



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Thursday, the Tenth day of March Two Thousand and Twenty Two

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.12082 of 2021

IN

CRL OP(MD) No.11383 of 2020

K. MUTHU @ MUTHUKUMAR

... PETITIONER/2nd ACCUSED

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE,
THIDEER NAGAR POLICE STATION,
MADURAI.

(CRIME NO.797/2021)

... RESPONDENT/COMPLAINANT

BASKAR RAJA,

....INTERVENER/PETITIONER
/DEFACTO COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to relax the condition imposed by this Hon`ble Court vide, order dated 16.10.2020 in Cr1.O.P(MD)No.11383/2020 to deposit the original title deeds, not less than the value of Rs.1.50 Crores with the proper valuation certificate from authority concerned, to the credit of Crime NO. 797 of 2020, before the Learned Judicial Magistrate No.V, Madurai imposed upon the petittioer and consequently to return back the title deeds to the petittioenr.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.KR.LAXMAN, Advocate for the petitioner and of MR.R.SIVAKUMAR, Government Advocate (Criminal Side) on behalf of the Respondent and of M/s.M.MUTHU KAVITHA, Advocate for the intervener in Cr1.MP(MD)No. 1288 OF 2022, the court made the following order:-

This Criminal Miscellaneous Petition has been filed seeking orders to relax the condition imposed by this Court in Cr1.O.P.(MD) No.11383 of 2020, dated 16.10.2020, directing the petitioner to deposit the original title deeds, not less than the value of Rs.1.50Crores with the proper valuation certificate from authority concerned to the credit of Crime No.797 of 2020, before the Judicial Magistrate Court No.V, Madurai.



2. The case of the petitioner is that the case was registered against him in Cr.No.797 of 2020 under Sections 406 and 420 I.P.C., on the file of the respondent police, that the petitioner was arrested on 18.09.2020 and was remanded to judicial custody, that the petitioner has filed a petition before this Court in Crl.O.P. (MD)No.11383 of 2020 seeking bail and this Court, vide order dated 16.10.2020 has granted bail on condition to deposit the original title deeds not less than the value of Rs.1.50Crores and also to report before the respondent police daily at 10.30a.m., until further orders, that the petitioner, in pursuance of the orders of this Court, has deposited the title deeds with respect to his properties worth about Rs.1.50Crores to the credit of Cr.No.797 of 2020, before the Judicial Magistrate Court No.V, Maduari, that the other conditions were later relaxed and that the petitioner has now come forward with the above petition to relax the said condition and permitted him to get back the original title deeds deposited by him.

3. The petitioner's main contentions are that the case was registered as early as on 30.08.2020, that the petitioner has been completely co-operating with the investigation and since the investigation is almost over, the withholding of the property documents is not warranted, that the petitioner's father and mother are aged at 66 years and 57 years respectively and both are remaining sick and in order to provide medical treatment, the petitioner is badly in need of money, for which he required the original documents to mobilise the funds by mortgaging the said properties, that since the charge sheet has not been filed, it is not sure as to when the charge sheet will be filed and as such, there is no assurance as to when the criminal case will get finality and that therefore, no purpose would be served in keeping the petitioner's documents.

4. The learned Counsel for the petitioner would submit that the petitioner has been released on bail after a period of 30 days of incarceration, that he has already complied with the other conditions imposed by this Court, that since the investigation is almost over, there is no chance for the tampering the evidence and that therefore, there is absolutely no need for withholding the original documents.

5. It is pertinent to mention that the petitioner, by citing his ill-health, has filed the above petition before the vacation Court. The respondent has filed a counter affidavit raising objections and wherein it has been stated that the investigation is still pending and due to covid-19 pandemic situation, the charge sheet is yet to be filed, that they have seized Innova Crystra Car and Rs.10,00,000/- from the second accused and that since the



the huge amounts from the defacto complainant, the petitioner is not entitled to get back the documents at present.

6. It is evident from the records that the petitioner who is the second accused in Cr.No.797 of 2020, on the file of the respondent police, for the alleged offences under Sections 406 and 420 I.P.C., has filed the petition in Crl.O.P.(MD)No.11383 of 2020 seeking bail and that this Court vide order dated 16.10.2020, has granted bail on imposing certain conditions, which includes that the petitioner to deposit the original title deeds not less than the value of Rs.1.50Crores with the proper valuation certificate from authority concerned to the credit of Crime No.797 of 2020, before the Judicial Magistrate Court No.V, Madurai. It is not in dispute that in pursuance of the bail order, the petitioner has deposited the original title deeds as directed by this Court and on complying with the other condition, he was ordered to be released on bail.

7. The learned Counsel for the petitioner has cited some decisions of this Court, wherein this Court has deprecated the practice of Magistrate Courts and Sessions Courts imposing onerous conditions while granting statutory bail. The learned Counsel for the petitioner has also relied on the judgment of the Hon'ble Supreme Court in ***I.Glaskasden Grace and Others Vs. Inspector of Police*** and another reported in ***2009(12)SCC769***, wherein the earlier judgments of the Hon'ble Apex Court were referred, which are extracted hereunder:

"16. This Court in *Amarjit Singh v. State of NCT of Delhi*, reported in JT 2002 (1) SC 291, held as under:-

"4. Having regard to the facts and circumstances of the present case, we have no hesitation in coming to the conclusion that the imposition of condition to deposit the sum of Rs. 15 lacks in the form of FDR in the Trial Court is an unreasonable condition and, therefore, we set aside the said condition as a condition precedent for granting anticipatory bail to the accused/appellant....."

