

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2020

CORAM:

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

Crl.O.P.No.10323 of 2020

D.A.Silambharasu, M/A 35 Years,
S/o. Dhanasekaran,
No. 1, B.R. Thottam,
Broadway,
Chennai - 600 001.

... Petitioner

-Vs-

State rep. by
The Senior Intelligence Officer,
DGGI, Chennai Zonal Unit,
No.16, Greams Road, BSNL building,
Tower-II, 5th Floor,
Chennai- 600 006.
(RR.No. 9 of 2020)

... Respondent

Prayer: Criminal Original petition filed under Section 439 (1)(b) of Code of Criminal Procedure praying to modify the conditional order imposed in E-Bail M.P.No.696 of 2020, dated 01.07.2020 on the file of the Additional Chief Metropolitan Magistrate (E.O.II), Egmore in R.R.No. 09 of 2020

For Petitioner	: Mr. D. Gopi Krishnan
For Respondent	: Mr.N.P.Kumar Special Public Prosecutor

ORDER

(The case has been heard through video conference)

This petition has been filed seeking to modify the condition imposed in E.Bail M.P.No.696 of 2020 dated 01.07.2020 passed in R.R.No. 09 of 2020 by the Additional Chief Metropolitan Magistrate, EO-II, Egmore.

2. The learned counsel for the petitioner would submit that the petitioner was arrested in R.R No.9 of 2020 for the offences under Sections 132(1) r/w 132(5) of the CGST Act 2017. The learned counsel for the petitioner submitted that the petitioner was arrested on 09.03.2020 and since final report was not filed by the respondent he applied for default bail and the learned Additional Chief Metropolitan Magistrate, EO-II, Egmore, Chennai in E.Bail M.P No.696 of 2020 was pleased to grant default bail to the petitioner on 01.07.2020 with condition that the petitioner shall deposit Demand Draft for a sum of Rs.4,00,000/- (Rupees Four Lakhs only) drawn in favour of Chief Metropolitan Magistrate, (E.O II) Egmore, Chennai and execute own bond for a sum of Rs.50,000/-. Further, the learned Judge has also imposed a condition that the petitioner shall deposit title deed of immovable property worth not less than Rs.10 lakhs before the Court. Further, the learned Judge directed to

appear before the respondent daily at 10am from 16.07.2020 and shall produce two sureties after lifting of lockdown and on or before 14.08.2020. Sureties have to execute a bond of Rs.50,000/-.

3. The learned counsel for the petitioner would submit that even after modification, the petitioner was unable to comply with the condition and he is languishing in jail from 09.03.2020 and despite the default bail granted on 01.07.2020 he was 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 petitioner and it has prevented the petitioner from coming out on bail. The petitioner is permanent resident of Chennai and the continued detention of the petitioner amounts to a pre trial conviction. He would further pray that taking into consideration the above and the Covid-19 pandemic, the conditions imposed maybe modified. 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 respondent filed counter and vehemently opposed to modify the condition stating that the petitioner has floated 7 fake companies, taken GST registration, filed GST returns, E-way bills and have passed on fraudulent Input Tax Credit to the tune of Rs.6.99 Crores approximately based on the fake invoice value of Rs.38 crores. The petitioner has created the bogus firms based on identity documents of several unsuspecting individuals fetched by one Muralitharan alias Sridhar with the help of his employees he has raised invoices bearing the names of such bogus firms without actual supply of goods thereby causing substantial loss of revenue to the government.

5. At this juncture, the learned counsel for the petitioner would submit that though at that relevant time before the Principal Sessions Court, the petitioner 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 he is unable to deposit the amount. He would further submit that in lieu of not depositing the cash sureties, the petitioner in alternative is prepared to furnish two sureties each, who will be able to deposit title deed of immovable property for the petitioner worth to the value of Rs.10

lakhs each. The learned counsel would pray that the petitioner may be directed to be released on his 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 infeasible 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 infeasible 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 petitioner has been arrested on 09.03.2020 and since, the final report was not filed by the respondent he has been granted bail defaulted on 01.07.2020 with conditions. Despite the bail order being passed on 01.07.2020, the petitioner is unable to come out since he is unable to comply with the condition of payment of cash. It is the contention of the petitioner 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 petitioner that two sureties will be able to deposit documents of immovable property worth Rs.10 lakhs for the petitioner 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 E-Bail M.P.696 of 2020 dated 01.07.2020 directing the petitioner to deposit a sum of Rs.4lakh is hereby set aside.

(a) Accordingly, the petitioner is ordered to be released on bail on executing own bond for a sum of Rs.50,000/- (Rupees fifty thousand only), before the Superintendent of the concerned prison, in which the petitioner has been confined and thereafter on his release;

(b) the petitioner shall furnish two sureties who shall deposit title deed of immovable property value of Rs.10 lakhs before the Additional Chief Metropolitan Magistrate (EO-II), Egmore, Chennai within four weeks from the lifting of the lock down or the commencement of the Court's normal functioning whichever is earlier, 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 daily at 10.30a.m., until further orders.

10. With the above directions, this Criminal Original Petition is ordered.

13.07.2020

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Pns

To

1. The Additional Chief Metropolitan Magistrate (E.O.II),
Egmore
2. The Senior Intelligence Officer,
DGGI, Chennai Zonal Unit,
No.16, Greams Road, BSNL building,
Tower-II, 5th Floor,
Chennai- 600 006.
- 3.The Public Prosecutor,
High Court, Madras.

A.D.JAGADISH CHANDRA.J.,

Pns



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