



Crl.M.P.No.14982 of 2022
in Crl.A.No.398 of 2022

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P.N.PRAKASH, J.
and
RMT.TEEKAA RAMAN, J.

ORDER
(Made by *P.N.PRAKASH, J.*)

This criminal miscellaneous petition has been filed seeking a direction to the Principal Special Court for the Exclusive Trial of Cases under the POCSO Act, Salem, to accept the sureties given by the petitioner in New Spl.S.C.No.71 of 2020 in Old Spl.S.C.No.164 of 2014.

2. The petitioner was granted suspension of sentence and bail by this Court *vide* order dated 08.08.2022 in Crl.M.P.No.4489 of 2022 in Crl.A.No.398 of 2022 on certain conditions, one of which, reads as follows:

“12.(i) The petitioner shall execute a bond for a sum of Rs.25,000/- with two sureties, each for a like sum to the satisfaction of the Principal Special Court for the Exclusive Trial of POCSO Act Cases, Salem;”



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3. Accordingly, two persons viz. R.Karthik and Rajamanickam appeared before the trial Court to stand as sureties for the petitioner by filing Judicial Form No.46 under Rule 14(4) of the Tamil Nadu Criminal Rules of Practice, 2019 (for brevity “the Rules”).

4. It appears that on 06.09.2022 the trial Judge has returned the papers with the following endorsement:

*“Return
To be filed along with property house tax
receipts. Hence returned.”*

5. Aggrieved by the same, the petitioner has filed the present criminal miscellaneous petition with the aforesaid prayer.

6. Heard Mr.D.Veerasekaran, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent/State.



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7. The learned counsel for the petitioner submitted that this Court had directed the petitioner to furnish a bond for a sum of Rs.25,000/- and nothing more and therefore, trial Court cannot insist upon the sureties to furnish house tax receipts. He took us through the other conditions in the order dated 08.08.2022 in Crl.M.P.No.4489 of 2022 relating to sureties and further submitted that the trial Court cannot impose additional conditions.

8. *Per contra*, the learned Additional Public Prosecutor submitted that the petitioner in this case has been convicted under the POCSO Act and therefore, there should be sufficient safeguards to ensure that the petitioner is available at the time of final disposal of the case.

9. We gave our anxious consideration to the aforesaid submissions.

10. Direction no.12(i) imposed in the order dated 08.08.2022, which has been extracted above is for the accused, who is in judicial custody, for executing a bond agreeing to pay a sum of Rs.25,000/-, if he



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does not adhere to the bail conditions, whereas, sureties essentially are the persons, to whom, the custody of the accused is entrusted by the Court, as held by the Constitution Bench of the Supreme Court in ***Sunil Fulchand Shah vs. Union of India and Others***¹. In other words, when a person, who has been convicted and sentenced by the trial Court is in prison and his bail petition is pending in the higher forum, his custody continues to be under the orders of the Court. When suspension of sentence and bail is granted to such an accused, he is transferred from the custody of the prison to the custody of the sureties. Thereafter, it becomes the duty of the sureties to ensure that the accused complies with the conditions of bail imposed upon him by the Court. Under the Rules, Judicial Form No.14 has been prescribed for the sureties to submit their application.

11. In this case, the trial Judge has only returned the papers asking the sureties to furnish house tax receipts. It is always open to the sureties to re-submit the papers along with house tax receipts if they have or state that they do not have. The trial Court has not stated as a matter of rule that only

¹ (2000) 3 SCC 409



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a person with property with house tax receipts can stand as surety. The trial Court only wants to assure itself about the genuineness of the surety.

12. Therefore, we direct the petitioner to re-submit the surety application and the trial Court is further directed to test the genuineness of the sureties. If the trial Court is convinced about the genuineness of the sureties, it is needless to state that the surety application has to be accepted without anything more.

This criminal miscellaneous petition stands closed with the above observations. The Registry is directed to return the original surety memo and the return dated 06.09.2022 made thereon to the learned counsel for the petitioner after substituting it with a photocopy of the same for the purpose of re-presentation before the trial Court.

(P.N.P.,J.) (T.K.R.,J.)
27.09.2022

nsd



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P.N.PRAKASH, J.
and
RMT.TEEKAA RAMAN, J.

nsd

To

- 1.The Sessions Judge
for Exclusive Trial of Bomb Blast Cases,
Chennai at Poonamallee.
- 2.The Inspector of Police,
Paravakottai Police Station,
Thiruvarur District.
- 3.The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

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27.09.2022