



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2020

CORAM:

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

Cr1.O.P.(MD) No.178 of 2020

Muthulingam

... Petitioner

Vs.

The Inspector of Police,
District Crime Branch,
Kanyakumari.
(Crime No.22/2019)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the dismissal order passed in the Miscellaneous Petition in Cr.M.P.No.11957 of 2019 in Cr1.M.P.No.11498 of 2019 on the file of the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District dated 17.12.2019 and set aside the same.

For Petitioner : Mr.B.N.Raja Mohamed

For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

ORDER

This petition has been filed to set aside the order, dated 17.12.2019 in Cr.M.P.No.11957 of 2019 in Cr1.M.P.No.11498 of 2019 passed by the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District.

2. The learned counsel for the petitioner would submit that the offence against the petitioner has not been proved. He would further submit that the petitioner was arrested on 27.11.2019 and that he is in judicial custody for the past 43 days. As per complaint, the petitioner has alleged to have cheated the defacto complainant to the tune of Rs.1,25,000/- (Rupees One Lakh Twenty Five Thousand Only) in the guise of obtaining employment in Malaysia, whereas, the trial Court had granted bail imposing a condition directing the petitioner to deposit a sum of Rs. 5 lakhs to the credit of Crime No.22 of 2000 on the file of the respondent police. Since the conditional order was onerous and unreasonable, the petitioner had filed a petition in Cr1.M.P. No. 11957 of 2019 before



the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District, seeking for modification of condition and the learned Magistrate, by order dated 17.12.2019 had dismissed the petition. Despite the petitioner having been granted bail on 09.12.2019, he is unable to come out on bail due to his poor financial condition.

WEB COPY

3. He would further submit that the **Apex Court has repeatedly held that the term 'any condition' used in the provision should not be regarded as conferring absolute power of law to impose any condition that it chooses to impose and any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail.**

4. In support of his contention the learned counsel for the petitioner also relied on the judgment of the Honourable Apex Court in the case of **Sumit Mehta -vs- State of N.C.T. of Delhi in Crl.A.No.1436 of 2013.**

5. The learned Additional Public Prosecutor appearing for the respondent police would submit that the petitioner, apart from cheating the defacto complainant has also cheated two other victims and thereby, the trial Court has directed the petitioner to deposit a sum of Rs.5 lakhs.

6. In view of the aforesaid submissions, this Court is of the opinion that the condition directing the petitioner to deposit a sum of Rs.5 lakhs is onerous and unreasonable.

7. Taking into consideration of the facts and circumstances of the case, the condition imposed by the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District in Crl.M.P. No.11957 of 2019 in Crl.M.P.No.11498 of 2019, dated 17.12.2019, directing the petitioner to deposit a sum of Rs. 5 lakhs in this case is set aside and all other conditions remain unaltered.

8. With the above observations, the instant Criminal Original Petition is partly allowed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



1. The Judicial Magistrate No.I,
Nagercoil,
Kanyakumari District

2. The Inspector of Police,
District Crime Branch,
Kanyakumari.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court.

+1 CC to M/s.B.N.RAJAMOHAMED, Advocate (SR-664)

Crl.O.P. (MD) No.178 of 2020
08.01.2020

ksa
SDS(09.01.2020) 3P-5C