



Crl.O.P.No.4204 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

CORAM

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

Crl.O.P.No.4204 of 2023

A.Malliga

... Petitioner

Vs

The State represented by,
The Inspector of Police,
CCIW Police Station,
Salem.
(Crime No.02 of 2021)

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., pleaded to set aside the order passed in Crl.M.P.No.5511 of 2022 on the file of the Judicial Magistrate-IV, Salem order dated 12.12.2022.

For Petitioner : Mr.E.C.Ramesh

For Respondents : Mr.N.S.Suganthan
Government Advocate (Crl.Side)



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ORDER

WEB COPY This Criminal Original Petition has been filed seeking to set aside the order passed in Crl.M.P.No.5511 of 2022 on the file of the Judicial Magistrate-IV, Salem dated 12.12.2022, for the offences punishable under Sections 120(b), 408 and 420 of I.P.C.

2. The allegation in this case is that A1 viz., Jewel Appraiser in TAICO Bank, Salem District, with the help of petitioner and other customers / co-accused cheated the above mentioned Bank by pledging spurious jewelleries and obtained a loan amount to the tune of Rs.93,79,360/-.

3. The learned counsel for the petitioner would submit that the petitioner is a senior citizen (lady) aged about 70 years. The main accused / A1, using the ignorance of the petitioner had obtained signature from her in certain documents and pledged spurious jeweleries and obtained a loan amount to the tune of Rs.4,65,200/-.



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WEB COPY 4. The learned counsel for the petitioner would submit that the petitioner was arrested and remanded to Judicial custody on 11.10.2022 for the alleged offences punishable under Sections 120(b), 408 and 420 of I.P.C in Crime No.02 of 2021.

5. The learned counsel for the petitioner would submit that the petitioner had applied an application for bail in Crl.M.P.No.993 of 2022, before the learned Judicial Magistrate No.IV, Salem and the learned Judicial Magistrate, while granting bail on 14.11.2022, had imposed onerous condition directing the petitioner to deposit 50% of the alleged misappropriated amount i.e., Rs.2,32,600/- to the credit of Cr.No.02 of 2021.

6. The learned counsel for the petitioner would submit that despite the bail granted on 14.11.2022, the petitioner was unable to raise the money, thereby, she had filed Crl.M.P.No.5511 of 2022, seeking for modification of condition, whereas, the Trial Court had dismissed the petition.



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7. The learned counsel for the petitioner would further submit that the Hon'ble Supreme Court as well as this Court in several judgments, have held that the process of criminal law cannot be utilized for arm twisting and money recovery and moreover excessive conditions imposed on the petitioner, in practical by manifestation, acted as a refusal to the grant of bail and thereby, the order of the learned Judicial Magistrate imposing a condition to deposit 50% of the alleged misappropriated amount i.e., Rs.2,32,600/- as a precondition for release on bail is not only erroneous but it also amounts to injustice to the petitioner. As on today, the petitioner is in custody for more than 144 days and the petitioner is also entitled to be released on bail under Section 167 (2) of Cr.P.C. In support of his contention, the learned counsel for the petitioner would rely on the Judgment of the Hon'ble Apex Court in the case of ***Guddan @ Roop Narayan Vs. State of Rajasthan***, reported in ***2023 Live Law (SC) 45***.

8. The learned counsel for the petitioner has also relied on the Judgment of the Hon'ble Apex Court in the case of ***Subhash Chouhan Vs. Union of India and Another***, reported in ***2023 Livelaw (SC) 61***, wherein the Court held that the onerous condition directing the petitioner to deposit money cannot be imposed



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while granting of bail.

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9. The learned Government Advocate (Crl.side) for the respondent would submit that the total amount cheated by the main accused / A1 together with customers / accused persons was Rs.93,79,360/-. As far as petitioner is concerned, she along with the main accused had cheated the Bank to the tune of Rs.4,65,200/- and thereby the learned Judicial Magistrate has rightly directed the petitioner to deposit 50% of the mis-appropriated amount i.e., Rs.2,32,600/- to the credit of Cr.No.02 of 2021.

10. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and perused the materials available on record.

11. The learned Judicial Magistrate-IV, Salem has granted bail to the petitioner imposing a condition to deposit 50% of the alleged misappropriation amount i.e., Rs.2,32,600/- to the credit of Cr.No.02 of 2021. Though the petitioner was granted bail on 14.11.2022, she was unable to raise funds and



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thereby could not comply with the condition and come out on bail.

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12. It is the case of the petitioner that the condition imposed by the learned Judicial Magistrate directing her to deposit the amount of Rs.2,32,600/- is onerous and the petition for modification was also dismissed by the Trial Court on 12.12.2022.

