



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.11215 of 2021
and
Crl.M.P.No.6559 of 2021

Ezhenchezhiyan

Versus

... Petitioner/Accused-2

The State rep.by the Inspector of Police
District Crime Branch
Nagapattinam District.
(Crime No. 2/2020)

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to modify the condition by removing Clause 1 of the orders passed by learned Judicial Magistrate No.I, Nagapattinam imposed in Crl.M.P.No.2593 of 2021 on 17.06.2021 in Crime No.2 of 2020 on the file of the Inspector of Police, District Crime Branch, Nagapattinam District.

For Petitioner : Mr.M.K.Subramanian

For Respondent : Mr.E.Raj Thilak
Counsel for Government of
Tamil Nadu (Crl.Side)

O R D E R

This petition has been filed seeking a direction, to modify the condition by removing Clause 1 of the orders passed by learned Judicial Magistrate No.I, Nagapattinam imposed in Crl.M.P.No.2593 of 2021 on 17.06.2021 in Crime No.2 of 2020 on the file of the Inspector of Police, District Crime Branch, Nagapattinam District.

2. The petitioner, who is A2 in this case, has filed this petition seeking modification of the condition of removing Clause 1 in the statutory bail order dated 17.06.2021 passed by the Judicial Magistrate No.I, Nagapattinam in Crl.M.P.No.2593 of 2021 in Crime No.2 of 2020. The petitioner was arrested and remanded in the case on 12.02.2021 for the offence under Sections 408, 409, 465, 467, 468, 471, 477A and 120B of IPCb.



The petitioner was a Cashier-in-charge in the State Bank of India, Thirukuvalai Branch, Nagapattinam District for the period from 2017 to January 2020, A1 is the Branch Manager and A3 is another Cashier-in-charge. They together misappropriated the funds of the Bank by forging false documents, opening false accounts to get the crop insurance, stealing the crop insurance amount by using fake vouchers and misappropriated the loan amount by using the KYC documents submitted by the customers. Thus, they caused loss to the Bank and general public to the tune of Rs.1,86,00,000/-. The petitioner has used his ID for the misappropriation of Rs.42,72,557/-.

3. The petitioner earlier moved bail before this Court in CrI.O.P.No.6758 of 2021 and this Court granted bail to the petitioner on 16.04.2021 and one of the condition was that the petitioner has to deposit a sum of Rs.30 lakhs. Though that conditional order was passed based on the voluntary submission made by the petitioner to show his bonafide, he could not comply with the said condition. Hence, the petitioner had moved a modification petition in CrI.M.P.No.5391 of 2020 and this Court by the order dated 29.04.2021, dismissed the same. Since the petitioner is unable to execute the said condition, he continued to be in confinement. Finally, the petitioner was granted bail under Section 167 of Cr.P.C. by the Judicial Magistrate No.I, Nagapattinam and imposed the same condition to deposit a sum of Rs.30 lakhs, probably following the earlier order passed by this Court. However, the petitioner is now also not in a position to deposit such amount and he continues to be in incarceration. He further submitted that though the bail was granted on 17.06.2021, he is still in incarceration, which shows that the condition is a onerous one. Solvency certificate of the petitioner was issued by the Tahsildar in Mu.Mu.1214/2020/A1 dated 03.03.2020.

4. The learned Counsel for Government of Tamil Nadu (CrI.Side) has submitted that in this case, the petitioner moved a bail application before this Court in CrI.M.P.No.6758 of 2021 and this Court considering the cheating, misappropriation committed by the petitioner along with the other accused and the nature of the offence, was not inclined to grant bail. At that time, the petitioner to show his bonafide had offered to make deposit a sum of Rs.30 lakhs for getting bail. Thereafter, he filed a modification petition to modify the condition to deposit a sum of Rs.30 lakhs and this Court had dismissed the same. Now, the petitioner has been granted statutory bail, but he is not willing to deposit the sum of Rs.30 lakhs. The said condition of depositing Rs.30 Lakhs is for the purpose of safeguarding the interest of public and bank's money, which were misappropriated and swindled by the petitioner and other accused.



5. In reply, the learned counsel petitioner has submitted that the only requirement for granting statutory bail is that whether the investigation is completed and charge sheet is filed, within a stipulated period. In support of his contention, he relied upon the judgment of the Hon'ble Apex Court in Saravanan Vs. State rep.by its Inspector of Police, reported in (2020) 9 SCC 101, wherein it has been held that while granting statutory bail, imposing a condition to deposit huge sums is not contemplated.

6. Considering the submissions and perused the materials, it is seen that the objection of the learned Government Advocate (Crl.Side) cannot be countenanced. In the earlier bail application of the petitioner, while granting bail, a condition to deposit a sum of Rs.30 lakhs was imposed. But, he was unable to comply with the said condition. Hence, he filed a modification petition and the same was dismissed. Thereafter, he was granted statutory bail only on 17.06.2021, again with the same condition to deposit a sum of Rs.30 lakhs, which would amount to denial of bail, since the condition is onerous. The petitioner is still in incarceration. In view of the same, this Court is inclined to modify the condition.

7. In view of the same, the order dated 17.06.2021 in Crl.M.P.No.2593 of 2021 is modified by setting aside the condition to deposit a sum of Rs.30 lakhs, instead the petitioner shall execute property along with Solvency Certificate Mu.Mu.1214/2020/A1 dated 03.03.2020 issued by Thasildar Kilvelur, Nagapattinam to petitioner Ezhenchezhiyan. The photocopy of Document to be retained and other conditions passed in the said order stands unaltered.

8. With the above directions, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is also closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

dna/ah
To

1.The Judicial Magistrate No.I,
Nagapattinam.



2.The Inspector of Police
District Crime Branch
Nagapattinam District.

3.The Public Prosecutor,
High Court, Madras.

Copy to
The Section Officer
Criminal Section(Records)
High Court, Madras 104.

+1 CC to Mr.M.K.Subramanian, Advocate sr 33673.

CRL.O.P.No.11215 of 2021
and
Crl.M.P.No.6559 of 2021

CA(CO)
SP(16/07/2021)