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Crl.O.P.No.13415 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

CORAM

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

Crl.O.P.No.13415 of 2023

Mohamed Khairul Islam

... Petitioner

Vs.

State Rep. by
Sub-Inspector of Police,
Jolarpet Police Station,
GRP Chennai District.

... Respondent

PRAYER: Criminal Original Petition filed under Section 439(1)(b) of Cr.P.C., pleaded to modify the condition that the petitioner shall execute a bond for Rs.20,000/- with two solvency sureties for like sum imposed by the learned Special Judge for EC/NDPS Act, Salem in Crl.M.P.No.159 of 2023 dated 08.02.2023.

For Petitioner : Mr.M.Mohamed Riyaz

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



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Crl.O.P.No.13415 of 2023

ORDER

This Criminal Original Petition is filed to modify the condition No.1 in Crl.M.P.No.159 of 2023 dated 08.02.2023 on the file of the learned Special Judge for EC/NDPS Act, Salem.

2. One of the conditions imposed by the Special Judge for EC/NDPS Act Cases, Salem while granting bail to the petitioner in a case of alleged possession of 4 kg of Ganja, to the effect that the petitioner shall execute a bond for a sum of Rs.20,000/- with two sureties each for a like sum and the sureties should be close relatives and they should produce necessary documents for owning a valuable property is challenged by the petitioner on the ground that it is onerous.

3. Mr.M.Mohamed Riyaz, learned counsel for the petitioner would submit that the petitioner hails from a poor family and he was arrested and remanded to judicial custody on 26.10.2022 for having been found in possession of 4 kgs of ganja and the Special Judge for EC/NDPS Act Cases, Salem has rightly considered the fact that the



CrI.O.P.No.13415 of 2023

petitioner had been in judicial custody for more than the statutory period of bail and granted statutory bail to him, however, the Hon'ble Judge had imposed an onerous condition insisting for execution of bond for a huge sum with two sureties, who shall produce documents for possession of valuable property. He would further submit that the petitioner has no relative with such a financial background, as a consequence, despite the fact that the statutory bail was granted on 08.02.2023, his personal liberty guaranteed by statute has been refused and he is still languishing in jail and thereby the indefeasible right accrued to the petitioner has been frustrated. Hence, he seeks for modification.

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.



CrI.O.P.No.13415 of 2023

WEB COPY

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

6. Admittedly, the bail granted to the petitioner is a statutory bail as he had been in judicial custody for more than the statutory period of 90 days 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 statutory bail. On this aspect, the Apex Court in number of decisions, has held that imposition of onerous condition while granting default bail is nothing but denial of bail.

7. 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



CrI.O.P.No.13415 of 2023

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



CrI.O.P.No.13415 of 2023

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.

8. 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 of onerous nature and which could not be complied with by the accused, would be like granting bail by one hand and taking it away by another



Crl.O.P.No.13415 of 2023

WEB COPY

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.

9. In the case on hand, the Court below had directed the petitioner to furnish two sureties each and the sureties should be close relatives and they should produce necessary documents to own a valuable property. It is the case of the petitioner that he is a person from the lower strata of the society and no propertied person is ready to stand as surety to him. His statement about his status cannot be simply brushed aside considering the fact that though he was granted bail by the court below on 08.02.2023, he could not come out on bail even after about 4-1/2 months, due to his inability to comply with one of the conditions imposed by the court below.

10. In such circumstances, in the opinion of this Court, the



CrI.O.P.No.13415 of 2023

WEB COPY

condition pointed out by the petitioner, imposed by the lower Court below, is onerous inviting this court's interference. Accordingly, the said condition imposed by the court below 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 Judicial Magistrate No.1, Salem."

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

19.06.2023

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CrI.O.P.No.13415 of 2023

WEB COPY

- To**
1. The Special Judge for EC/NDPS Act, Salem.
 2. The Judicial Magistrate No.I, Salem.
 3. The Sub-Inspector of Police,
Jolarpet Police Station,
GRP Chennai District.
 4. The Public Prosecutor,
High Court of Madras.



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Crl.O.P.No.13415 of 2023

A.D.JAGADISH CHANDIRA,J.,

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Crl.O.P.No.13415 of 2023

19.06.2023