

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.07.2020

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.MP.No.4527 of 2020 in

Crl.OP.No.10076 of 2020

M.Balamananikandan Petitioner

Vs.

State by:

The Inspector of Police,
Central Crime Branch,
Salem City Police Station,
Salem

(Crime No.8 of 2020) ... Respondent

Prayer :- This Criminal Miscellaneous Petition is filed under Section 482 of Cr.P.C. praying to modify the anticipatory bail condition directing the petitioner to deposit title deed worth of Rs.50,00,000/- passed by this Court in Crl.OP.No.10076 of 2020 dated 03.07.2020.

For Petitioner : Mr.S.Jeyakumar
For Respondent : Mr.S.Karthikeyan,
Additional Public Prosecutor

ORDER

This petition has been filed to modify the anticipatory bail condition directing the petitioner to deposit title deed worth of Rs.50,00,000/- passed by this Court in Crl.OP.No.10076 of 2020 dated 03.07.2020.

2. The learned counsel for the petitioner would submit that the petitioner is arrayed as fourth accused in Cr.No.8 of 2020 registered for the offences under Section 420 read with 506(ii) of IPC. The first accused is the proprietor of Sri Mahalakshmi Jewellers and the second accused is the wife of the first accused. The defacto complainant is none other than the friend of the first accused. The complaint was lodged by the defacto complainant alleging that the first accused had promised the defacto complainant that he will return double the money to the defacto complainant if he invested in gold. Believing the said words, the defacto complainant invested a sum of Rs.1 crore to the first accused at Salem City Police Station on 31.08.2018 to 09.04.2020. On receipt of the

entire money, the defacto complainant was cheated by the accused persons by non returning the said amount. He further submitted that insofar as the petitioner is concerned, he is only the staff who is working in the first accused jewellery shop and the salaried employee and therefore he has nothing to do with the crime as alleged by the prosecution. Therefore, the petitioner moved anticipatory bail petition before this Court and this Court considered the facts and circumstances of the case and granted anticipatory bail to the petitioner on condition that the petitioner shall deposit original title deeds stand in his name or his friend's name or his relative's name not less than value of Rs.50 lakhs along with proper valuation certificate obtained from the authority concerned to the credit of crime No.8 of 2020 by order dated 03.07.2020.

3. He further submitted that the petitioner is being an employee of the first accused as such he never owned any property to the tune of Rs.50 lakhs, and he could not deposit title deed since he is hailing from a very poor family. He further submitted that this Court ought not to have passed any condition while granting anticipatory bail, and it is improper and illegal. In support of his contention, he relied upon the judgment reported in 2017 (1) LW CrI 800 in the case of Sagayam @ Devasagayam Vs. State rep. by The Inspector of Police, G-7 Chetpet Police Station, Chennai.

4. The learned Additional Public Prosecutor submitted that there are totally four accused in which the petitioner is arrayed as A4. He is also one of the employees of the first accused jewellery shop. Further he is also equally responsible for the amount collected by the first accused. Therefore, he vehemently opposed to this petition.

5. Heard Mr.S.Jeyakumar, learned counsel for the petitioner, and Mr.S.Karthikeyan, Additional Public Prosecutor appearing for the respondent.

6. The petitioner is arrayed as fourth accused. There are totally four accused in Crime No.8 of 2020 on the file of the respondent, in which the petitioner is arrayed as A4. According to the prosecution, A1 to A4 have cheated the defacto complainant to the tune of Rs.1 crore. On false promise, they collected money and thereafter failed to return back the said amount. Therefore, this Court while considering the petition for anticipatory bail for the petitioner imposed condition that the petitioner shall deposit title deeds not less than the value of Rs.50 lakhs to the credit of crime No.8 of 2020. Now, the learned counsel for the petitioner would submit that the order passed by this Court is illegal and improper and also relied upon the judgment reported in 2017 (1) LW CrI 800 rendered in the case of Sagayam @ Devasagayam Vs. State rep. by The Inspector of Police, G-7 Chetpet Police Station, Chennai, the relevant portion of which is extracted hereunder:

