



Crl.O.P.(MD) No.22400 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2022

PRESENT

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

CRL.O.P(MD)No.22400 of 2022

Arunkumar

...Petitioner

-vs-

1.The State represented by
The Inspector of Police,
District Crime Branch,
Thanjavur District.
(in Cr.No.2 of 2022)

2.Ambethkar

...Respondents

(R2 was impleaded as per the order of this Court, dated 19.12.2022,
in Crl.M.P.(MD)No.15747 of 2022, dated 19.12.2022)

PRAYER: Criminal Original Petition filed under Section 438 of Cr.P.C,
praying to call for the records pertaining to the impugned order
passed in Cr.M.P.No.5076 of 2022, dated 30.11.2022 on the file of the
learned Judicial Magistrate No.II, Thanjavur, and modify the condition
No.2.

For Petitioner

:Mr.A.Arun Prasad

For R1

:Mr.M.Veeranthiran
Government Advocate (Crl.side)

For R2

:Mr.M.Karunanithi



Crl.O.P.(MD) No.22400 of 2022

ORDER

WEB COPY

This petition has been filed to modify the condition No.2, imposed by the learned Judicial Magistrate No.II, Thanjavur, in Cr.M.P.No.5076 of 2022, dated 30.11.2022.

2.The learned Counsel for the petitioner would submit that the petitioner is an accused in Crime No.2 of 2022 registered by the respondent Police for the offence punishable under Section 420 IPC. The petitioner was arrested and remanded to judicial custody on 29.09.2022. On completion of 60 days, the petitioner had applied for statutory bail on 28.11.2022 under Section 167(2) Cr.P.C., the trial Court finding that the charge sheet had not been filed, granted bail to the petitioner on 30.11.2022, however, imposing onerous conditions directing the petitioner to execute a security bond for a sum of Rs. 25,00,000/- and also to deposit a sum of Rs.10,00,000/- to the credit of crime number.

3.He would submit that on the lapse of 60 days, the accused gets an “indefeasible right” to default bail and the accused becomes entitled to default bail once the accused applies for default bail and furnish bail. He would also submit that no other condition of deposit



CrI.O.P.(MD) No.22400 of 2022

of amount can be imposed on the petitioner. He would also submit that imposing such a condition would frustrate the very object and purpose of default bail under Section 167(2) Cr.P.C.

4.The learned Counsel for the petitioner would submit that the the condition imposed by the learned Judicial Magistrate while granting statutory bail to the petitioner by directing him to deposit a sum of Rs.10,00,000/- to the credit of crime number under Section 167(2) Cr.P.C., is contrary to the scheme of Section 167 of Cr.P.C. He would further submit that the Honourable Apex Court in catena of decisions regarding the scheme of Code of Criminal Procedure delineates that provisions of Section 167 Cr.P.C., giving due regard to the personal liberty of a person. Without submission of charge sheet within 60 days or 90 days, as may be applicable, an accused cannot be detained further in judicial custody and the accused need not make out any grounds for grant of default bail but only needs to state that 60/90 days, as the case may be, have expired, and the charge sheet not filed and that he is entitled to bail, if he is willing to furnish surety and thereby, he would seek to set aside the condition and pray for bail.



Crl.O.P.(MD) No.22400 of 2022

5.In support of his contention, the learned Counsel for the petitioner would rely on the judgment of Honourable Apex Court in the case of **Saravanan vs State** reported in **(2021) 1 SCC (Cri.) (141)**.

6.The learned Government Advocate (Crl.side) would submit that in this case, the petitioner was arrested on 29.09.2022 and that the charge sheet was filed only on 29.11.2022. The statutory bail application was filed on 28.11.2022 and he was directed to be released on 30.11.2022 by imposing the condition to deposit a sum of Rs.10,00,000/-to the credit of crime number.

7.Mr.M.Karunanithi, learned Counsel for the second respondent would submit that though the period of 60 days has lapsed, the learned Judicial Magistrate has granted bail only on 30.11.2022 and would submit that in this case, there was a collusion between the prosecution and the accused. Though the charge sheet was made ready as early as on 28.11.2022, the respondent has purposively delayed to file it before the Court to enure the benefit of statutory bail and thereby, the rights of the victim has been defeated and he would pray that suitable direction may be issued to the authorities to take



Crl.O.P.(MD) No.22400 of 2022

action against the respondent Police for not filing the charge sheet before the Court in time, despite it being ready even before the completion of 60 days.

