

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Sixteenth day of October Two Thousand Nineteen

PRESENT

The Hon'ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL REVISION CASE NO.1084 of 2019

B.PADMAJ BOMMISHETTY

[PETITIONER / ACCUSED]

Vs

STATE BY

[RESPONDENT]

INSPECTOR OF POLICE,
K4, ANNA NAGAR POLICE STATION,
CHENNAI.

CRIME NO.313 OF 2019

Petition praying that in the circumstances stated therein the High Court will be pleased to set aside the order passed by the Learned V Metropolitan Magistrate, Egmore, Chennai in CrI.MP.NO.11510 of 2019 dated 03/10/2019 and enlarge the petitioners on bail, in the case pending investigation in Crime No.313 of 2019 on the file of the Respondent Police as the investigation was not completed within the mandatory period of 60 days as per Section 167(2) (ii) of Cr.P.C

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S.R.RAFI BABU, Advocate for the petitioner and of MR.M.MOHAMED RIYAZ, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

- 1.The petitioner is an accused in Crime No.313 of 2019, registered for the offence under Sections 406, 420 of IPC. The petitioner was arrested on 22.07.2019 and remanded to judicial custody on 22.07.2019. Since the charge sheet was not filed despite the petitioner being in judicial custody for more than 60 days, he had filed the bail petition under Section 167(2) of Cr.P.C, before the Judicial Magistrate, Egmore, seeking mandatory bail.
- 2.The Respondent had filed a counter stating that the petitioner had earlier approached the Hon'ble Sessions Court, Chennai and filed an application for bail in CrI.MP.No.17927/2019 and that Sessions Court, Chennai had granted bail on 09.09.2019 with a condition to deposit of Rs.1Lakh. It was further stated that the petitioner had not complied with the condition of paying Rs.1 Lakh, and having been granted bail on merits with the condition, he was not entitled to statutory bail and this petition is also not maintainable.

3.The learned Magistrate had dismissed the bail petition stating that since the petition had been granted conditional bail earlier and that the condition being not complied with, the petition filed under Section 167(2) of Cr.P.C is not maintainable. Against which the present revision is filed.

4.The learned counsel for the petitioner would submit that even in cases, where bail was granted by imposing certain conditions and if the accused is unable to come out of the bail in view of the non-compliance of the condition and in the meantime if the investigation is not completed and final report is not filed within the statutory period, the petitioner can independently invoke the provisions of Section 167(2) of the Code of Criminal Procedure and seek for Statutory Bail and he is entitled for grant of bail. In support of his contention, the learned counsel for the petitioner would rely on the judgements of this Court reported in 2019(1) LW(Crl) 387 [Umadevi Vs. State] (supra) wherein, in paragraph No.17, this Court has held hereunder:-

" 17.Insofar as the first issue is concerned, even though the petitioner was granted bail, by considering the merits of the case and by imposing certain condition, the same was not able to be complied with by the petitioner and as a result of the same the petitioner was not able to come out on bail. The same will not stand in the way of the petitioner to file a fresh bail petition u/s.167(2) of Cr.P.C, once the statutory period expires and no final report is filed by the respondent police. The earlier order has worked itself out and the petitioner is now armed with a statutory right to seek bail as a matter of right. The accused person should be released on bail if she is prepared to and does furnish the bail which has been termed by judicial pronouncements to be " compulsive bail" and such bail would be deemed to be a bail under chapter XXXIII. Therefore, the petitioner has every right to invoke the provisions of Section 167(2) of the Code of Criminal Procedure, and seek bail for Statutory Bail independently."

5.The learned Additional Public Prosecutor would submit that the trial Court finding that earlier bail was granted by imposing certain conditions and in view of the non-compliance of the condition had held that the petition filed under Section 167(2) of Cr.P.C is not maintainable. However, he would submit that 60 days have lapsed after remand of the petitioner and till date charge sheet has not been filed.

6.Taking into consideration the facts and the submissions made by the learned counsel and taking into consideration that the petitioner is in custody from 22.07.2019, this Court is inclined to grant bail to the petitioner.

7. In view of the same the order dated 03.10.2019, passed by the V Metropolitan Magistrate, Egmore in CrI.M.P.No.11510/2019, is set aside. Accordingly, this Criminal revision petition is allowed and the petitioner is ordered to be released on bail on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only), with two sureties, each for a like sum to the satisfaction of the learned V Metropolitan Magistrate, Egmore and on further conditions that:

[a] The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

[b] the petitioner shall report before the respondent police daily at 10.30 am for a period of two weeks and thereafter as and when required.

[c] the petitioner shall not tamper with evidence or witness either during investigation or trial.

[d] the petitioner shall not abscond either during investigation or trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

[f] If the accused thereafter abscond, a fresh FIR can be registered under Section 229-A IPC.

-sd/-
16/10/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE METROPOLITAN MAGISTRATE NO.V,
EGMORE, CHENNAI.

2 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
K4, ANNA NAGAR POLICE STATION,
CHENNAI.

5 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI,
CHENNAI.

+1C.C. to M/S.R.RAFI BABU Advocate on payment of necessary
charges SR NO.21196

Order

in
CRL RC.1084/2019

Date :16/10/2019

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

MK:16/10/2019

सत्यमेव जयते

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