

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.1369 of 2019

Nehru @ Nehru Babu

... Petitioner

Vs.

State Rep.by:
The Inspector of Police
Central Crime Branch
EDF-II, Team-IX-A, Chennai.

... Respondent

Criminal Original Petition filed under Section 439(1)(b) of Cr.P.C. praying to call for the records in Crl.M.P.No.7403 of 2018 in Crime No.454 of 2017 on the file of the learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai and modify the bail condition No.1 being pre-deposit of Rs.25 Lakhs imposed therein in Crl.M.P.No.7403 of 2018 in Crime No.454 of 2017 order dated 02.01.2019.

For Petitioner : Mr.Durai Kannan

For Respondent : Mrs.M.Prabhavathi
Additional Public Prosecutor

ORDER

This petition has been filed for modification of the condition imposed by the learned CCB and CBCID Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.No.7403 of 2018 dated 02.01.2019.

2. The case of the prosecution is that the petitioner along with the first accused had approached the de-facto complainant who is in the trade of leasing out construction equipments. The first accused namely Sambasiva Rao along with this accused had taken out the construction equipments on monthly rent and also agreed to pay the monthly rent for the equipments entrusted to the accused. Further alleging that the de-facto complainant believing words of the accused had supplied construction

equipments to the value of Rs.2,31,34,950/-. Construction equipments were supplied to the destination mentioned by the first accused. The rent has been paid till may 2017. Thereafter, the first accused defaulted paying monthly rent as agreed. On verification the informant came to know with this accused purchased the construction equipments from the first accused for a cheaper prices. Basing on complaint the above stated case came to be registered for the offences under Sections 406, 420 of IPC.

3. The learned counsel for the petitioner would submit that the petitioner was arrested and remanded to judicial custody on 02.11.2018 and continue to be in custody for more than 80 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 and CBCID Metropolitan Magistrate, Egmore, Chennai. Unfortunately, the learned trial Judge had imposed the following conditions while granting statutory bail in CrI.M.P No.7403 of 2018 dated 02.01.2019:-

"(i) The petitioner shall deposit a sum of Rs.25 Lakhs to the credit of Crime No.454 of 2018.

(ii) On compliance of the 1st condition the accused is ordered to be released statutory bail on his executing a bond for Rs.10,000/- on his own along tow sureties for the like sum 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 conditions imposed by the Court of the learned CCB and CBCID Metropolitan Magistrate, Egmore, Chennai.

4. The learned Additional Public Prosecutor would submit that the petitioner involved in huge and grave crime. According to the prosecution, the petitioner/A-2 knowing fully well that the first accused is not owner of the property, had purchased construction equipments for a cheaper price. Further, when the de-facto complainant was induced to supply the construction equipments this petitioner/A-2 was also present along with the first accused. 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 02.11.2018. 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 learned CCB and CBCID Metropolitan Magistrate, Egmore, Chennai granted bail and released the petitioner on condition that the petitioner shall deposit Rs.25,00,000/- to the credit of Cr.No.454 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 learned CCB and CBCID Metropolitan Magistrate, Egmore, Chennai. Accordingly, the condition 3(i) of the order dated 02.01.2019 on the file of the Court of the learned CCB and CBCID Metropolitan Magistrate, Egmore, Chennai stands deleted. The other conditions shall remain intact.

8. This Criminal Original Petition is ordered accordingly.

Sd/-
Assistant Registrar(CS VIII)

//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
EDF-II, Team-IX-A, Chennai.

+1cc to Mr.Durai Kannan, Advocate, S.R.No.4508

CRL.O.P.No.1369 of 2019

PP(CO)
GSP(23/01/2019)