

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.R.C.NO.543 OF 2022

Kaleeswari

... Petitioner/Accused

Vs.

The State Rep. by
The Inspector of Police,
Central Crime Branch,
Bank Fraud Investigation Team-XI,
Chennai.

... Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 397 of Cr.P.C to call for the records and set aside the order passed by the learned Special Metropolitan Magistrate for CCB & CBCID, Chennai, in Crl.M.P.No.9174 of 2022 dated 20.04.2022 in Crime No.190 of 2020 on the file of the respondent and grant bail to the petitioner.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.Leonard Arul Joseph Selvam,
Government Advocate (Crl. Side)

O R D E R

This Criminal Revision Case has been filed praying to set aside the order passed by the learned Special Metropolitan Magistrate for CCB & CBCID, Chennai, in Crl.M.P.No.9174 of 2022 dated 20.04.2022 in Crime No.190 of 2020 on the file of the respondent and grant bail to the petitioner.

2. The case of the petitioner is that the petitioner was arrested by the respondent police on 18.11.2021 for the alleged offences said to have been committed by the petitioner under Section 120(B), 420, 465, 467, 468, 471 of IPC in Crime No.190 of 2020 which was registered by the respondent police based on the complaint lodged by one Rajesh, Chief Manager, Catholic

Syrian Bank. It is alleged that the petitioner while at the time of occurrence committed an offence of criminal breach of trust by diverting the money obtained by her from the defacto complainant bank. More than that, after filing the suit in respect to recovery of money from the petitioner and other accused, they filed fake income tax returns pertaining to the year of 2012-13 & 2013-14. Therefore, by making false representation with intention to cheat the bank, the petitioner availed loan and committed the serious offence.

3. Later after registering the case, in view of the order passed in CrI.O.P.No.837 of 2022 dated 12.01.2022, this Court enlarged the petitioner on bail subject to some conditions, in which one of the condition is that to deposit a sum of Rs.50,00,000/- to the credit of Crime No.190 of 2020 within a period of two weeks. After passing such order, the petitioner was released on bail on the same day i.e., on 12.01.2022.

4. Thereafter, the petitioner could not deposit Rs.50,00,000/- as ordered by this Court and therefore, she has again surrendered before the trial Court on 09.03.2022 and till today, she is in judicial custody. Only in the said circumstances, the petitioner filed petition in CrI.M.P.No.9174 of 2022 under Section 167(ii) of Cr.P.C., seeking statutory bail. The said petition filed by the petitioner was dismissed on 20.04.2022, and challenging the same, the petitioner is before this Court.

5. Heard Mr.R.C.Paul Kanagaraj, learned counsel appearing for the petitioner and Mr.Leonard Arul Joseph Selvam, learned Government Advocate (CrI. Side) appearing for respondent police.

6. It is the contention raised by the learned counsel appearing for the petitioner that after arresting the petitioner, she is in judicial custody for the period of 91 days and therefore she is entitled for the relief of bail under Section 167(ii) of Cr.P.C.

7. On the other hand, the learned Government Advocate (CrI. Side) appearing for the respondent police raised objection stating that the condition imposed by this Court, in the earlier order dated 12.01.2022, is not complied with and therefore, this petition has also been decided by imposing such conditions.

8. The submission made by the learned counsel appearing on either side are considered.

9. Now on going through the impugned order passed by the trial Court, the learned Metropolitan Magistrate after observing

as the petitioner is not in judicial custody continuously for the period of 90 days, dismissed the petition filed under Section 167(ii) of Cr.P.C.

10. In this occasion, it would be relevant to see the judgment in the case of Suresh Kumar Bhikamchand Jain Vs. State of Maharashtra & anr dated 13.02.2013 made in S.L.P(Crl.)No.147 of 2013, wherein, in paragraph No.14, our Hon'ble Apex Court observed as follows :-

"14. From the above provision, it would be amply clear that the Magistrate may authorise the detention of an accused person, otherwise than in the custody of the police, beyond a period of 15 days, if he is satisfied that there are adequate grounds for doing so, but no Magistrate is authorised to detain the accused person in custody for a total period exceeding 90 days where the investigation relates to an offence punishable with death, imprisonment of life or imprisonment for a term of not less than ten years and 60 days where the investigation relates to any other offence."

Accordingly, in view of the above, for considering the petition filed under Section 167(ii) of Cr.P.C., it would be necessary to see whether the petitioner was in judicial custody for the total period of 90 days or not.

11. Admittedly, here it is a case that the petitioner is in judicial custody for the period of 105 days. Further the final report has not been filed in the petition mentioned case. Accordingly, in view of the above referred judgment, the petitioner is having a right to file a bail petition under Section 167(ii) of Cr.P.C., and accordingly the petition is liable to be ordered.

12. It is the further contention raised by the learned counsel appearing for the petitioner that while at the time of deciding the petition filed under Section 167(ii) of Cr.P.C., imposing such condition to deposit the huge amount in the Court is against the law laid down by our Hon'ble Apex Court. In this regard, he relied on the judgment of our Hon'ble Apex Court in the case of Saravanan Vs. State rep by the Inspector of Police, made in Criminal Appeal Nos.681-682 of 2020 dated 15.10.2020, which reads as follows :-

"9.2. The circumstances while considering the regular bail application under Section 437 Cr.P.C., are different, while considering the application for

default bail/statutory bail. Under the circumstances, the condition imposed by the High Court to deposit Rs.8,00,000/- while releasing the appellant on default bail/statutory bail is unsustainable and deserves to be quashed and set aside."

Now on applying the said principle laid down in the above referred case with the present case, it would not necessary to direct the petitioner to deposit the cheated amount in the Court.

13. In view of the above discussion, the impugned order dated 20.04.2022 passed by the learned Special Metropolitan Magistrate for CCB & CBCID, Chennai, in Crl.M.P.No.9174 of 2022, is set aside and this Court is inclined to grant bail to the petitioner subject to certain conditions.

14. Accordingly, the petitioner is ordered to be released on bail subject to the following conditions;

(a) the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties, each for a like sum to the satisfaction of the learned Metropolitan Magistrate, CCB & CBCID, Egmore, Chennai.

(b) 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;

(c) the petitioner shall report before the respondent Police daily at 10.30 a.m., until further orders;

(d) the petitioner shall not commit any offences of similar nature;

(e) the petitioner shall not abscond either during investigation or trial;

(f) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(g) on breach of any of the aforesaid conditions, the learned Judicial Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560];

(h) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

15. With the above directions, this Criminal Revision Case is ordered.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Special Metropolitan Magistrate
for CCB & CBCID,
Chennai.
2. The Inspector of Police,
Central Crime Branch,
Bank Fraud Investigation Team-XI,
Chennai.
3. The Superintendent of Prison,
Central Prison for women,
Puzhal, Chennai.
4. The Public Prosecutor,
High Court of Madras.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras - 104.

+1cc to M/s.R.C.Paul Kanagaraj, Advocate, S.R.No.29071

Cr1.R.C.No.543 of 2022

SRA(CO)
RLP(28/04/2022)