

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2020

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THE HONOURABLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P.No.9979 of 2020

1. Balachander
2. Govindhasami

Petitioners

/versus/

State Represented by
The Inspector of Police,
PEW Krishnagiri Police Station,
Krishnagiri District.
(Crime No.873 of 2019)

Respondent

Prayer: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to modify the condition that the petitioners to deposit a sum of Rs.40,000/- each (Total Rs.80,000/-) before the Judicial Magistrate -II, Krishnagiri imposed by learned Principal District and Sessions Judge at Krishnagiri in Crl.M.P.No.1413 of 2020 dated 15.06.2020 to they have to furnish two sureties bond for a sum of Rs.10,000/-each to the satisfaction of the Judicial Magistrate No.II-Krishnagiri.

For Petitioner : Mr.R.Sasi Kumar
For Respondent : Mr.K.Prabhakar,
Addl Public Prosecutor

ORDER

(The case has been heard through video conference)

This petition has been filed seeking to modify the condition imposed by the learned Principal District and Sessions Judge at Krishnagiri in Crl.M.P.No.1413 of 2020 dated 15.06.2020 directing the petitioners to deposit a sum of Rs.40,000/- each (Total Rs.80,000/-) before the Judicial Magistrate-II, Krishnagiri and to furnish sureties bond for a sum of Rs.10,000/-each to the satisfaction of the Judicial Magistrate No.II-Krishnagiri.

2. The learned counsel for the petitioner would submit that the petitioners were remanded to Judicial Custody in Crime No.873 of 2019 registered by the respondent for the offences under Sections 4(1)(aaa), 4(1-A) of TNP Act and Sections 468, 471, 420 of IPC r/w Sections 6 and 7 of TNRS Rules 2000 on 14.11.2019. Since the final report was not filed even after completion of 90 days, the petitioners filed application for bail before the Magistrate Court No.II, Krishnagiri and the learned Magistrate dismissed the bail application. Since the matter regarding issue of default bail pending Covid-19 was pending in SLP before the

Hon'ble Apex Court. **Later the petitioners moved the bail application in Crl.M.P.No.1413 of 2020 before the Hon'ble Principal Sessions Judge, Krishnagiri and the learned Judge was pleased to grant bail to the petitioners on 15.06.2020**, with a condition to deposit a sum of Rs.40,000/- each (Total Rs.80,000/-) before the Judicial Magistrate II, Krishnagiri in the concerned Crime Number and produce the receipt before Superintendent of concerned prison/Sub jail and thereafter the petitioners were ordered to be released on interim bail till 06.07.2020 on their executing a own bond for a sum of Rs.10,000/- each to the satisfaction of the Judicial Magistrate II, Krishnagiri. Thereafter, the petitioners were directed to appear before the learned Judicial Magistrate II, Krishnagiri on 07.07.2020 by furnishing two sureties for a sum of Rs.10,000/- each to the satisfaction of Judicial Magistrate II, Krishnagiri. The learned counsel for the petitioners would submit that the petitioners are in custody from 14.11.2019, and thereby the family members are also unable to raise such huge amounts for making cash deposits. In this case, though the petitioners had the benefit of indefeasible right under Section 167(2) for mandatory bail due to non-payment of cash deposit they are still languishing in jail. An onerous condition has been imposed by the learned judge, in order to defeat their legal rights. The petitioners are

permanent residents of Tindivanam and they will be able to furnish adequate securities within a time frame fixed by this Court, after coming out on bail. The learned counsel would further submit that this Court following the judgment in **P.L.Jayaraj V. State reported in 2019(1) MWN(Cr.) 31** had set aside the order of imposition of cash sureties as onerous in a later judgment reported in **2019-1-LW(Crl.) 387 in Umadevi v. State** and thereby would seek for modification of condition to deposit cash of Rs.40,000/- each.

3. The learned Additional Public Prosecutor would submit that though the final report has not been filed, it is the case were the petitioners have transported huge quantity of rectified spirits, he would further submit that the first petitioner has got three previous cases.

4. At this juncture, the learned counsel for the petitioner would submit that though the petitioners have got an indefeasible right under Section 167(2) Cr.PC., and the order directing to deposit cash of Rs.40,000/- each is illegal, the petitioners without prejudice to their contention are prepared to deposit Rs.10,000/- each to any charitable organization or association.

5. 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.”

6. Taking into consideration the facts and circumstances of the case and the submissions made by the learned counsel for the petitioner, this Court is inclined to set aside the condition imposed by the learned Principal Sessions Judge, Krishnagiri in Crl.MP.No.1413 of 2020 dated 15.06.2020 directing the petitioners to deposit a sum of Rs.40,000/- each (total Rs.80,000/-) before the Judicial Magistrate II, Krishnagiri.

i)in the alternative the petitioners are directed to deposit a sum of Rs.10,000/- each to the Madras High Court Advocates Clerk Association, High Court Madras in the Indian Bank High Court Branch, bearing **Account No.484077244, IFSC No.IDIB000M157 Indian Bank, High Court branch** and on such deposit and production of proof, the petitioners are ordered to be released on bail on executing their own bond for a sum of Rs.10,000/- (Rupees ten thousand only), before the Superintendent of the concerned prison, in which the petitioners have been confined.

7. Except the above modification, the other conditions imposed by the learned Principal Sessions Judge, Krishnagiri in Crl.MP.No.1413 of 2020 dated 15.06.2020, remains unaltered.

8. With the above modification, this Criminal Original Petition is ordered accordingly.

03.07.2020

To

1. The Judicial Magistrate II, Krishnagiri.
2. The Sub Jail, Krishnagiri.
3. The Inspector of Police,
PEW Krishnagiri Police Station, Krishnagiri District.
4. The Public Prosecutor
High Court of Madras.



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A.D. JAGADISH CHANDIRA, J

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