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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2022

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.6530 of 2022

John Jacob

... Petitioner/A1

Vs.

The State, rep. by its
The Inspector of Police,
CCB-Team XVII Police Station,
Chennai District.
(Crime No.199 of 2021)

... Respondent/Complainant

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to modify the condition that the petitioner shall execute a bond for sum of Rs.10,000/- along with two sureties. One must be relative instead of "2] Among the Sureties one of the Surety shall be the family members of the accused and he/she shall produce and deposit the original property document in Court until further orders", in the order of Crl.M.P.No.37 of 2022 dated 28.02.2022 by the Special Metropolitan Magistrate, Land Grabbing Court No.II [FAC] Egmore at Allikulam, Chennai in Crime No.199 of 2021 on the file of the respondent in the interest of justice.

For Petitioner : Mr.M.Ravikumar

For Respondent : Mr.A.Gokulakrishnan,
Additional Public Prosecutor.

O R D E R

This Criminal Original Petition has been filed to to modify the condition that the petitioner shall execute a bond for sum of Rs.10,000/- along with two sureties. One must be relative instead of "2) Among the Sureties one of the surety shall be the family members of the accused and he/she shall produce and deposit the original property document in Court until further orders", in the order of Crl.M.P.No.37 of 2022 dated 28.02.2022 by the learned Metropolitan Magistrate, Special Court for Land Grabbing Court No.II (FAC), Egmore at Allikulam, Chennai in Crime No.199 of 2021 on the file of the respondent.



2. The learned counsel appearing for the petitioner would submit that the petitioner is an accused in Crime No.199 of 2021 registered by the respondent for the offence under Section 419, 465, 467, 468, 471 r/w 34 of IPC. The petitioner was arrested on 30.11.2021 and remanded to the judicial custody on the same day. The petitioner was directed to be enlarged on statutory bail under Section 167(2)(a)(i) of Cr.P.C. While granting bail to the petitioner, the learned Trial Judge has imposed the following conditions:

"1.The petitioners/Accused shall execute a bond each for a sum of Rs.10,000/- along with two sureties like such sum.

2.Among the sureties one of the surety shall be the family member of the accused and he/she shall produce and deposit the original property document in Court until further orders. Since the accused are involved in Land Grabbing Offence cases."

Learned counsel for the petitioner would further submit that the petitioner does not possess any property and since the petitioner is being an accused in this case, there is no body to offer their property documents to produce as Sureties. The Trial Judge imposing such condition directing the petitioner to produce the original documents, while granting statutory bail is onerous. He would further submit that by virtue of grant of bail under Section 167(2) Cr.P.C, the petitioner accrues an indefeasible right and it cannot be extinguished by imposing onerous condition. The Court has to only see whether the petitioner is able to furnish sureties and nothing else. In support of his contention, the learned counsel relied upon the order of this Court made in CrI.O.P.No.30154 of 2018 dated 21.12.2018.

3.Mr.A.Gokulakrishnan, learned Additional Public Prosecutor would submit that the petitioner is involved in Land Grabbing offence case and thereby, the learned Judge had imposed such condition.

4. At this juncture, learned counsel for the petitioner would submit that the petitioner's wife and daughter are ready to stand as sureties and execute a bond for a sum of Rs.10,000/-.

5. Heard both sides and perused the materials available on record.

6. It is seen that the petitioner was arrested and remanded to judicial custody on 30.11.2021 in a Land Grabbing case for the offence under Section 419, 465, 467, 468, 471 r/w 34 of IPC. It is useful to refer paragraph Nos.4 & 5 of the order passed in CrI.O.P.No.30154 of 2018 dated 21.12.2021 as follows.

"4.It is seen from the records that the petitioner was



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arrested and remanded to judicial custody on 19.07.2018 and charge sheet has not been filed in this case so far. Therefore, he is entitled for the statutory 167(2) Cr.P.C. Therefore, the Court of the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai granted bail and released the petitioner on condition that the petitioner shall deposit Rs.5,00,000/- to the credit of Cr.No.300 of 2018. Section 167(2) Cr.P.C reads as follows:-

"167(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police. 1

Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;]. 2 Explanation II.- If any question arises whether an accused person was produced before the



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Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.]”

5. It is the right of the accused for statutory bail for non filing of the charge sheet by the respondent police. Therefore, the said right cannot be extinguished by imposing conditions.”

7. Further in the case of Saravanan Vs State rep by the Inspector of Police reported in 2029 SCC 101, the Hon'ble Apex Court had held that imposing onerous condition would frustrate the very object and purpose of default bail under Section 167(2) of Cr.P.C, the Court has to only see whether the accused is prepared to furnish bail.

8. In view of the above, the second condition imposed by learned Metropolitan Magistrate, Special Court for Land Grabbing Court No.II (FAC), Egmore at Allikulam, Chennai in CrI.M.P.No.37 of 2022 dated 28.02.2022 is modified as follows:

“2)The two sureties shall be the family members of the accused viz., wife and daughter and they shall execute bonds for a sum of Rs.10,000/- (Rupees ten thousand only) each.

It is made clear that the learned Trial Judge shall not insist for the deposit of original property document. The remaining conditions are unaltered. Accordingly this Criminal Original Petition stands ordered.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

shk/sai

To

1.The Special Metropolitan Magistratem
Land Grabbing Court No.II,
FAC, Egmore at Allikulam.

2.The Inspector of Police,
CCB-Team XVII Police Station,
Chennai District.
(Crime No.199 of 2021)



3.The Public Prosecutor,
High Court of Madras.

+1cc to Mr.M.Ravi Kumar, Advocate, S.R.No.19462

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AJS (CO)
CB(24/03/2022)

Cr1.O.P.No.6530 of 2022