

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2020

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.Nos.5991 and 6461 of 2020

Crl.O.P No.5991 of 2020

A.Mohideen

S/o. Abdul Khader

.. Petitioner/Accused

Vs.

The Senior Intelligence Officer
DGGI, Chennai Zonal Unit,
C-3, C Wing, II Floor, Raj Bhawan,
Besant nagar, Chennai-90

..Respondent/Complainant

Crl.O.P No.6461 of 2020

J.Vinoth Kumar, Male aged 35 years

S/o.Late Shri Jawari Lal

No.74 Hunters Road,

Choolai High Road,

Choolai, Chennai-600 012.

.. Petitioner/Accused

Vs.

The Senior Intelligence Officer
DGGI, Chennai Zonal Unit,
No.6, Tower II, 5th Floor,
BSNL Building, Greams Road
Chennai-6.

.. Respondent/Complainant

Common Prayer: Criminal Original Petition filed under Section 439(1) of Criminal Procedure Code, against the statutory bail order dated 19.02.2020 passed in Crl.M.P Nos.37 and 36 of 2020 in R.R.42 and 41 of 2019 respectively by the Additional Chief Metropolitan Magistrate, EO-I, Egmore, Chennai and partially modified by the Principal Sessions Judge, Chennai by an order dated 28.02.2020 in Crl.M.P Nos.4576 and 4575 of 2020.

For Petitioners

: Mr.Durai Kannan

For Respondents

: Mr.N.P.Kumar

Special Public Prosecutor

C O M M O N O R D E R
(The case has been heard through video conference)

These petitions have been filed seeking to modify the conditions imposed in the statutory bail orders dated 19.02.2020 passed in Crl.M.P Nos.37 and 36 of 2020 in R.R.42 and 41 of 2019 respectively by the Additional Chief Metropolitan Magistrate, EO-I, Egmore and which have been later partially modified by the Principal Sessions Judge, Chennai by an order dated 28.02.2020 made in Crl.M.P Nos.4576 and 4575 of 2020.

2. The learned counsel for the petitioner would submit that the petitioners were arrested in R.R No.42 of 2019 in F.No.INV/DGGI/CZU/GST/110/2019 for the offence under Section 132(1)(b) & (c) and 132(5) of the CGST Act 2017 and in R.R No.41 of 2019 in F.No.INV/DGGI/CZU/GST/110/2019 respectively for the offence under Section 132(1)(b) & (c) and 132(5) of the CGST Act 2017. The learned counsel for the petitioner submitted that the petitioners were arrested on 21.12.2019 and since final report was not filed by the respondent police they applied for statutory bail and the learned Additional Chief Metropolitan Magistrate, EO-I, Egmore, Chennai in Crl.M.P Nos.36 and 37 of 2020 was pleased to grant statutory bail to the petitioners on 19.02.2020 with condition that the petitioners shall deposit a cash surety of Rs.5,00,000/- in deposit of Additional Chief Metropolitan Magistrate, (E.O I) Egmore, Chennai and execute a bond for a sum of Rs.50,000/- with two sureties for a like sum in he respective cases. Further, the learned Judge has also imposed a condition that the petitioners shall deposit title deeds of immovable properties which stands in the petitioner's name worth not less than Rs.20 lakhs before the Court. Since the condition imposed to deposit Rs.5,00,000/- was onerous and unreasonable, the petitioners were unable to deposit the amount and come out on bail, despite statutory bail being granted on 19.02.2020. Further, since the petitioners did not possess any property in their names, the petitioners filed a petition seeking for modification of condition before the Court of Principal Sessions Judge in Crl.M.P No.4576 and 4575 of 2020 and the learned Sessions Judge, by an order dated 28.02.2020 partly modified the condition that the petitioners shall deposit cash of Rs.5,00,000/- and the petitioners were also directed to deposit title deed of any other person worth about Rs.20lakh.

3. The learned counsel for the petitioner would submit that even after modification, the petitioners were unable to comply with the condition and they are languishing in jail from 21.12.2019 and despite the statutory bail granted on 19.02.2020 they were unable to come out. The Court below have imposed a condition which cannot be complied with. The learned counsel

for the petitioner would further submit that the indefeasible right given under Section 167(2) cannot be extinguished by imposing any onerous conditions. The condition directing to deposit cash had indirectly defeated the indefeasible right of the petitioners and it had prevented the petitioners from coming out on bail. The petitioners are permanent resident of Chennai and the continued detention of the petitioners amounts to a pre trial conviction. He would further submit that taking into consideration the above and the Covid-19 pandemic, prays for modification of the condition. In support of his contention, the learned counsel for the petitioner relied on the decision of this Court reported in 2019-1-LW(Crl.)387 in the case of Umadevi V. State and referred to paragraph 18 of the said judgment.

