

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.293 of 2019

Fahim Khan

... Petitioner

Vs.

State:-

The Inspector of Police
Central Crime Branch-I,
Cyber Crime, Chennai.
(Crime No.17 of 2018).

.... Respondent

Criminal Original Petition filed under Section 439(1) (b) of Cr.P.C. praying to modify the conditional order to deposit a sum of Rs.5,00,000/- to the credit of Crime No.17 of 2018 and the petitioner shall furnish bond of two sureties for like sum of Rs.1,00,000/- before the lower Court passed in Crl.M.P.No.6850 of 2018 dated 30.11.2018 on the file of the learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai.

For Petitioner : Mr.S.Vellidoss

For Respondent : Mrs.M.Prabhavathi
Additional Public Prosecutor

O R D E R

This petition has been filed for modification of the condition imposed by the learned CCB & CBCID Metropolitan Magistrate, Egmore Chennai in Crl.M.P.No.6850 of 2018 dated 30.11.2018.

2. The case of the prosecution is that the Assistant General Manager of City Union Bank, Anna Salai Branch had lodged a complaint on 04.01.2018, wherein it is alleged that some fraudsters had illegally tampered their computer system by illegal access by prevented validation of their system and dishonestly induced Master/Visa/Rupay systems to send response as if the bank had authorized, the fraudulent transaction to the tune of Rs.31.56 Crores and the transaction occurred in various places. Based on the complaint, above said case came to be registered. The investigation officer took up the investigation and collected the CCTV footage, during the course of the investigation.

3. The learned counsel for the petitioner would submit that the petitioner was arrested and remanded to judicial custody on 01.10.2018 and continue to be in custody for more than 90 days and as such he is entitled to be released on statutory bail as per the provision contemplated under Section 167 (2) Cr.P.C. Hence the petitioner prayed to grant bail before the learned CCB & CBCID Metropolitan Magistrate, Egmore Chennai. Unfortunately, the learned trial Judge had imposed the following conditions while granting statutory bail in CrI.M.P No.6850 of 2018 dated 30.11.2018:-

"1) The accused shall deposit a sum of Rs.5 lakhs to the credit of Crime No.17 of 2018.

2) After compliance of the 1st condition cited above, the petitioner shall furnish two sureties for like sum of Rs.1,00,000/- to the satisfaction of this Court and one among the surety shall be a Government Servant and another surety shall be the blood relative of the accused.

3) The accused shall appear and sign before the respondent police daily at 10.30 a.m., and 6.00 p.m., until further orders.

Therefore, he sought for modification of the conditions imposed by the Court of the CCB & CBCID Metropolitan Magistrate, Egmore Chennai.

4. The learned Additional Public Prosecutor would submit that the petitioner involved in huge and grave crime. She would further submit that the similar offence had took place at Pune and a case has been registered in Crime No.336 of 2018, for the similar offence. It is also informed by the Investigating Officer that 7 persons were arrested by the Pune Police and the photographs of the accused were shared by the Pune police which tallies with the CCTV footage collected by the Investigating officer. Therefore, she sought for dismissal of this petition seeking modification.

5. It is seen from the records that the petitioner was arrested and remanded to judicial custody on 01.10.2018. 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 the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai granted bail and released the petitioner on condition that the petitioner shall deposit Rs.5,00,000/- to the credit of Cr.No.17 of 2018. 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.]”

6. 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.

7. In view of the above discussions, this Court is inclined to modify the condition No.3(i) imposed by the Court of the CCB & CBCID Metropolitan Magistrate, Egmore Chennai . Accordingly, the condition 3(i) of the order dated 30.11.2018 on the file of the Court of the CCB & CBCID Metropolitan Magistrate, Egmore Chennai stands deleted. The other conditions shall remain intact.

8. This Criminal Original Petition is ordered accordingly.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The CCB & CBCID Metropolitan Magistrate, Egmore Chennai
2. The Public Prosecutor,
High Court of Madras, Chennai.
3. The Inspector of Police
Central Crime Branch-I,
Cyber Crime, Chennai.

+1 CC to Mr.S.Vellidoss, Advocate sr 4446.

CRL.O.P.No.293 of 2019

SP(22/01/2019)