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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.4.2023

CORAM:

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

Crl.O.P.No.8162 of 2023

N.Ramesh Itha

Petitioner

Vs.

State:

The Inspector of Police,
H-5, New Washermenpet Police Station,
Tondiarpet, Chennai.
(Crime No.483 of 2022)

Respondent

PRAYER: Criminal Original Petition filed under Section 439(1)(b) of the Code of Criminal Procedure, to set aside and modify the condition imposed on the petitioner by the Principal Special Court under EC & NDPS Act, Chennai in Crl.M.P.No.1865 of 2023 dated 5.4.2023 in Crl.M.P.No.743 of 2023 dated 15.2.2023 and in Crl.M.P.No.391 of 2023 dated 1.2.2023.

For Petitioner : Mr.M.J.Senthilkumar

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



ORDER

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This present Criminal Original Petition is filed by A1 in Crime No.483 of 2022 on the file of the respondent police challenging the order dated 5.4.2023 passed by the Principal Special Court under EC & NDPS Act, Chennai in CrI.M.P.No.1865 of 2023 declining to modify certain conditions imposed while granting bail to him.

2. The petitioner/A1 is alleged to have committed offences punishable under Sections 8(c), 9A, 21(a), 21(c), 25A of NDPS Act in Crime No.483 of 2022 and arrested on 20.7.2022. He moved an Application seeking mandatory bail in CrI.M.P.No.391 of 2023, which was granted by the court below by order dated 1.2.2023 with a condition among other conditions that he shall execute a bond for Rs.10,000/- with two acceptable and reliable sureties each for a like sum to the satisfaction of XV Metropolitan Magistrate, George Town, Chennai and one such surety must be a blood relative and another must be a Government employee and both must possess immovable property at Chennai supported with title documents and property tax receipt.

3. Seeking modification of the conditions, the petitioner had filed



Crl.M.P.No.743 of 2023 before the court below, whereupon, by order dated 15.2.2023, the court below modified the condition to the effect that one surety must be acceptable and reliable surety having immovable property at Chennai or at any place standing in his own name supported with title document and property tax receipt.

4. Still, expressing grievance that he, being a resident of Telangana, finds it difficult to arrange a blood relative as one surety and a Government employee as another surety at Chennai or at any other place that too possessing immovable property, sought for further modification before the court below by filing Crl.M.P.No.1865 of 2023, which came to be dismissed by the court below, aggrieved against which, the present Criminal Original Petition has been filed seeking further modification.

5. Mr.J.Senthilkumar, learned counsel appearing for the petitioner would submit that in respect of offences punishable under Sections 8(c), 9A, 21(a), 21(c), 25A of NDPS Act for the alleged possession of commercial quantity of narcotic drugs, the petitioner was arrested on 20.7.2022 and since no charge sheet was filed even after the statutory period of 180 days, he sought for mandatory bail, which was granted by the court below by order dated 1.2.2023, however imposing conditions that are onerous thereby



making it inexecutable. He would further submit that the petitioner, being a resident of Telangana, has no blood relative at Chennai or any other place and a Government employee as another surety that too possessing immovable property and thereby, he is still undergoing incarceration for about 2-1/2 months even after grant of statutory bail.

6. The learned counsel for the petitioner would further submit that the condition imposed by the court below while releasing the petitioner on statutory bail/default bail under Section 167(2) of Cr.P.C 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 filed within the statutory period, 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.

7. The learned counsel for the petitioner would further submit that when a court feels that a prima facie case has been made out for the purpose of granting bail, by no stretch of imagination, any onerous condition can be imposed, 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.

8. Learned Government Advocate (Criminal Side), opposing for grant of bail, would submit that 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.

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

10. 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 180 days and charge sheet 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.

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11. 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. "

12. In the case on hand, the petitioner, having been arrested on 20.7.2022, has been rightly granted statutory bail on 1.2.2023 (after about six months), however, due to the stringent and impracticable conditions imposed by the court below, he could not come out on bail even after 2-1/2 months therefrom.

13. In such circumstances, in the opinion of this Court, the condition pointed out by the petitioner, imposed by the court below with regard to execution of sureties, is onerous warranting this court's interference. Accordingly, the said condition imposed by the court below with regard to execution of sureties is modified to the effect that

"The petitioner shall execute a bond for a sum of Rs.10,000/- with two sureties, each for a like sum to the satisfaction of the learned XV Metropolitan Magistrate,



George Town, Chennai, one of which must be a blood relative (with residential proof) and the other surety shall be a local surety."

14. It is made clear that the other conditions imposed by the court below remain unaltered while the condition imposed by the court below with regard to requirement of possession of immovable property by the sureties is removed. The Criminal Original Petition is ordered accordingly.

17.4.2023

Index: Yes/No

Internet: Yes/No

ssk.

Note to office:-

**Issue copy of this order
by 18.4.2023.**

To

1. Principal Special Court under EC & NDPS Act,
Chennai.
2. XV Metropolitan Magistrate,
George Town, Chennai.



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3. The Inspector of Police,
H-5, New Washermenpet Police Station,
Tondiarpet, Chennai.

4. The Superintendent,
Central Prison, Puzhal,
Chennai.



A.D.JAGADISH CHANDIRA.,J.

ssk.

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