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Crl.O.P.No.9775 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **28.04.2023**

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P.No.9775 of 2023

Rahimunnisa @ Nisha

... Petitioner

Vs.

State by
The Inspector of Police,
K-8, Arumbakkam Police Station,
Chennai.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C.,
pleaded to set aside the order dated 24.03.2023 in Crl.M.P.No.6446 of 2023 on
the file of the Principal Sessions Judge, Chennai and may be pleased to modify
the condition imposed in Crl.M.P.No.30341 of 2022 order dated 28.09.2022 by
the learned V Metropolitan Magistrate, Egmore, Chennai in Crime No.208 of
2022 on the file of the respondent police, K8 Arumbakkam Police Station,
Chennai.



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For Petitioner : M/s.M.Hussaini Basha

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

ORDER

This Criminal Original Petition has been filed to set aside the order dated 24.03.2023 in Crl.M.P.No.6446 of 2023 on the file of the Principal Sessions Judge, Chennai and to modify the condition imposed in Crl.M.P.No.30341 of 2022, dated 28.09.2022 by the learned V Metropolitan Magistrate, Egmore, Chennai in Crime No.208 of 2022 on the file of the respondent police.

2. The learned counsel for the petitioner would submit that petitioner is facing a case in Crime No.208 of 2022 on the file of the K8 Arumbakkam Police Station, Chennai, for the offence punishable under Sections 406, 420 and 506(i) IPC. It appears that she was arrested on 25.07.2022 and since no charge sheet was filed by the respondent even after completion of 90 days, she moved for statutory bail. The court below, while granting the statutory bail by order dated 28.09.2023 in Crl.M.P.No.30341 of 2022 with the following condition:



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“In the result, this application for bail is allowed with condition

that the petitioner shall deposit a sum of Rs.1,00,000/- in this Crime number and on executing a bond by himself along with two solvent sureties for Rs.10,000/- (Rupees Ten Thousand only) and one of the surety shall be parents or blood relatives or family members of the petitioner and;

e.The petitioner shall produce one of the sureties must possess immovable property in and around Chennai.”

3. The learned counsel for the petitioner further submitted that she is only a sole breadwinner for her family and she is unable to deposit the said amount to the credit of the said crime number. He further submitted that despite, the bail being granted on 28.09.2022, she is unable to come out on bail on account of the onerous condition imposed by the Court below. He would further submit that the imposition of the onerous condition amounts to denial of bail and despite the bail being granted on 28.09.2022, is unable to enjoy the fruits of the bail. He would submit that the petitioner has filed an application before the learned Principal Sessions Judge, Chennai in Crl.M.P.No.6446 of 2023, and the same was dismissed on 24.03.2023. He would further submit that the petitioner's son and her sister's daughter are ready to stand as surety for her. He further submitted that in support of her contention, the learned counsel for the petitioner has relied on the very same decision in **Saravanan Vs. State**



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represented by the Inspector of Police (2020) 9 SCC 101, and thereby, he would seek for modification of the condition.

4. 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.

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

6. 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



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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



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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."

9.1. As observed herinabove and even from the impugned orders passed by the High Court, it appears that the High Court while releasing the appellant on default bail/statutory bail has imposed the condition to deposit Rs.8,00,000 taking into consideration that earlier before the learned Magistrate and while considering the regular bail application under section 437 CrPC, the wife of the accused filed an affidavit to deposit Rs.7,00,000. That cannot be a



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ground to impose the condition to deposit the amount involved, while granting default bail/statutory bail."

7. This Court is of the considered opinion that the condition imposed on the petitioner in Crl.M.P.No.30341 of 2022 dated 28.09.2022 is onerous.

8. In view of the above submission, the condition imposed on the petitioner by the learned V Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.No.30341 of 2022 dated 28.09.2022, directing the petitioner to deposit Rs.1,00,000/- in this Crime Number is set aside, and the condition is modified to the effect that the petitioner shall execute a bond for a sum of Rs.5,000/- with two sureties. The petitioner is directed to report before the respondent police daily at 10.30 a.m., for a period of two weeks and thereafter as and when required for interrogation. It is made clear that the other conditions imposed by the court below remain unaltered. The Criminal Original Petition is ordered accordingly.

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Internet : Yes / No
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A.D.JAGADISH CHANDRA.,J

mpa

To

The V Metropolitan Magistrate, Egmore, Chennai.

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