4. Mr.N.P.Kumar, the learned Special Public Prosecutor appearing for DRI Cases filed counter and vehemently opposed to modify the condition stating that the petitioners have floated fake companies and filed E-way bill in the name of one Amar jain and his wife name to the tune of Rs.8.77 Crores and 15.16crores, approximately on the invoice value of Rs.57.99crores and 90.84crores. It has also been admitted by the petitioners in voluntarily statement dated 20.12.2019 that they have also produced fake Aadhar cards before the authorities and the total amount cheated by the petitioners along with other accused work out to above Rs.122 crores. He would further submit that the petitioners have offered to deposit Rs.5,00,000/- before the Sessions Court.

5. At this juncture, the learned counsel for the petitioner would submit that though at that relevant time before the Principal Sessions Court, the petitioners had made an offer to deposit the cash security, due to the present situation of Covid-19, the family members are unable to raise funds and thereby they are unable to deposit the amount. He would further submit that in lieu of not depositing the cash sureties, the petitioners in alternative are prepared to furnish two sureties each, who will be able to deposit title deeds of immovable properties for each of the petitioners worth to the value of Rs.20lakhs. The learned counsel would pray that the petitioners may be permitted to be released on their own bond and thereafter, a time may be fixed for furnishing the sureties before the Court, after the lockdown is lifted and the normal functioning of the Courts resumes.

6. Heard both sides and perused the materials on record.

7. In the decision of this Court reported in 2019-1-LW(Crl.) 387 in the case of Umadevi V. State this Court in paragraph 18 of the order held that :-

"18. Insofar the second issue is concerned,

this Court concurs with the view expressed by this Court in its judgment in P.L.Jayaraj vs. State referred supra, where in this Court has categorically held that the indefeasible right given u/s.167(2) cannot be extinguished by imposing any onerous conditions. In this case even though the petitioner was granted bail, she was not able to come out on bail since she was not able to comply with the condition directing her to make a cash deposit of Rs.20lakhs. If the very same condition of cash security is to be imposed on the petitioner while considering the Statutory Bail, it will indirectly defeat the indefeasible right of the petitioner and will prevent the petitioner from coming out on bail. The Court below failed to appreciate this fundamental aspect while dismissing the bail petition filed by the petitioner. It is seen from records that the petitioner is a permanent resident of Coimbatore, and all the properties belonging to the petitioner and her family is in and around Coimbatore and this Court is convinced that the petitioner cannot abscond, if the bail is granted by imposing reasonable conditions."

8. In this case, the petitioners have been arrested on 21.12.2019 and since, the final report was not filed by the respondent they have been granted bail on 19.02.2020. Despite the bail order being passed on 19.02.2020, the petitioners are unable to come out since they are unable to comply with the condition of payment of cash. Though before the Principal Sessions Judge, they have offered to deposit cash of Rs.5lakh, it is the contention of the petitioners that due to Covid-19 pandemic, the family members are unable to raise funds and deposit the amount, further in lieu of non payment of cash, a submission has been made by the counsel for the petitioners that two sureties will be able to deposit documents of immovable properties each worth Rs.20lakhs for each of the petitioners within a time frame fixed by this Court.

9. In view of the above, taking into consideration the facts and circumstances of the case and the submissions made by the learned counsel for the petitioner, the condition imposed by the Additional Chief Metropolitan Magistrate, EO-I, Egmore, Chennai in CrI.MP.Nos.4576 and 4575 of 2020 dated 19.02.2020 directing each of the petitioners to deposit cash of Rs.5lakh is hereby set aside.

(a) Accordingly, the petitioners are ordered to be released on bail on executing their own bond for a sum of Rs.50,000/- (Rupees fifty thousand only) each, before the Superintendent of

the concerned prison, in which the petitioner has been confined and thereafter on their release;

(b) each of the petitioners shall furnish two sureties who shall deposit title deeds of immovable properties each to the value of Rs.20lakhs before the Additional Chief Metropolitan Magistrate (EO-I), Egmore, Chennai within four weeks from the lifting of the lock down or the commencement of the Court's normal functioning, failing which the bail granted by this Court shall stand dismissed automatically;

(c) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(d) the petitioner shall report before the respondent police daily at 10.30a.m., until further orders.

10. With the above directions, this Criminal Original Petitions are ordered.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Additional Chief Metropolitan Magistrate,
EO-I, Egmore, Chennai

2.The Principal Sessions Judge, Chennai

3. The Superintendent, Central Prison, Chennai.

4 The Senior Intelligence Officer
DGGI, Chennai Zonal Unit,
No.6, Tower II, 5th Floor,
BSNL Building, Greams Road, Chennai-6.

5 The Senior Intelligence Officer
DGGI, Chennai Zonal Unit,
C-3, C Wing, II Floor, Raj Bhawan,
Besant nagar, Chennai-90.

5. The Public Prosecutor
High Court of Madras.

CrI.O.P.Nos.5991 & 6461 of 2020

CA(CO)
SP(20/07/2020)