13. This Court as well as the Hon'ble Apex Court have held that the onerous conditions cannot be imposed as a precondition for grant of bail. In the case of ***Guddan @ Roop Narayan Vs. State of Rajasthan*** reported in ***2023 Live Law (SC) 45***, the Hon'ble Apex Court has held that the excessive conditions imposed on the appellant, in practical manifestation, acted as a refusal to grant bail and the Apex Court has also deprecated the practice of imposing onerous conditions at the time of grant of bail. The relevant paragraphs are extracted hereunder:-

“...9.This Court, time and time again has held that jail is the exception and grant of bail is the rule, and in such a scenario, the conditions imposed on bail must not be unreasonable.



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14. In the case of *Munish Bhasin and Others Vs. State (Government of NCT of Delhi)* and *Another* (2009) 4 SCC 45, the Appellant had approached the Supreme Court in Appeal against an order of the High Court that had imposed onerous conditions for grant of Anticipatory Bail in a Domestic Violence case. This Hon'ble Court in its reasoning held that harsh and excessive conditions cannot be imposed while granting bail, the relevant observations of this Court are reproduced hereunder:

“10. It is well settled that while exercising discretion to release an accused under Section 438 of the Code neither the High Court nor the Sessions Court would be justified in imposing freakish conditions. There is no manner of doubt that the court having regard to the facts and circumstances of the case can impose necessary, just and efficacious conditions while enlarging an accused on bail under Section 438 of the Code. However, the accused cannot be subjected to any irrelevant condition at all.

12. While imposing conditions on an accused who approaches the court under Section 438 of the Code, the court should be extremely chary in imposing conditions and should not transgress its jurisdiction or power by imposing the conditions which are not called for at all. There is no manner of doubt that the conditions to be imposed under Section 438 of the Code cannot be harsh, onerous or excessive so as to frustrate the very object of grant of anticipatory bail under Section 438 of the Code.”



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11. *In the case of Sanjay Chandra Vs. Central Bureau of Investigation (2012) 1 SCC 40, while hearing a bail Application in a case of an alleged economic offence, this court held that the object of bail is neither punitive nor preventative. It was observed as under:*

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

25. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law



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and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual.

27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution.”

12. Further, in the case of Sandeep Jain Vs. National Capital Territory of Delhi (2000) 2 SCC 66, this Court, while hearing a bail application held that conditions for grant of bail cannot become so onerous that their existence itself is tantamount to refusal of bail. This Court held as under:

“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 the 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



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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.”

13. In the present case, the Appellant has been granted bail by the High Court. However, while granting bail, the High Court has imposed the excessive conditions of a deposit of fine amount of Rs.1,00,000/- along with a surety of another Rs.1,00,000/- and two further bail bonds of Rs.50,000/- each.

14. We are unable to appreciate the excessive conditions of bail imposed by the High Court. The fact that bail has been granted to the Appellant herein is proof enough to show that he is not to be languishing in jail during the pendency of the case.

15. While bail has been granted to the Appellant, the excessive conditions imposed have, in-fact, in practical manifestation, acted as a refusal to the grant of bail. If the Appellant had paid the required amount, it would have been a different matter. However, the fact that the Appellant was not able to pay the amount, and in default thereof is still languishing in jail, is sufficient indication that he was not able to make up the amount.

16. As has been stated in the Sandeep Jain case (supra), the conditions of bail cannot be so onerous that their existence itself tantamounts to refusal of bail. In the present case, however, the excessive conditions herein have precisely become that, an antithesis to the grant of bail.

17. Any other accused in a similar circumstance at this point would not be in custody, however, the present Appellant, because of the conditions imposed, has not been able to leave the languish of jail. Can the Appellant, for not being able to comply



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with the excessive requirements, be detained in custody endlessly? To keep the Appellant in jail, that too in a case where he normally would have been granted bail for the alleged offences, is not just a symptom of injustice, but injustice itself.”

15. In view of the above, this Court is of the opinion that the order passed by the learned Judicial Magistrate directing the petitioner to deposit 50% of the alleged misappropriation amount i.e., Rs.2,32,600/- to the credit of Cr.No.02 of 2021 is onerous and liable to be set aside. Accordingly, the petitioner is directed to be released on a condition that *“the petitioner shall execute her own bond for a sum of Rs.10,000/- with one surety for a likesum to the satisfaction of the learned Judicial Magistrate No.IV, Salem”*. The other conditions imposed by the trial Court on 14.11.2022 remains unaltered.

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Index: Yes/No

Internet: Yes/No

Speaking order/Non Speaking Order

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A.D.JAGADISH CHANDIRA, J.

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To

1.The Inspector of Police,
CCIW Police Station,
(Crime No.02 of 2021)

2.Judicial Magistrate-IV,
Salem.

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