



Crl.O.P.No.5447 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.5447 of 2023

Aravind

...Petitioner

Vs.

1.State by Inspector of Police,
Chithode Police Station.
(Crime.No.498/2022)

..Respondents

Prayer:- Criminal Original Petition filed under Section 439(1)(b) Cr.P.C.,
praying to modify the condition on bail imposed on the petitioner/accused.

For Petitioner : Mr.J.Franklin

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

ORDER

This Criminal Original Petition is filed under Section 439(1)(b) of
Cr.P.C., seeking to modify the condition imposed in C.M.P.No.635 of 2023
by the Principal District and Sessions Judge at Erode dated 14.02.2023.



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2.Learned counsel appearing for the petitioner would submit that the petitioner was arrested in connection with Crime No.498/2022 for the offences under Section 302 I.P.C. He would further submit tht since the respondent had not filed the final report, after completion of 90 days, on 91st day, the petitioner applied for bail under Section 167(2)(a)(i) of Cr.P.C. and the learned Judicial Magistrate, while granting bail to the petitioner, had imposed a condition that the petitioner should execute a bond for Rs.10,000/- with two sureties out of which, one shall be a blood surety and a Government surety. He would also submit that the petitioner was unable to get a Government surety and thereby, the petitioner had filed an Application seeking for modification of the condition before the learned Principal District and Sessions Judge, Erode in Crl.M.P.No.635 of 2023 and the learned Judge, by order dated 14.02.2023, modified the condition that the petitioner should execute a bond for Rs.10,000/- with three sureties, of which one surety must be a blood relative and other two sureties must be the persons residing within the jurisdiction of Erode Taluk.



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3.Learned counsel would submit that the petitioner was granted bail under Section 167 (2)(a)(i) of Cr.P.C whereas the Court below imposed an onerous condition. He would further submit that the Hon'ble Apex Court has held that when an Application for default bail / statutory bail made under Section 167 (2)(a)(i) of Cr.P.C., an indefeasible right accrues on the petitioner and in such condition, the Courts cannot impose onerous condition, which would amount to denial of bail to the petitioner. He would further submit that when the petitioner is being released under Section 167 (2)(a)(i) Cr.P.C., the said right cannot be extinguished by imposition of onerous condition. He would also submit that the petitioner is a native of Dindigul and he would be able to furnish one blood surety and one more surety from his native place, which is Dindigul.

4. Learned Government Advocate (Criminal Side) would submit that the petitioner was arrested on 31.10.2022 in Crime No.498 of 2022 for the offences under Section 302 I.P.C. Since charge sheet was not filed within 90 days, the learned Magistrate had enlarged the petitioner on default bail with conditions.



WEB COPY 5. Heard learned counsel appearing for the parties and perused the material available on record.

6. While deciding the correctness of imposing a condition to deposit amount for grant of statutory bail, the Apex Court, in **Saravanan Vs. State represented by the Inspector of Police** reported in **(2020) 9 SCC 101**, has held as under:-

"9.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 chargesheet 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 chargesheet 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 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."*

7. In the light of the above decision, this Court is of the opinion that the condition imposed by the Courts below is onerous. In view of the same, the orders passed by the learned Principal District and Sessions and Judge, Erode in Crl.M.P.No.635 of 2023 and the learned Judicial Magistrate, Erode in Cr.M.P.Nos.968 of 2023 are modified to the effect that the petitioner shall execute a bond for Rs.10,000/- (Rupees Ten Thousand only) with two sureties of which, one shall be a blood relative.



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WEB COPY 8. The Criminal Original Petition is ordered accordingly. No costs.

09.03.2023

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Internet : Yes/No

Index: Yes/No

Speaking / Non-speaking order

Nuetral Citation :Yes/No

Note: Issue order copy on 09.03.2023



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To

- 1.The Inspector of Police,
Chithode Police Station.
- 2.The Judicial Magistrate No.III,
Erode.
- 3.The Principal District and Sessions Judge,
Erode
- 4.The Public Prosecutor
High Court of Madras,
Madras.



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A.D.JAGADISH CHANDIRA, J.

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