



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Fifth day of August Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice P.RAJAMANICKAM

CRL OP(MD) No.10962 of 2019

JOSEPH VEDARAJ

... PETITIONER / PETITIONER

Vs

THE INSPECTOR OF POLICE
MARTHANDAM POLICE STATION,
KANYAKUMARI DISTRICT
CRIME NO.269/2019

... RESPONDENT / COMPLAINANT

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Modify the condition imposed by the Principal Session Judge, Kanyakumri District at Nagercoil in Crl. M.P. No. 2939 of 2019 dated 22/07/2019 to deposit a Sum of Rs. 1,00,000/- (Rupees one Lakh only) before the concerned Magistrate within 15 days.

ORDER: This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.B.CHRISTOPHER, Advocate for the petitioner and of Mrs.M.ANANTHA DEVI Govt. Advocate (Crl. Side) for the respondent, the court made the following order:-

This petition has been filed by the petitioner/accused seeking to modify the condition which was imposed by the Principal Sessions Judge, Kanyakumari District, at Nagercoil in Crl.M.P.No.2939 of 2019 dated 22.07.2019.

2.Heard both sides.

3.The learned counsel appearing for the petitioner has submitted that the petitioner had entered into a sale agreement with one Rapheal with regard to sell his property and in pursuance of the said agreement the said Rapheal had transferred a sum of Rs.1,00,000/- to the account of the petitioner on 14.01.2019. He further submitted that the defacto complainant namely Stalin Devakumar is in no way connected with the said transaction but, he gave a false complaint stating that he entered into a sale agreement when the petitioner with regard to purchase 2.5 acres of land which



belonged to the petitioner for Rs.37,50,000/- dated 27.12.2018 and in pursuance of the said agreement, he has agreed to pay a sum of Rs.1,00,000/- as advance. Since he is not having money and he made a request to his uncle Rapheal and the said Rapheal had transferred a sum of Rs.1,00,000/- to the account of the petitioner. He further submitted that based on the said complaint, the respondent has registered an FIR in Crime No.269 of 2019 against the petitioner herein under Sections 406 and 420 of IPC. He further submitted that the petitioner has filed anticipatory bail application in Crl.M.P.No.2939 of 2019 on the file of the Principal Sessions Judge, Kanyakumari, at Nagercoil and the learned Principal Sessions Judge by the order dated 22.07.2019 has granted anticipatory bail by imposing certain conditions and one such condition is that the petitioner has to deposit a sum of Rs.1,00,000/- before the concerned Magistrate. He further submitted that since there is no transaction between the defacto complainant and the petitioner, the petitioner is not liable to pay any amount to the defacto complainant. He further submitted that the aforesaid condition is onerous one and therefore, he prayed to modify the said condition.

4. In support of the aforesaid contention, the learned counsel appearing for the petitioner has relied upon the following issuance of this Court:

- (i) Sagayam @ Devasagayam Vs. State reported in (2017) 3 MLJ (Crl) 134
- (ii) Arivudainambi Pandian Vs. The Inspector of Police, Thattarmadam Police Station, Tuticorin District reported in 2019 (2) TLNJ 31 (Criminal).

5. Per contra, the learned Government Advocate (Crl. Side) has submitted that the petitioner entered into a sale agreement with the defacto complainant to sell his 21.5 acres of land for Rs.37,50,000/- on 27.12.2018 and demanded to pay a sum of Rs.5,00,000/- as advance but the defacto complainant has agreed to pay a sum of Rs.1,00,000/- as advance and at that time since the defacto complainant was not having sufficient fund, he made a request with his uncle Rapheal, who is residing at Thrissur in Kerala to pay a sum of Rs.1,00,000/- directly to the account of the petitioner and in pursuance of the said request the said Rapheal has transferred the said amount to the account of the petitioner and thereafter, the petitioner has insisted the defacto complainant to pay a sum of Rs.10,00,000 as additional advance and hence also demanded a sum of Rs.20,000/- has provided for cent and hence, the defacto complainant cancelled the agreement made a request to return the advance amount and for that the petitioner has stated that he returned the said amount within one or two days thereafter he did not pay the said amount and hence, the defacto complainant lodged a complaint against the petitioner and FIR has been registered under the aforesaid provisions of law. He further submitted that there is



no agreement between the petitioner and the said Rapheal and only at the request of the defacto complainant, the said Rapheal has transferred a sum of Rs.1,00,000/- to the account of the petitioner and after receiving the said amount he has not returned the said amount. Considering the aforesaid facts, the Sessions Court has directed the petitioner to deposit the aforesaid amount to the credit of the aforesaid crime number before the concerned Magistrate and also granted anticipatory bail, but, now the petitioner has trying to avoid to pay the said amount and hence, he strongly opposed this petition.

