



Crl.RC.No.374 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 01.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.RC No.374 of 2023

Mantu Saikia

... Petitioner

Vs.

State: Rep. by the Inspector of Police,
Thoppur Police Station,
Dharmapuri District.

... Respondent

Prayer: Criminal Revision Petition filed under Section 397 & 401 Cr.P.C. to call for the records and set aside the dismissal order dated 15.02.2023 in CMP No.1296/2023 passed by the Judicial Magistrate No.II, Dharmapuri in Crime No.237 of 2022 on the file of the Inspector of Police, Thoppur Police Station, Dharmapuri District and enlarge the petitioner on bail.

For Petitioner : Mr.B.Vasudevan

For Respondent : Mr.V.Meganathan,

Government Advocate (Crl. Side)



Crl.RC.No.374 of 2023

ORDER

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This petition has been filed to set aside the order dated 15.02.2023 passed in CMP No.1296/2023 by the learned Judicial Magistrate No.II, Dharmapuri and enlarge the petitioner on bail in Crime No.237/2022.

2. The case of the petitioner in nutshell, is as follows.

The respondent police registered a case in Crime No.237/2002 against the petitioner for the offences punishable under Section 328 IPC and Sec.7 and 20(1) of COTPA Act, 2003 and he was remanded to judicial custody on 02.10.2022. The petitioner filed a petition in Crl.M.P.No.2095 of 2022 under Section 439 Cr.P.C. before the Principal District Judge, Dharmapuri to grant bail and it was allowed with some conditions. One of the conditions is to pay a sum of Rs.3,79,000/- to the Mediation and Conciliation Centre, Dharmapuri. Subsequently, the petitioner filed a petition in Crl.O.P.No.30966/2022 before this Court to modify the above said condition and this Court, vide order dated 15.12.2022, has modified the above condition to the effect that the petitioner shall pay a sum of Rs.1,50,000/- to the



Crl.RC.No.374 of 2023

WEB COPY

Mediation and Conciliation Centre, Dharmapuri. Thereafter, the petitioner filed a petition under Section 167(2) of Cr.P.C. before the learned Judicial Magistrate No.II, Dharmapuri to grant statutory bail and it was dismissed vide order dated 15.02.2023. Challenging the above order, this Criminal Revision Case has been filed.

3. The learned counsel for the petitioner submitted that, earlier, the bail petition in C.M.P.No.2095/2022 filed under Section 439 Crl.P.C. was allowed by the Principal District Judge, Dharmapuri on condition to deposit a sum of Rs.3,79,000/- at Mediation and Conciliation Centre, Dharmapuri and thereafter, it was modified by this this Court as to deposit a sum of Rs.1,50,000/-,on the petition filed by the petitioner in Crl.O.P.No.30966/2022 .

4. The learned counsel for the petitioner further submitted that, the petitioner is very poor and he is not able to pay the amount of Rs.1,50,000/-. He also submitted that, though the petitioner was granted bail under section 439 of Cr.P.C, for not complying of the conditions, he is in judicial custody from 01.02.2019 i.e. more than 180



Crl.RC.No.374 of 2023

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days. Therefore, there is no bar to file statutory bail under Section 167(2) Cr.P.C and hence, he filed the petition in CMP No.1296/2023.

But the learned Magistrate without considering the above aspect, has erroneously dismissed the statutory bail petition by passing the impugned order dated 15.02.2023. Therefore, the above said order is liable to dismissed and the petitioner may be granted bail.

5. The learned Government Advocate (Crl.Side) appearing for the petitioner submitted that, since already the petitioner was granted bail under Section 439 of Cr.P.C., he has no right to file a statutory bail petition under Section 167(2) Cr.P.C. Hence, the learned Magistrate has rightly dismissed the statutory bail petition and the order does not warrant any interference by this Court.

6. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) and I have perused the materials on record.



Crl.RC.No.374 of 2023

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7. A perusal of the records shows that, earlier, the petitioner was granted bail under Section 439 of Cr.P.C. with some conditions. Further, one of the bail condition i.e. to pay a sum of Rs.3,79,000/- to the Mediation and Conciliation Centre, Dharmapuri was also modified by this Court, vide order dated 15.12.2022, on the petition filed by the petitioner in Crl.O.P.No.3096/2022. It is the contention of the petitioner that, he is very poor and he is not able to deposit the modified amount also and hence, he is in judicial custody from 02.10.2022 i.e. for more than 180 days. Therefore, he filed a petition under Section 167(2) Cr.P.C. in Crl.MP No.1296/2023 to grant statutory bail and it was dismissed by the learned Magistrate, vide impugned order dated 15.02.2023.

8. The learned counsel for the petitioner argued that though the petitioner was granted bail under Section 439 of Cr.P.C., he is not able to deposit such a large amount and in view of the same he is in judicial custody for more than 180 days. Hence, there is no bar to grant statutory bail to the petitioner under Section 167(2) Cr.P.C. The above contention of the learned counsel for the petitioner cannot be accepted.



Crl.RC.No.374 of 2023

The main object of Section 167 Cr.P.C. is to release an accused on his application, on the expiry of the period as contemplated under the proviso to sub section (2) of Section 167 Cr.P.C., if no charge sheet had been filed. But in this case, before expiry of the statutory period, the petitioner already filed a bail application under Section 439 of Cr.P.C. and the same was also allowed, however, the relief of bail was not availed by the petitioner. Further, the petitioner may have many reasons for non complying of bail conditions, as imposed by the Court. But for such reasons, he cannot file yet another petition, seeking right under Section 167(2) Cr.P.C., to grant statutory bail. Therefore, this Court is of the view that the learned Magistrate has rightly dismissed the statutory bail petition and the same does not warrant any interference by this Court. Therefore, this Criminal Revision Case is liable to be dismissed, as it has no merits.

9. Accordingly, this Criminal Revision Case is dismissed.

01.03.2023

Index:Yes/No
Internet:Yes/No
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Crl.RC.No.374 of 2023

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To

1. The Judicial Magistrate No.II (FAC), Charmapuri.
- 2.The Public Prosecutor, High Court, Madras.



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Crl.RC.No.374 of 2023

V.SIVAGNANAM, J.

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Crl.RC No.374 of 2023

01.03.2023