



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.4.2023

CORAM:

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

Crl.O.P.No.6676 of 2023

G.Manikandan @ Guru Manikandan

Petitioner

Vs.

State rep by
Inspector of Police,
EOW Headquarters,
Chennai.
Crime No.21 of 2022

Respondent

PRAYER: Criminal Original Petition filed under Section 439(2) read with Section 482 of the Code of Criminal Procedure, to modify the condition imposed on the petitioner in the bail order dated 7.3.2023 passed by the Special Judge Under Tamil Nadu Protection of Interests of Depositors (in Financial Establishment) Act, 1997 at Chennai in Crl.M.P.No.992/2023 in Crime No.21/2022 pending investigation on the file of the respondent.

For Petitioner : Mr.R.Mohan

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



ORDER

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This Criminal Original Petition is filed to modify the condition imposed on the petitioner in the bail order dated 7.3.2023 passed by the Special Judge Under Tamil Nadu Protection of Interests of Depositors (in Financial Establishment) Act, 1997 at Chennai in CrI.M.P.No.992/2023 in Crime No.21/2022 pending investigation on the file of the respondent.

2. The petitioner is facing a case in Crime No.21 of 2022 on the file of the respondent police for the offences punishable under Sections 120(B), 409, 420 read with Section 109 and 34 IPC in respect of a financial scandal. It appears that he was arrested on 7.12.2022 and since no charge was filed by the respondent even after completion of 90 days, he moved for statutory bail. The court below, while granting the statutory bail, apart from imposing several other conditions, imposed a condition to deposit a sum of Rs.1 Crore or to deposit original title deed for the value of Rs.1 Crore alongwith valuation certificate obtained from the authority concerned within a period of 30 days from the date of his release, which has been challenged by the petitioner in the present Criminal Original Petition.



3. Learned counsel appearing for the petitioner would submit that the condition to deposit such a huge sum or title deed to that value is an untenable and onerous one. He would further submit that the petitioner was released on bail on 9.3.2023 and since then, he had been complying with all other conditions. He would also submit that the co-accused by name Nehru, who has been a Director of the Company in question has not been imposed with any such onerous condition while granting bail by the Special Court in CrI.M.P.No.610 of 2023 by order dated 14.2.2203, whereas, the petitioner, who is only an employee of the Company has been imposed such a condition, while releasing him on statutory bail/default bail under Section 167(2) of Cr.P.C, which is contrary to the scheme of Section 167 Cr.P.C. He would also submit that the Apex Court and this Court have time and again observed that the scheme of Code of Criminal Procedure delineates that provisions of Section 167 Cr.P.C., give due regard to the personal liberty of a person and when the charge sheet has not been submitted within 60 days or 90 days, an accused cannot be detained by the police and the right in which accused becomes entitled to default bail and it cannot be frustrated either by the prosecution or the Court.



4. The learned counsel for the petitioner would further submit that when a court feels that a prima facie has been made out for the purpose of granting bail, by no stretch of imagination, any onerous condition be passed, thereby thwarting and making the order inexecutable as it amounts to denial of bail. In support of his contention, the learned counsel for the petitioner has relied on the decision in ***Saravanan Vs. State represented by the Inspector of Police*** (2020) 9 SCC 101.

5. Learned Government Advocate (Criminal Side), opposing for grant of bail, would submit that the offence involved is having high stake and thus, the learned Trial Judge has rightly imposed the condition on the petitioner and thereby the petitioner is not entitled for any indulgence and the present petition is liable to be dismissed.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. Admittedly, the bail granted to the petitioner is a default bail as he had been in judicial custody for more than the statutory period of 90 days



and charge has not been filed by the respondent police, however, the court below has imposed such a onerous condition frustrating the purpose of granting the bail. On this aspect, as rightly pointed out by the learned counsel for the petitioner, the Apex Court in number of decisions, has held that imposition of onerous condition while granting default bail is nothing but denial of bail.

8. In *Saravanan Vs. State represented by the Inspector of Police* (2020) 9 SCC 101, a Full Bench of the Apex Court has held as under:-

"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 *Rakesh Kumar Paul* [*Rakesh Kumar Paul v. State of Assam*, (2017) 15 SCC 67 : (2018) 1 SCC (Cri) 401] , 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, 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. Therefore, the only requirement for getting the default bail/statutory bail under Section 167(2) CrPC 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) CrPC. As observed by this Court in Rakesh Kumar Paul [Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67 : (2018) 1 SCC (Cri) 401] and in other decisions, the accused is entitled to default bail/statutory bail, subject to the eventuality occurring in Section 167 CrPC, namely, 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 and the accused applies for default bail and is prepared to furnish bail.

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9.2. The circumstances while considering the regular bail application under Section 437 Code of Criminal Procedure are different, while considering the application for grant of 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."



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9. Applying the ratio laid down by the Apex Court in the above decision, this Court is of the view that the condition pointed out by the petitioner, imposed by the Court below, is onerous inviting this court's interference. Accordingly, the said condition imposed by the court below is removed.

10. It is made clear that the other conditions imposed by the court below remain unaltered. The Criminal Original Petition is ordered accordingly.

10.4.2023

Index: Yes/No

Internet: Yes/No

ssk.

Note to office:-

**Issue copy of this order
by 11.4.2023.**

To

1. Special Judge Under Tamil Nadu
Protection of Interests of Depositors
(in Financial Establishment) Act, 1997
Chennai.



2. Inspector of Police,
EOW Headquarters,
Chennai.

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3. The Public Prosecutor,
High Court,
Madras.



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A.D.JAGADISH CHANDIRA.,J.

ssk.

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