



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2023

PRESENT

WEB COPY

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

CRL.O.P(MD)No.2638 of 2023

Kumar Alias Vellaiyan

...Petitioner/Petitioner

-vs-

The State represented by
The Inspector of Police,
Eral Police Station,
Thoothukudi Dis trict.
(in Cr.No.113 of 2021)

...Respondent/Respondent

PRAYER: Criminal Original Petition filed under Section 439(1) r/w 482 of Cr.P.C, to modify the condition imposed on the petitioner to deposit a sum of Rs.25,000/- as non-refundable deposit to the Mediation and Conciliation Centre, Thoothukudi vide order made in Cr.M.P.No.654 of 2023, dated 31.01.2023 by the learned Principal Sessions Judge, Tuticorin.

For Petitioner : Mr.V.Angusamy, Advocate

For Respondent : Mr.P.Kottai Chamy
Government Advocate (Crl.side)

O R D E R

This petition has been filed seeking to modify the condition imposed on the petitioner to deposit a sum of Rs.25,000/- as non-refundable deposit to the Mediation and Conciliation Centre, Thoothukudi vide order made in Cr.M.P.No.654 of 2023, dated 31.01.2023 by the learned Principal Sessions Judge, Tuticorin.

2.The learned Counsel appearing for the petitioner would submit that the petitioner was arrested on 20.01.2023 in connection with Cr.No.113 of 2021 registered by the respondent Police for the offences punishable under Section 379 of IPC and Section 21(1)a of TNMMDR Act. He would further submit that the petitioner had filed an application for bail vide Crl.M.P.No.654 of 2023 and the same came to be allowed on 31.01.2023 by the learned Principal Sessions Judge, Tuticorin. However, while granting bail, the learned Judge had



directed the petitioner to deposit a sum of Rs.25,000/- on refundable deposit to the Mediation and Conciliation Centre, Tuticorin.

3.The learned Counsel for the petitioner would further submit that the petitioner was arrested for having been illegally transported 1/2 unit of river sand. She would also submit that the petitioner is a poor daily wager and he is not able to procure Rs.25,000/- to satisfy the condition and thereby, the petitioner, despite the bail granted on 31.01.2023, is unable to come out on bail. He would further submit that the condition imposed by the learned Judge is onerous and the condition is tantamount to refusal of bail.

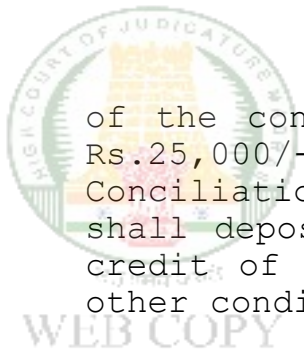
4.She would further submit that the Honourable Apex as well as this Court in several cases has held that harsh and excessive condition cannot be imposed while granting bail. He would also submit that excessive conditions imposed in fact, in practical manifestation, have acted as refusal to grant of bail and the petitioner is languishing in jail and thereby, he would seek to modify the condition of directing the petitioner to deposit a sum of Rs.25,000/-.

5.In reply, the learned Government Advocate (crl.side) would submit that the petitioner is a habitual offender and involved in theft of river sand. He would further submit that before the lower Court, the petitioner's Counsel has voluntarily undertaken to deposit a sum of Rs.25,000/- as non refundable deposit to the Mediation and Conciliation Centre, Tuticorin and only on the submission made by the learned Counsel for the petitioner, the learned Judge had imposed such a condition.

6.In reply, the learned Counsel for the petitioner would submit that there had been a miscommunication between the parties and the Counsel and thereby, he had undertaken to pay Rs.25,000/-. He would submit that due to poor financial condition, the petitioner is unable to pay the amount and despite the order being passed on 31.01.2023, he is unable to come out from jail. However, he would submit that the petitioner now undertakes to pay Rs.5,000/- as non refundable deposit to Mediation and Conciliation Centre, Tuticoron and would pray that the condition may be modified.

7.Heard the learned Counsel appearing for the petitioner and the learned Government Advocate (Crl.side) appearing for the respondent and perused the materials available on record.

8.Taking into consideration the facts and submission as well as the undertaken given by the petitioner, this Court is inclined to allow this petition. Accordingly, this petition is allowed and the order in Cr.M.P.No.654 of 2023, dated 31.01.2023 passed by the Principal Sessions Judge, Tuticorin, is modified in respect



of the condition by directing the petitioner to deposit Rs.25,000/- as non-refundable deposit to the Mediation and Conciliation Centre, Thoothukudi, to the effect that the petitioner shall deposit a sum of Rs.5,000/- as non refundable deposit to the credit of Mediation and Conciliation Centre, Thoothukudi and all other conditions shall remain unaltered.

sd/-

09/02/2023

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/02/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CMR

TO

- 1 THE PRINCIPAL SESSIONS JUDGE,
TUTICORIN.
- 2 THE JUDICIAL MAGISTRATE NO.II,
SRIVAIKUNDAM.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TUTICORIN
- 4 THE SECRETARY
MEDIATION AND CONCILIATION CENTRE, THOOTHUKUDI.
- 5 THE INSPECTOR OF POLICE
ERAL POLICE STATION, THOOTHUKUDI.
- 6 THE OFFICER INCHARGE, DISTRICT JAIL, PERURANI.
- 7 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.V.ANGUSAMY, Advocate (SR-2224[I] dated 13/02/2023)

ORDER

IN

CRL OP(MD) No.2638 of 2023

Date :09/02/2023

PKP/SB/SAR-4/13.02.2023/3P/9C