



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

RESERVED ON : 15/02/2022

PRONOUNCED ON: 21/02/2022

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PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.3122 of 2022

Maniraj ... Petitioner/Accused No.2

Vs

The State rep.by,
The Inspector of Police,
E.O.W. - II,
Tiruchirappalli.
(Crime No.1 of 2018)

... Respondent/Complainant

For Petitioner : MR.N.Ranjith,
Advocate.

For Respondent : Mr.E.Antony Sahaya Prabhar,
Additional Public Prosecutor

PETITION FOR BAIL Under Sec.439 of Cr.P.C.

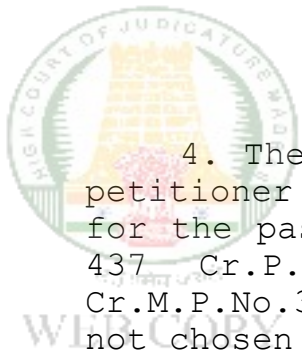
PRAYER :-For Bail in Crime No.1 of 2018 on the file of the respondent Police.

ORDER : The Court made the following order :-

The petitioner/accused, who was arrested and remanded to judicial custody on 09.11.2021 for the offence punishable under Sections 406, 420, 120-B I.P.C., and Section 5 of TNPID Act in Crime No.1 of 2018, on the file respondent police, seeks bail.

2. The case of the prosecution is that the petitioner has been conducting a business in the name and style of WEEZOO for garment business, that he collected a sum of Rs.1,52,56,500/- from 300 depositors in the year 2018, that he did not repay the amount to the depositors and that thereby he had cheated them. Hence, the present complaint.

3. Admittedly, the petitioner is the first accused and the Managing Director of the said Company and that the accused 2 and 3 are his sons and the fourth accused is his daughter and the fourth accused is his relative.



4. The learned Counsel for the petitioner would submit that the petitioner was remanded on 09.11.2021 and he is in judicial custody for the past 93 days, that his bail application filed under Section 437 Cr.P.C., has been dismissed by the Special Court in Cr.M.P.No.3952 of 2021, dated 23.12.2021, that the respondent has not chosen to file the final report till now and that therefore, the petitioner is entitled to invoke Section 167(2) Cr.P.C., to get statutory bail.

5. No doubt, the learned Special Court Judge, on considering the quantum of amount involved and the number of persons affected, has dismissed the bail application. Admittedly the said application was filed under Section 437 Cr.P.C. Now the petitioner has moved the bail application under Section 439 Cr.P.C.

6. When the matter is taken up on 15.02.2022, the learned Additional Public Prosecutor appearing for the State would fairly concede that the respondent has not filed the charge sheet so far.

7. As already pointed out, the petitioner is in judicial custody from 09.11.2021 for the past more than 105 days. The learned Counsel for the petitioner has relied on the judgment of the Honourable Supreme Court in ***Rakesh Kumar Paul vs State Of Assam [SPECIAL LEAVE TO APPEAL (CRL.) NO. 2009 OF 2017 dated 16.08.2017]*** and argued that the Hon'ble Apex Court has observed that in matters of personal liberty and [Article 21](#) of the Constitution, it is not always advisable to be formalistic or technical and quoted the following passages in the said judgment;

"40. In the present case, it was also argued by learned counsel for the State (1996) 1 SCC 722 that the petitioner did not apply for 'default bail' on or after 4th January, 2017 till 24th January, 2017 on which date his indefeasible right got extinguished on the filing of the charge sheet. Strictly speaking this is correct since the petitioner applied for regular bail on 11th January, 2017 in the Gauhati High Court - he made no specific application for grant of 'default bail'. However, the application for regular bail filed by the accused on 11th January, 2017 did advert to the statutory period for filing a charge sheet having expired and that perhaps no charge sheet had in fact being filed. In any event, this issue was argued by learned counsel for the petitioner in the High Court and it was considered but not accepted by the High Court. The High Court did not reject the submission on the ground of maintainability but on merits. Therefore it is not as if the petitioner did not make any application for default bail - such an application was definitely made (if not in writing) then at least orally before the High Court. In our opinion, in matters of personal liberty, we cannot and



should not be too technical and must lean in favour of personal liberty. Consequently, whether the accused makes a written application for 'default bail' or an oral application for 'default bail' is of no consequence. The concerned court must deal with such an application by considering the statutory requirements namely, whether the statutory period for filing a charge sheet or challan has expired, whether the charge sheet or challan has been filed and whether the accused is prepared to and does furnish bail.

41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court."

8. In the same judgment, the Hon'ble Justice P.C. Pant has observed as follows:

"The law laid down as above shows that the requirement of an application claiming the statutory right under [Section 167\(2\)](#) of the Code is a prerequisite for the grant of bail on default. In my opinion, such application has to be made before the Magistrate for enforcement of the statutory right. In the cases under the [Prevention of Corruption Act](#) or other Acts where Special Courts are constituted by excluding the jurisdiction of the Magistrate, it has to be made before such Special Court. In the present case, for the reasons discussed, since the appellant never sought default bail before the court concerned, as such not entitled to the same."

