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Crl.O.P.No.26273 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2022

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.26273 of 2022

Surya

...

Petitioner

/vs/

State, represented by
the Inspector of Police
B1, Big Bazaar Police Station,
Coimbatore.

...

Respondent

Prayer : Criminal Original Petition filed under Section 482 of Criminal Procedure Code to direct the learned Judicial Magistrate No.V, Coimbatore to accept the sureties furnished by the petitioner in Bail order dated 06.10.2022 in Crl.M.P.No.32579 of 2022 on the file of the Judicial Magistrate No.V, Coimbatore in line with the Modification Order passed in Crl.M.P.No.5105 of 2022 on the file of learned Principal District and Sessions Judge, Coimbatore vide its order dated 17.10.2022.

For Petitioner ... Mr. J. Jayan

For Respondent ... Mr.S. Santhosh
Govt. Advocate (crl.side)

ORDER



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This Criminal Original Petition has been filed to direct the learned Judicial Magistrate No.V, Coimbatore to accept the sureties furnished by the petitioner as per the Bail order dated 06.10.2022 in Crl.M.P.No.32579 of 2022 on the file of the Judicial Magistrate No.V, Coimbatore in pursuant to the modification order dated 17.10.2022 passed in Crl.M.P.No.5105 of 2022 on the file of learned Principal District and Sessions Judge, Coimbatore.

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

3. The petitioner is an accused in Crime No.207 of 2022 on the file of respondent police for the offences punishable under sections 392 r/w.397 and 506(ii) IPC. Since the charge sheet has not been filed within the statutory limit, the petitioner had obtained statutory bail on 6.10.2022 on certain conditions. However, the petitioner, having got aggrieved due to the conditions imposed on him while enlarging him on bail, filed a petition for modification of condition before the learned Principal District and Sessions Judge, Coimbatore in Crl.M.P.No.5105 of 2022 and the same was also allowed on 17.10.2022. Subsequently, the petitioner had furnished sureties



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before the learned Judicial Magistrate V, Coimbatore on 18.10.2022. The learned Judicial Magistrate has returned the surety memo with the following written endorsements.

*'Returned
18.10.2022*

Final Report presented before this Court on 12.10.2022. In the said circumstances, in view of the decision of the Honourable Madurai Bench of Madras High Court in Crl.R.C.(MD) No.409 of 2022 dated 11.08.2022, Spurgeon samuel Vs. The Inspector of Police, Asaripallam Police Station, Nagercoil, Kanyakumari District and another, How the surety Memo is maintainable to be explained.'

4.The grievance of the petitioner is that the learned Judicial Magistrate ought to have accepted the sureties since the statutory bail order was not cancelled at any point of time, even though the charge sheet has been filed in the interregnum. In fact, the above return order made by the learned Judicial Magistrate on 18.10.2022 is a judicial order. Hence the appropriate recourse open to the petitioner is to challenge the said order and not to seek a direction. On facts, the petitioner was enlarged on statutory bail on 6.10.2022. In accordance with the conditions stipulated in the said bail order, he did not furnish sureties. He filed a petition to modify the bail



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condition before the learned Principal District and Sessions Judge, Coimbatore in Crl.M.P.No.5105 of 2022 and the same was allowed and got the condition modified. Fortunately or unfortunately, the charge sheet has been filed on 12.10.2022. In view of the same, the learned Magistrate has returned the surety memo with the above endowment.

5. Reliance was placed by the learned Judicial Magistrate on the judgement of High Court made in Crl.R.C.(MD)No.409 of 2022 dated 11.08.2022. The learned Govt. Advocate (crl.side) also submitted that in the said order of the High Court, the decision of the Supreme Court rendered in ***Uday Mohanlal Acharya's case*** has been followed. In the said order of the High Court, it is held as under;

'25. Recently, the Hon'ble Division bench of this Court in Kannan @ Senthil @ Kumar @ Minnal Vs. the State represented by the Deputy Superintendent of Police, Q Branch, Coimbatore in Crl.O.P.No.7736 of 2021, dated 23.12.2021 has specifically observed that they are unable to subscribe themselves to the contrary view that has been expressed by the learned Single Judge of this Court in Periyasamy Vs. State, referred supra and the Division Bench,



after referring to the Uday Mohanlal Acharya's case, M.Ravindran's case, Sanjay Dutt's case and Raghubir Singh's case, has observed as follows:

“10. Thus, even the dissenting Judge in Uday Mohanlal Acharya (supra) has agreed with the law laid down by the other two Judges of the Bench in paragraph 13.5, which would squarely apply to the case in hand. Since Raghubir Singh (supra) was decided by a 2 Judge Bench and following the Constitution Bench judgment in Sanjay Dutt (supra), when a 3 Judge Bench in Uday Mohanlal Acharya (supra) has so categorically held that if the accused is unable to furnish bail as directed by the Magistrate, then, the so-called indefeasible right of the accused will stand extinguished on the police filing the final report, we are afraid we cannot fall back on Raghubir Singh (supra) and grant relief to the petitioner. To be noted, the expression “furnish bail as directed by the Magistrate” employed in Uday Mohanlal Acharya (supra) means “furnish sureties as directed by the Magistrate”.

6. Since the Magistrate got no other way except to follow the legal position already settled in this regard by the Supreme Court and the High



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Court, had chosen to return the surety memo. As per the above judgments of the Supreme Court, one need not cancel the statutory bail in order to deprive him of the benefit, if the charge sheet has been filed before the accused could furnish surety. In the case on hand also, the petitioner had omitted to furnish sureties immediately after he got the statutory bail and in the meanwhile, the charge sheet has been filed. Since the charge sheet has been filed, the petitioner had lost the benefit of the statutory bail order, as the same got extinguished. However, it is open to the petitioner to file a regular bail application and seek appropriate remedy.

7. With the above observations, this Criminal Original Petition stands disposed of.

01.11.2022

msr

Index;yes/no

Internet;yes/no

To

1. The Inspector of Police
B1, Big Bazaar Police Station,
Coimbatore.
2. The Public Prosecutor,
High Court, Madras.



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Note: Issue copy on 2.11.2022



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R.N.MANJULA, J.

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