6. The learned counsel appearing for the petitioner has admitted the fact that one Rapheal has transferred a sum of Rs.1,00,000/- to the account of the petitioner, but he contended that the petitioner had entered into separate sale agreement with Rapheal and in pursuance of the said agreement the said Rapheal has directly transferred the amount of Rs.1,00,000/- to the petitioner, he has not produced any material to substantiate his contention that the petitioner had entered into sale agreement with Rapheal.

7. Taking into consideration of the aforesaid facts, the Sessions Court while granting anticipatory bail to the petitioner has directed the petitioner to deposit the aforesaid amount to the credit of crime number before the concerned Court the petitioner not to pay the amount either Rapheal or to the defacto complainant. Therefore, this Court is of the view that the aforesaid condition is neither onerous one nor phenal.

8. In Sagayam @ Devasagayam Vs. State cited supra, this Court in para 33 has observed as follows;

"While fixing the bail amount the Court must take into account the circumstances of the case. But in any case, it should not be excessive. This provision has been judicially interpreted by the Courts in various cases. The bail bond amount should 'not be onerous' bail condition should not be a 'harsh condition'

9. There is no quarrel with regard to the aforesaid question of law. In this case admittedly the petitioner has received a sum of Rs.1,00,000/- from Rapheal and according to the prosecution, the said Rapheal has transferred the said amount only at the instance of the defacto complainant. Therefore, taking into consideration of the aforesaid facts, the sessions Court has directed the petitioner to deposit the said amount to the credit of crime number. Therefore this Court is of the view that the aforesaid condition is not the onerous one. Therefore, the aforesaid decision will not help the petitioner.



10. In Arivudainambi Pandian Vs. State cited supra, observed as follows;

"The owner of the vehicle has filed an application under section 451 of Cr.P.C before the learned Judicial Magistrate to return the said vehicle pending trial. The learned Judicial Magistrate while allowing the said application has directed the petitioner therein to produce a sum of Rs.10,00,000/- before the Court as against the said condition, the petitioner therein has filed criminal revision before this Court. This Court is relying upon the decision in Sagayam @ Devasagayam Vs. The Inspector of Police, G-7, Chetpet Police Station, Chennai, cited supra has modified the said condition to the effect that the petitioner therein shall produce a sum of Rs.25,000/- to the credit of crime No.71 of 2019 on the file of the learned Judicial Magistrate, Sattankulam."

11. In this case, the facts are totally different. In this case, the petitioner has filed anticipatory bail application before the Sessions Court and the Sessions Court after taking into consideration of the relevant submission has directed the petitioner to deposit the amount of Rs.1,00,000/- which was said to have been received by him from Rapheal to the credit of crime No.269 of 2019. Therefore, the aforesaid decision will not apply the facts of this case.

12. For the aforesaid reasons, this Court does not find any merit in this Petition. Hence, this criminal original petition is dismissed.

13. After passing the oral order, the learned counsel appearing for the petitioner has submitted that the petitioner is ready to deposit the amount of Rs.1,00,000/- as directed by the Sessions Court and he requested to grant ten days time for complying with the said condition.

14. Considering the said submission, the time is extended within a period of ten days from the date of receipt of a copy of this order for complying with the said condition imposed by the Sessions Court.

sd/-
05/08/2019

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Sub-Assistant Registrar (C.S-II)
Madurai Bench of Madras High Court,
Madurai - 625 023.



1. THE PRINCIPAL SESSIONS JUDGE,
KANYAKUMARI DISTRICT AT NAGERCOIL.

2. THE INSPECTOR OF POLICE
MARTHANDAM POLICE STATION,
KANYAKUMARI DISTRICT.

3. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to Mr.B.CHRISTOPHER Advocate SR.No.79770

ORDER

IN

CRL OP(MD) No.10962 of 2019

Date :05/08/2019

vsg

TK/VR/SAR.2/21.08.2019/5P/5C