In Sandeep Jain v. National Capital Terriotry of Delhi, reported in (2000) 2 SCC 66, this court held that:

"4. We are unable to appreciate even the first order passed by the Metropolitan Magistrate imposing the onerous condition that an accused at the FIR stage should pay a huge sum of Rs. 2 lakhs to be set at liberty. If he had paid it is a different matter.

But the fact that he was not able to pay that amount and in default thereof he is to languish in jail for more than 10 months now, is

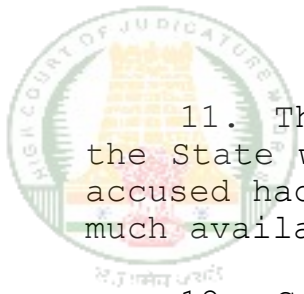


sufficient indication that he was unable to make up the amount. Can he be detained in custody endlessly for his inability to pay the amount in the range of Rs. 2 lakhs. If the cheques issued by his surety were dishonoured, the Court could perhaps have taken it as a ground to suggest to the payee of the cheques to resort to his legal remedies provided by law. Similarly if the court was dissatisfied with the conduct of the surety as for his failure to raise funds for honouring the cheques issued by him, the court could have directed the appellant to substitute him with another surety. But to keep him in prison for such a long period, that too in a case where bail would normally be granted for the offences alleged, is not only hard but improper. It must be remembered that the Court has not even come to the conclusion that the allegations made in the FIR are true. That can be decided only when the trial concludes, if the case is charge-sheeted by the police".

8. The Hon'ble Supreme Court in the above cited case, after observing that though the High Court passed the impugned order with the intention of protecting the interest of the complainant, the approach of the High Court was not correct, as a very unreasonable and onerous condition has been laid down by the Court as a condition precedent for grant of anticipatory bail, set aside the impugned order and remitted the matter back to the High Court to consider the prayer for anticipatory bail afresh.

9. No doubt, it is settled law that the bail condition should be executable and it should not be onerous. The Honourable Supreme Court in ***M.D.Dhanapal Vs. State represented by the Inspector of Police*** in a petition of ***Special Leave to Appeal (Crl.) Nos.5195-5196 of 2019, dated 11.06.2019***, has reiterated the settled position that the bail cannot be made conditional upon heavy deposits beyond the financial capacity of an applicant for bail. It cannot be said that the Courts should not impose such conditions at all.

10. In the case on hand, the case of the prosecution is that the accused persons have promised the defacto complainant to supply iridium and believing the words of the accused, the defacto complainant has paid a sum of Rs.2.58Crores and that after the receipt of money, the accused failed to produce iridium. Admittedly, the petitioner is the second accused and F.I.R., was registered against him and another and according to the prosecution, both of hem have received the said amount and cheated the defacto complainant.



11. The learned Government Advocate (Crl.Side) appearing for the State would submit that on receipt of the said amount, both the accused had purchased so many properties and the properties are very much available in Bangalore and other parts of the Tamil Nadu.

12. Considering the seriousness and gravity of the offences alleged and also the quantum of the amount involved and also taking note of the period of judicial custody, the learned Judge, while granting bail, has imposed the condition directing the petitioner to deposit the original title deeds not less than the value of Rs.1.50Crores. Admittedly, the petitioner has not challenged the bail order nor the above said condition directing him to deposit the title deeds. It is not in dispute that the petitioner has also submitted the title deeds of his properties worth about Rs.1.50Crores and on that basis, he was released on bail.

13. The main contention of the petitioner is that since his parents are having health issues, he has to provide treatment to them and for that purpose, he has to mortgage the properties to mobilise the funds. As rightly contended by the learned Government Advocate (Crl.Side) appearing for the State, the petitioner has now indirectly admitted that he is going to alienate or encumber the properties covered by the title deeds deposited before the concerned Court. As rightly contended by the learned Government Advocate (Crl.Side) appearing for the State, since the defacto complainant has specifically alleged that he was cheated by the accused including the petitioner by receiving Rs.2.58Crores, the above condition came to be imposed by this Court.

14. In this case, the petitioner has not challenged the imposition of such a condition before coming out on bail, but after the lapse of nearly 1 ½ years, has now come forward for returning of the title deeds alleging indirectly that this Court has imposed unreasonable and onerous condition. But as rightly contended by the learned Government Advocate (Crl.Side) appearing for the State, such a stand cannot be taken at this stage, since the petitioner has already complied with the condition and he has been enjoying the bail order for the past 1 ½ years.

15. No doubt, as rightly pointed out by the learned Counsel for the petitioner, the investigation is still pending and the respondent police as usual has been alleging some reason or other for not completing the investigation. But, non-filing of the final report by itself is not a ground to relax the main condition. Considering the above, this Court concludes that the above petition is devoid of merits and the same is liable to be dismissed.



16. In the result, the Criminal Miscellaneous Petition is dismissed. However, the respondent police is directed to complete the investigation within a period of six months from the date of receipt of a copy of this order.

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

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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 JUDICIAL MAGISTRATE NO.V,
MADURAI.
- 2 DO-THROUGH :
THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.
- 3 THE INSPECTOR OF POLICE
THIDEER NAGAR POLICE STATION,
MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.12082 of 2021
IN
CRL OP(MD) No.11383 of 2020
Date :10/03/2022

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PKP/SBN/SAR-3/24.03.2022/6P/5C