8. Heard the learned Counsel appearing on either side and perused the materials available on record.

9. No doubt, it is a case, where the petitioner has been arrested for the offence punishable under Section 420 IPC. The maximum period, in which a person can be kept in detention, is 60 days. The petitioner was arrested on 29.09.2022 and he has filed a bail application on 28.11.2022. On the date of filing of the bail application, the charge sheet has not been filed and thereby, the petitioner had enured the indefeasible right under Section 167(2) Cr.P.C. However, in this case, the learned Magistrate while granting bail had imposed a condition directing the petitioner to deposit a sum of Rs.10,00,000/- to the credit of crime number, which in the opinion of this Court is onerous.

10. It is apposite to refer the relevant paragraphs of the judgment of the Honourable Apex Court in the case of **Saravanan vs**



State reported in **(2021) 1 SCC (Cri.) (141)**, which is as follows:

“8. We have heard the learned counsel for the respective parties at length. The short question which is posed for the consideration of this Court is, whether while releasing the appellant-accused on default bail/statutory bail under Section 167(2), Cr.P.C., any condition of deposit of amount as imposed by the High Court, could have been imposed?

9. Having heard the learned counsel for the respective parties and considering the scheme and the object and purpose of default bail/statutory bail, we are of the opinion that the High Court has committed a grave error in imposing condition that the appellant shall deposit a sum of Rs.8,00,000/- while releasing the appellant on default bail/statutory bail. It appears that the High Court has imposed such a condition taking into consideration the fact that earlier at the time of hearing of the regular bail application, before the learned Magistrate, the wife of the appellant filed an affidavit agreeing to deposit Rs. 7,00,000/-. However, as observed by this Court in catena of decisions and more particularly in the case of Rakesh Kumar Paul (*supra*), where the investigation is not completed within 60 days or 90 days, as the case may be, and no charge sheet is filed by 60th or 90th day, accused gets an “indefeasible right” to default bail, and the accused becomes entitled to default bail once the accused applies for default bail and furnish bail. Therefore, the only requirement for getting the default bail/statutory bail under Section 167(2), Cr.P.C. is that the accused is in jail for more than 60 or 90 days, as the case may be, and within 60 or 90 days, as the case may be, the investigation is not completed and no charge sheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail. No other condition of deposit of the alleged amount involved can be imposed. Imposing such condition while releasing the accused on default bail/statutory bail would frustrate the very object and purpose of default bail under Section 167(2), Cr.P.C. As observed by this Court in



CrI.O.P.(MD) No.22400 of 2022

the case of Rakesh Kumar Paul (supra) and in other decisions, the accused is entitled to default bail/statutory bail, subject to the eventuality occurring in Section 167, Cr.P.C., namely, investigation is not completed within 60 days or 90 days, as the case may be, and no chargesheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail.

9.1 As observed hereinabove and even from the impugned orders passed by the High Court, it appears that the High Court while releasing the appellant on default bail/statutory bail has imposed the condition to deposit Rs. 8,00,000/ taking into consideration that earlier before the learned Magistrate and while considering the regular bail application under Section 437 Cr.P.C., the wife of the accused filed an affidavit to deposit Rs.7,00,000/. That cannot be a ground to impose the condition to deposit the amount involved, while granting default bail/statutory bail.

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.”

11. In view of the discussion made above, this Court is inclined to allow this petition. Accordingly, this Criminal Original Petition is allowed and the condition No.2 imposed by the learned Judicial Magistrate No.II, Thanjavur, in Cr.M.P.No.5076 of 2022, dated 30.11.2022, is set aside. The other conditions imposed by the learned Judicial Magistrate No.II, Thanjavur, in Cr.M.P.No.5076 of 2022,



Crl.O.P.(MD) No.22400 of 2022

dated 30.11.2022, shall remain unaltered. The petitioner shall be released on bail on compliance of other conditions imposed by the learned Judicial Magistrate No.II, Thanjavur.

12.Taking into submissions made by the learned Counsel for the second respondent, a direction is issued to the Superintendent of Police, Thanjavur District, to conduct an enquiry and take appropriate action against the respondent Police, if the respondent Police is found to have faulted.

20.12.2022

Index:Yes/No

Note: Issue order copy on **20.12.2022**
cmr

To

1.The Judicial Magistrate No.II, Thanjavur.

2.The Inspector of Police,
District Crime Branch,
Thanjavur District.

3.The Superintendent of Police,
Thanjavur District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD) No.22400 of 2022

A.D.JAGADISH CHANDIRA, J.

cmr

CRL.O.P(MD)No.22400 of 2022

20.12.2022