

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.225 of 2019

Gopinath @ Gopi

... Petitioner

Vs.

State Rep.by:

The Inspector of Police
OCU-II, CBCID, Chennai
(Crime No.02 of 2018)

.... Respondent

Criminal Original Petition filed under Section 439(1)(b) of Cr.P.C. praying to modify the cash deposit condition viz., to deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs only) imposed on the petitioner in the statutory bail order dated 03.12.2018 passed by the learned XI Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.2203 of 2018.

For Petitioner : Mr.R.D.Santhana Krishnan

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 XI Metropolitan Magistrate, Saidapet, Chennai in Crl.M.P.No.2203 of 2018 dated 03.12.2018.

2. The learned counsel for the petitioner would submit that the petitioner was arrested and remanded to judicial custody on 04.10.2018 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 XI Metropolitan Magistrate, Saidapet, Chennai. Unfortunately, the learned trial Judge had imposed the following conditions while granting statutory bail in Crl.M.P No.2203 of 2018 dated 03.12.2018:-

"(i) The petitioner shall execute a bond for a sum of Rs.10,000/- with two sureties to the like sum each. One of the surety must be

his blood relative/Wife.

(ii) The petitioner shall deposit a sum of Rs.2,00,000/- to the credit of the Crime number before this Court and in the event of deposit of amount, it shall be invested in the Fixed Deposit Scheme in a National Bank.

(iii) The petitioner shall appear before the respondent/police daily at 10.00 a.m., for period of 15 days and thereafter as and when required for Investigation on due Notice by the IO.

(iv) The petitioner shall produce the copy of address cum ID Proof before this court at the time of proceeding sureties.

Therefore, he sought for modification of the conditions imposed by the Court of the XI Metropolitan Magistrate, Saidapet, Chennai-15.

3. The learned Additional Public Prosecutor would submit that the petitioner involved in huge and grave crime. According to the prosecution, through one of the real estate broker Tr.Anbu @ Purasai Anbu, the petitioner/A-8 had received huge sum from one Tr.Arulpandian, who proposed to purchase the property and divide it among the co-accused persons in the course of commission of offence. 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 04.10.2018. 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 XI Metropolitan Magistrate, Saidapet, Chennai-15 granted bail and released the petitioner on condition that the petitioner shall deposit Rs.2,00,000/- to the credit of Cr.No.2 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.]”

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.4(ii) imposed by the Court of the XI Metropolitan Magistrate, Saidapet, Chennai. Accordingly, the condition 4(ii) of the order dated 03.12.2018 on the file of the Court of the XI Metropolitan Magistrate, Saidapet, Chennai stands deleted. The other conditions shall remain intact.

7. This Criminal Original Petition is ordered accordingly.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The XI Metropolitan Magistrate, Saidapet, Chennai.
2. The Public Prosecutor,
High Court of Madras, Chennai.
3. The Inspector of Police
OCU-II, CBCID, Chennai.
- 4 The Superintendent , Central Prison, Puzhal, Chennai.
- +1 CC to Mr.R.D.Santhana Krishnan Advocate sr 1391.

CRL.O.P.No.225 of 2019

KJI (CO)
SP(09/01/2019)

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