petition, the Court below without keeping in mind the legal position that the contents of the FIR are only allegations, after contest and trial only, the truth will prevail as to whether the



petitioner has committed the offence or not. Hence, imposing such onerous condition while granting anticipatory bail is opposed to law and hence, the said condition is liable to be modified.

4. In support of his submissions, the learned counsel for the petitioner relied on the following decisions of this Court.

(i) **Amaldoss and others Vs. State, Rep. by the Inspector of Police, Patteeswaram Police Station, Thanjavur District, [Crl.O.P. (MD) Nos.19196 and 19197 of 2014, dated 05.02.2015]**, wherein at Paragraph No.19, it has been held as follows:

'19. Therefore, the practice of imposing condition for depositing of money for granting the bail has been deprecated by the High Courts and the Hon'ble Supreme Court. Of course, while granting the bail, the Court of law is entitled to put certain conditions at its discretion, however, it should not be ignored that such conditions must be reasonable and judicious and should not be arbitrary. In fact, no provision in Code of Criminal Procedure contemplates cash deposit as a condition precedent for grant 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. It is needless to state that granting or denying the bail depending upon the circumstances of each case, is within the exclusive discretion of the Court of law or authority, however, such discretion should not be exercised arbitrarily. Once the court comes to the conclusion on the facts and circumstances of the case that a person is entitled to the benefit of bail, then no condition other than those enumerated in Section 437(3) or 438(2) can be imposed. Imposition of such unreasonable condition is not only beyond the purview of the provisions of Code of Criminal Procedure but also beyond the powers of the court. Discretion does not mean that it has no arena or boundary. No Court having howsoever absolute power can traverse beyond the arena carved out for it. Even absolute discretion does not admit element of arbitrariness or whimsicality or capriciousness.'

(ii) **V. Mahesh Vs. Chinnathambi [Crl.O.P. (MD) No.16914 of 2017, dated 10.12.2017]**, wherein at Paragraph No.10, it has been held as

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'10. Having regard to the above, this Court is of the view that the condition imposed by the



learned Principal Sessions Judge, Trichirappalli, in his order, dated 17.11.2017 in CrI.M.P(MD).No.3848 of 2017, while granting bail to the petitioner, to deposit a sum of Rs.1,90,000/-, is onerous and unreasonable and hence, it is set aside.''

5.The learned Additional Public Prosecutor submitted that the petitioner has misappropriated a sum of Rs.2,86,010/- from his working place and he has paid a sum of Rs.1,00,000/- on 01.07.2017 and remaining amount has to be paid by the petitioner and investigation is going on.

6.I have heard the learned counsel appearing for the parties and perused the materials available on record.

7.Taking into consideration of the contentions of both sides and on perusal of the records, the learned Principal Sessions Judge, Trichy, vide order dated 24.08.2017 granted anticipatory bail to the petitioner on condition that he should deposit the remaining amount of Rs.1,86,010/- in crime number on or before 22.09.2017. However, the said condition is onerous and unreasonable one. Once the Court comes to the conclusion on the facts and circumstances of the case that a person is entitled to the benefit of bail, then no onerous and unreasonable conditions can be imposed. Hence, following the above said decisions cited by the learned counsel for the petitioner, which are squarely applicable to the case on hand, this Court is inclined to delete the onerous condition imposed by the Court below.

8.Accordingly, this Criminal Original Petition is allowed and the direction issued by the learned Principal Sessions Judge, dated 24.08.2017, in CrI.M.P.No.2614 of 2017, with regard to deposit of Rs.1,86,010/- by the petitioner alone is deleted and other portions of the order shall stand unaltered.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Trichy.

<https://heservices.courts.gov.in/Heservices/>
2. The Inspector of Police,
Manapparai Police Station,
Trichy District.



3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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+ 1 cc TO Mr.B.Jameel Arasu , Advocate in SR No. 40426

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