

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.9882 of 2020

Balaji, S/o.Rajendran,
No.104, Mannarkudi Street,
Chidambaram.

... Petitioner

-Vs-

The Inspector of Police,
DCB Police Station,
Cuddalore.
(Crime No.32/2019)

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to modify the conditions imposed by the learned Principal Sessions Judge, Cuddalore, dated 26.06.2020, in Cr.No.32/2019 on the file of the Inspector of Police, DCB Police Station, Cuddalore.

For Petitioner : Mr.T.Saravanan

For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

O R D E R

The petitioner has filed this petition to modify the conditions imposed by the learned Principal Sessions Judge, Cuddalore, in Crl.M.P.No.3839 of 2020 dated 26.06.2020.

2. The learned counsel for the petitioner would submit that the petitioner was arrested and remanded to judicial custody on 24.12.2019. The petitioner filed a bail petition before this Court in Crl.O.P.No.1620 of 2020 and this Court, vide its order, dated 29.01.2020 granted interim bail with a condition to deposit a sum of Rs.10,00,000/-. As the petitioner could not deposit the amount, he surrendered before the Judicial Magistrate on 27.02.2020 and he was remanded to the judicial custody. However, the respondent Police have not started the investigation and filed final report even after expiry of the

mandatory period of 90 days. Hence, statutory bail was granted under Section 167(2) Cr.P.C by the learned Principal sessions Judge, Cuddalore in Crl.M.P.No.3839, dated 26.06.2020, but once again imposed a condition to deposit a sum of Rs.10,00,000/-.

3. The learned counsel for the petitioner further submitted that the petitioner is in judicial custody only because he could not deposit the the said amount. Hence, the petitioner filed this petition to modify the condition, viz., "(b) the petitioner shall deposit a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) before the concerned Magistrate Court within one month from the date of lifting of the lockdown and the commencement of the Court's normal functioning, failing which, the bail granted by this Court shall stand dismissed automatically."

4. The learned Additional Public Prosecutor would submit that the petitioner is involved in huge and grave crime. Therefore, he 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 24.12.2019. Subsequently, this Court had granted bail in Crl.O.P.No.1620 of 2020 by order dated 29.01.2020 with a condition to deposit Rs.10,00,000/-. As the petitioner could not deposit the same, he was again remanded to the judicial custody. However, the respondent Police have not laid the charge sheet in this case even after expiry of the mandatory period, and hence, he is entitled for statutory bail under Section 167(2) Cr.P.C. The Principal sessions Judge, Cuddalore has granted statutory bail and released the petitioner, on a condition that he shall deposit Rs.10,00,000/- before the concerned Magistrate Court. 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 imposed by the learned Principal sessions Judge, Cuddalore in CrI.M.P.No.3839, dated 26.06.2020, viz., “(b) the petitioner shall deposit a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) before the concerned Magistrate Court

within one month from the date of lifting of the lockdown and the commencement of the Court's normal functioning, failing which, the bail granted by this Court shall stand dismissed automatically". Accordingly, the above condition stands deleted and the other conditions shall remain intact.

8. This Criminal Original Petition is ordered accordingly.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

dna
To

1. The Principal Sessions Court,
Cuddalore.
2. The Judicial Magistrate No.II,
Chidambaram
3. The Inspector of Police,
DCB Police Station,
Cuddalore.
Crime No.32 of 2019.
4. The Public Prosecutor,
High Court, Madras.
- 5.The Chief Judicial Magistrate,
Chidambaram.

सत्यमेव जयते

Cr1.O.P.No.9882 of 2020

PP(CO)
RMP(23/07/2020)

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