9. The other two Hon'ble Judges of the said Bench, did not disagree with the above observation. Moreover in the said decision case, the main issue therein was concerned with the interpretation of the words "imprisonment for a term not less than ten years" appearing in clause (i) of proviso (a) to [Section 167\(2\)](#) of the Code of Criminal Procedure and the learned two Judges by majority view have held that [Section 167\(2\)\(a\)\(i\)](#) of the Code is applicable only in cases where the accused is charged with (i) offences punishable with death; (ii) offences punishable with life imprisonment and (iii) offences punishable with minimum sentence of 10 years and that in all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then [Section 167\(2\)\(a\)\(ii\) Cr.P.C.](#), will apply and the accused will be entitled to grant of 'default bail' after 60 days in case charge-sheet is not filed. It is pertinent to note that in the said judgment, the



Hon'ble Supreme Court has nowhere stated that the High Court can be approached for default bail directly. Hence, the contention of the learned Counsel for the petitioner that the accused can move the High Court for statutory bail directly is legally unsustainable.

10. No doubt, in cases where the High Court is approached for regular bail after the dismissal of the same by the Sessions Court and at the time of enquiry, if the time contemplated under Section 167 Cr.P.C., to file the charge sheet gets expired, then the accused can canvass his right to get statutory bail under Section 167 Cr.P.C., if charge sheet is not filed and the High Court along with the merits of the case, can also take into account the petitioner's entitlement for getting statutory bail. But at the same time, it cannot be stated that the accused is entitled to approach the High Court for statutory bail directly.

11. In the present case, as already pointed out, the petitioner is charged with the offences under Sections 406 and 420 I.P.C., and hence, the Investigating Officer ought to have filed the charge sheet within 60 days. Though the respondent police has raised objections, this Court is at loss to understand as to why the final report was not filed so far. As already pointed out, the petitioner is in judicial custody for the past 105 days. Considering the above circumstances, this Court is inclined to consider the plea for the statutory bail, but this order should not be taken as precedent that the High Court can be moved for statutory bail directly.

12. The learned Additional Public Prosecutor appearing for the State would submit that this Court in the earlier order granting anticipatory bail to the petitioner has directed the petitioner to deposit some amount and that since the petitioner has not complied with the direction of this Court, he was subsequently arrested and remanded to judicial custody.

13. No doubt, as rightly contended by the learned Additional Public Prosecutor, the amount alleged to have been cheated by the petitioner is heavy and 300 depositors were alleged to be the affected parties.

14. The learned Additional Public Prosecutor appearing for the State would further submit that the petitioner may be directed to deposit the amount which was directed to be deposited by this Court in earlier order.

15. To counter the said argument, the learned Counsel for the petitioner has relied on a judgment of this Court in ***Umadevi Vs. the State represented by Inspector of Police, EOW-II, Coimbatore***, reported in ***2019-1-L.W. (Cr1.)387*** and this Court has specifically held that once an accused person becomes entitled to statutory bail, this Court cannot impose onerous condition and the relevant passage is extracted hereunder:



"18. Insofar the second issue is concerned, this Court concurs with the view expressed by this Court in its judgment in P.L.Jayaraj Vs. State referred supra, where in this Court has categorically held that the indefeasible right given u/s 167(2) cannot be extinguished by imposing any onerous conditions. In this case even though the petitioner was granted bail, she was not able to come out on bail since she was not able to comply with the condition directing her to make a cash deposit of Rs.20 lakhs. If the very same condition of cash security is to be imposed on the petitioner while considering the Statutory Bail, it will indirectly defeat the indefeasible right of the petitioner and will prevent the petitioner from coming out on bail. The Court below failed to appreciate this fundamental aspect while dismissing the bail petition filed by the petitioner. It is seen from records that the petitioner is a permanent resident of Coimbatore, and all the properties belonging to the petitioner and her family is in and around Coimbatore and this Court is convinced that the petitioner cannot abscond, if the bail is granted by imposing reasonable conditions."

16. Hence, this Court concludes that the petitioner is entitled to get default bail subject to the following conditions:

17. Accordingly, the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judge, Special Court for TNPID Act Cases, Madurai and on further conditions that;

i) the sureties shall affix their photographs and left thumb impression in the surety bond and the Magistrate/concerned court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity.

ii) the petitioner shall report before the respondent police daily at 10.30 a.m until further orders;

iii) the petitioner shall not tamper with evidence or witness.

iv) the petitioner shall not abscond during trial.

v) On breach of any of the aforesaid conditions, the learned 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]***.



vi) If the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

sd/-
21/02/2022

/ TRUE COPY /

WEB COPY

23/02/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

- 1 THE JUDGE,
SPECIAL COURT FOR TNPID ACT CASES, MADURAI.
- 2 THE SUPERINTENDENT,
CENTRAL PRISON, TIRUCHIRAPALLI.
- 3 THE INSPECTOR OF POLICE
E.O.W. - II, TIRUCHIRAPPALLI
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL OP(MD) No.3122 of 2022
Date :21/02/2022

SSL
MK/VR/SAR.III/23.02.2022/6P/5C