"19. As already stated even if the cash security is ordered under [Section 445 Cr.P.C.](#), the Court must pay regard to the circumstances of the case and the amount should not be excessive (see [Section 440 Cr.P.C.](#) Also see [State of Mysore vs. H.Venkatarama Kotaiyah](#) (1968 Cr.L.J. 696), [Moti Ram and Others vs. State of Madhya Pradesh](#) [(1978) 4 SCC 47], [Babu Singh and Others vs. The State of U.P.](#) (AIR 1978 SC 527), [Gokul Das vs. The State of Assam](#) (1981 Cr.L.J. 229), [Afsar Khan vs. State of Karnataka](#) (1992 Cr.L.J. 1676), [Bhikhabhai Udesinh Darbar vs. State of Gujarat](#) [(1998) 1 GLR 315], [Parades Patra and Another vs. State of Orissa](#) (1993 II OLR 452), [Sandeep Jain vs. National Capital Territory of Delhi](#) [(2000) 2 SCC 66], [Amarjit Singh vs. State of NCT of Delhi](#) (JT 2002 (1) SC 291), [Sheikh Ayub vs. State of Madhya Pradesh](#) [(2004) 13 SCC 457], [Ramathal and Others vs. Inspector of Police and Another](#) [(2009) 12 SCC 721], [Amaldoss and others vs. The Inspector of Police, Patteeswaram Police Station, Thanjavur District](#) (Cr.L.O.P.(MD) Nos.19196 and 19197 of 2014 dated 5.2.2015) and [Sakthivel and Another vs. The Inspector of Police, Belukurichi Police Station, Namakkal District](#) (Cr.L.O.P.Nos.835 and 836 of 2015 dated 4.2.2015).

20. [Article 3](#) of Universal Declaration of Human Rights, 1948 declares that 'everyone has the right of life, liberty and security of person'. [Article 21](#), Constitution of India, 1950 proclaims that 'no one shall be deprived of his life or personal liberty except by procedure established by law'. And [Article 6](#) of International Covenant on Civil and Political Rights, 1966 declares that no one shall be arbitrarily deprived of his life'.

21. The Hon'ble Supreme Court in [Maneka Gandhi vs. Union of India](#) (AIR 1978 SC 597), held that any law, procedure depriving a person's life or liberty, which is 'unjust', 'unreasonable' and 'inequitable' militates against the Constitutional mandate in [Article 21](#), Constitution of India. It is also in abridgment of human right of accused persons.

22. Thus, directing a poor man to deposit Rs.25,000/- in each case is against [Article 21](#), Constitution of India and [Maneka Gandhi](#) (supra) principle and also the said International Covenants, which have been ratified by our country."

7. In this regard, the Hon'ble Supreme Court of India issued guidelines while considering the anticipatory bail under [Section 438 Cr.P.C.](#) in Special Leave Petition in SLP.No.7281 and 7282 of 2017 dated 29.01.2020, and the Special Leave Petition was referred to the Larger Bench on the following prefix.

"(1) Whether the protection granted to a person under [Section 438 Cr.P.C.](#) should be limited to a fixed period so as to enable the person to surrender before the Trial Court and seek regular bail.

(2) Whether the life of an anticipatory bail should end at the time and stage when the accused is summoned by the court."

While deciding both the issues, the Hon'ble Supreme Court of India issued various guidelines to be followed by the courts below while considering the petition for anticipatory bail under Section 438 Cr.P.C. The Hon'ble Supreme Court of India also held in respect of imposing condition while granting anticipatory bail that the Courts ought to be generally guided by the considerations such nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while assessing whether to grant anticipatory bail, or refusing it. Whether to grant or not is a matter of discretion; equally whether, and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.

8. Considering the above guidelines issued by the Hon'ble Supreme Court of India, while granting anticipatory bail, considering the nature of the allegations, this Court imposed condition that the petitioner shall deposit original title deeds not less than Rs.50 lakhs. Therefore, if at all the petitioner finds any illegality or improper in the order passed by this Court, the petitioner can very well file appeal as against the said order. Therefore, this Court justify the condition imposed on the petitioner while granting anticipatory bail and as such this Court is not inclined to modify the condition imposed by this Court.

9. Accordingly, this Criminal Miscellaneous Petition is dismissed. However, the time for execution of surety is extended for further period of two weeks from the date of receipt of copy of this Order.

-sd/-
30/07/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
NO.III, SALEM

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE
CENTRAL CRIME BRANCH,
SALEM CITY POLICE STATION,
SALEM.

C.C. to M/S. S.JEYAKUMAR Advocate on payment of necessary
charges

Order

in
CRL MP.4527/2020

in
CRL OP.10076/2020

Date :30/07/2020

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RD 04/09/2020



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