

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.850 of 2019

Shanmugam @ Karthick

... Petitioner

Vs.

State represented by
The Inspector of Police,
Central Crime Branch - 1,
Job Racket, Team - VIII,
Chennai.

... Respondent

Criminal Original Petition filed under Section 439(1)(b) Cr.P.C. praying to modify the condition No.3(1) and 3 (2) imposed by the court of the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.No.6783 of 2018 on the file of the Court of the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai

For Petitioner : Mr.M.Ramesh

For Respondent : Mrs.M.Prabhavathi
Additional Public Prosecutor

ORDER

This petition has been filed to modify the condition No.3 (1) and 3 (2) imposed by the court of the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.No.6783 of 2018 on the file of the Court of the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai.

2. The learned counsel for the petitioner would submit that the petitioner was arrested and remanded to judicial custody on 13.09.2018 with regard to Crime No.386 of 2018 for the offences under Section 419, 420, 465, 468, 471 and 506(i) I.P.C. and after that charge sheet has not been filed by the respondent Police, hence statutory bail was granted to the petitioner under Section 167(2) Cr.P.C in Crl.M.P.No.6783 of 2018 by the learned CCB & CBCID Court at Egmore on 28.11.2018. Unfortunately, the learned trial Judge had imposed the following conditions:-

"(i)The accused shall deposit a sum of Rs.25 lakhs to the credit of Cr.No.386/2018.

(ii)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 blood relative of the accused.

(iii)The accused shall appear the 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 condition No.3(1) and 3(2) imposed by the Court of the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai.

3. The learned Additional Public Prosecutor would submit that the petitioner involved in huge and grave crime. 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 13.09.2018 with regard to Crime No.386 of 2018 and after that charge sheet has not been filed by the respondent Police, hence statutory bail was granted to the petitioner under Section 167(2) Cr.P.C in CrI.M.P.No.6783 of 2018 by the learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai on 28.11.2018 and the petitioner was released on the above conditions. 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

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 the case on hand, admittedly, the charge sheet has not been filed by the respondent police. Therefore the petitioner is entitled to be released on statutory bail under Section 167(2) Cr.P.C. When it being so, the right to be released under Section 167(2) Cr.P.C. is an indefeasible right and such a right cannot be extinguished by imposition of onerous conditions.

7. In view of the above, the condition imposed by the learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai in CrI.M.P.No.6783 of 2018 on 28.11.2018, that the petitioner shall deposit a sum of Rs.25 lakhs to the credit of Crime No.386 of 2018, is set aside and accordingly, this petition is allowed. The other conditions shall remain intact.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Metropolitan Magistrate for
Exclusive Trial of CCB cases
and CB CID, Egmore,
Chennai.

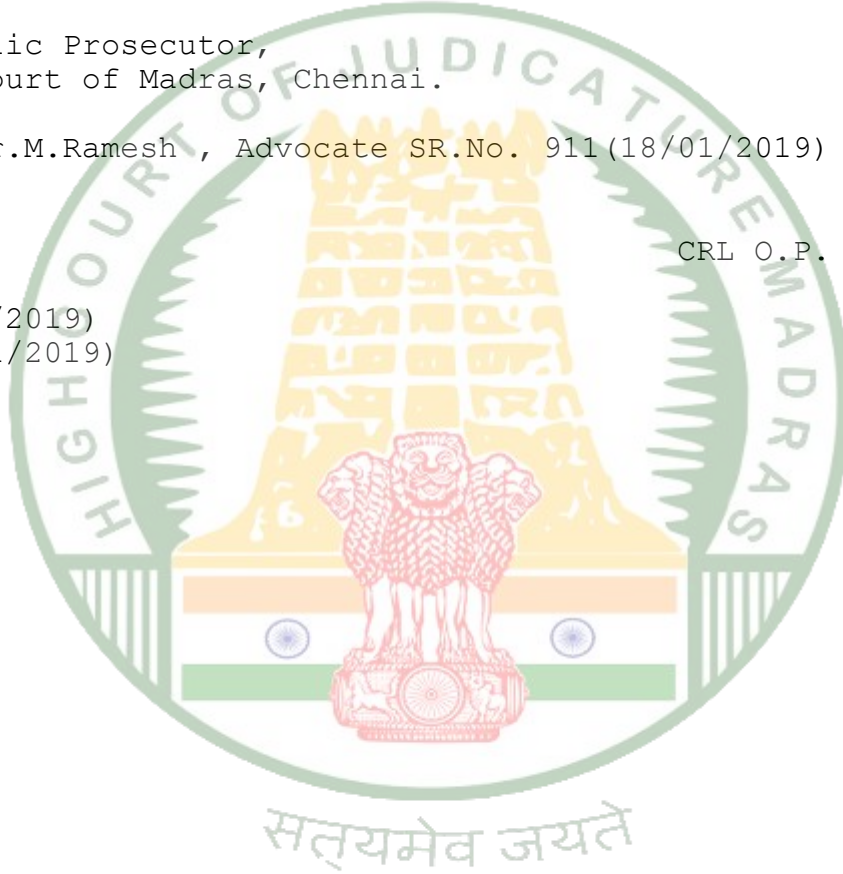
2. The Inspector of Police,
Central Crime Branch - 1,
Job Racket, Team - VIII,
Chennai.

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

+1cc to Mr.M.Ramesh , Advocate SR.No. 911 (18/01/2019)

CRL O.P. No.850/2019

KAK(11/01/2019)
A.SK(18/01/2019)



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