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Crl.O.P.No.12714 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2023

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

Crl.O.P.No.12714 of 2023

Paddayappa @ Surya

... Petitioner

Vs.

State rep. by
The Inspector of Police,
AWPS Salem Town Police Station,
Salem District.
(Crime No.44 of 2021)

... Respondent

PRAYER: Criminal Original Petition filed under Section 439(1)(b) of Cr.P.C., pleased to modify the condition imposed in Crl.M.P.No.896 of 2021 in Crime No.44 of 2021 dated 05.01.2022 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Salem.

For Petitioner : M/s.S.Sengkodi

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



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ORDER

This Criminal Original Petition is filed to modify the condition imposed in Crl.M.P.No.896 of 2021 in Crime No.44 of 2021 dated 05.01.2022 on the file of the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Salem.

2. The learned counsel for the petitioner submitted that the petitioner was arrested and remanded to judicial custody on 08.06.2021 in Crime No.44 of 2021 for the offences under Sections 366 IPC and Section 5(m) read with Section 6 of POCSO Act 2012. Subsequently, the petitioner was detained under Goondas Act. Meanwhile, the petitioner had filed an application for bail before Principal Special Court for Exclusive Trial of Cases under POCSO Act, Salem, in Crl.M.P.No.896 of 2021 and the learned Judge, by order dated 05.01.2022, had granted statutory bail to the petitioner under Section 167(2) Cr.P.C. stating that the petitioner shall be released from prison pursuant to the bail order but subject to the out come of the detention order. However, the learned Judge imposed a condition that the petitioner has to execute a bond for Rs.50,000/- with two sureties and both the sureties should be the close blood relative of the petitioner. He would submit that the



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petitioner hails from very poor back ground and thereby, he is unable to comply with the condition. Further the condition imposed by the Court below is onerous. Hence, he seeks for modification of the said condition.

3. Heard the learned Government Advocate (Crl. Side) appearing for the respondent police.

4. Admittedly, the bail granted to the petitioner is a default bail as he had been in judicial custody for more than the statutory period and the 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 default bail. It is relevant to refer to the Full Bench of the Apex Court in ***Saravanan Vs. State represented by the Inspector of Police*** (2020) 9 SCC 101 which is 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



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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. "

5. In ***Sakthivel Vs. Inspector of Police, Belukurichi Police Station, Namakkal District*** (2015 (2) MWN (Cr.) 438) this Court has held that the bail condition should be executable and it should not be onerous and oppressive in nature. In ***Navaneetha Krishnan Vs. Inspector of Police, Natrampalli Police Station Vellore District*** (2015 (2) MWN (Cr.) 53), this Court has observed that the conditions which are in the nature of onerous and which could not be complied with by the accused, would be like granting bail by one hand and taking it away by another hand. In ***Sundar @ Ashok Vs. Inspector of Police, T-16 Nazarathpet Police Station*** (Crl.O.P.No.993 of 2017 dated 18.01.2017), **this Court has held that Court cannot expect an accused or surety to be a propertied person.**



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6. Considering the above facts and circumstances and the submissions of the learned counsel on either side, the condition in respect of execution of bond for Rs.50,000/-, imposed by the Principal Special Court for Exclusive Trial of Cases under POCSO Act, Salem, in Crl.M.P.No.896 of 2021 dated 05.01.2022, **is modify to the effect that the petitioner shall execute a bond for a sum of Rs.10,000/- with two sureties and both the sureties shall be the close blood relative of the petitioner.**

7. With the above modification, this Criminal Original Petition stands ordered. The other conditions shall remain unaltered.

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To

1. Principal Special Court for Exclusive Trial of Cases under POCSO Act,
Salem
2. The Inspector of Police,
AWPS Salem Town Police Station,
Salem District.
3. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA.,J.

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