



Crl.O.P.(MD).No. 2983 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.O.P.(MD).No.2983 of 2023

Manivasan

... Petitioner/Petitioner

Vs.

**The State Rep. by
The Inspector of Police,
Kumbakonam PEW Police Station,
Thanjavur District.
(Crime No.165 of 2023)**

... Respondent/Respondent

PRAYER: Criminal Original Petition filed under Section 439 (i)(b) r/w 482 of the Cr.P.C., to call for the records pertaining to the order passed by the learned Principal Sessions Judge, Thanjavur in Crl.M.P.No.819 of 2023, dated 09.02.2023 and set aside the same by modifying the condition.

For Petitioner

: Mr.K.M.Karunakaran

For Respondent

: Mr.P.Kottaichamy

Government Advocate (Crl. Side)



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ORDER

This Criminal Original Petition has been filed to modify the condition imposed on the petitioner by the learned Principal Sessions Judge, Thanjavur in Crl.M.P.No.819 of 2023, dated 09.02.2023.

2.The learned counsel for the petitioner would submit that the petitioner petitioner is a person living below poverty line and he has no previous case against him, whereas, the learned Principal Sessions Judge, Thanjavur, while granting bail to the petitioner, had directed the petitioner to deposit a sum of Rs.25,000/- to the credit of the Chief Educational Officer, Thanjavur (Development Fund)-Account No.05350100020509”. He would further submit that despite the bail being granted on 03.02.2023, the petitioner is unable to raise funds and come out on bail. He would further submit that the condition imposed by the learned Principal Sessions Judge, Thanjavur in Crl.M.P.No.646 of 2023 in condition Nos.1 and 2 are onerous. He would further submit that in order to modify the said condition Nos.1 and 2 in Crl.M.P.No.646 of 2023, the petitioner had approached the learned Principal Sessions Judge, Thanjavur, by filing a petition in Crl.M.P.No.819 of 2023 and the same was dismissed on 09.02.2023, against which, the petitioner has filed the above petition seeking modification of the said conditions. In support of his contention, the



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learned counsel for the petitioner would rely on the Judgment of the Hon'ble Apex Court reported in **2023 Live Law (SC) 45** in the case of ***Guddan @ Roop Narayan Vs. State of Rajasthan.***

3.The learned Government Advocate (Crl. Side) would submit that the learned Principal Sessions Judge has rightly imposed the condition on the petitioner and thereby, he would oppose for allowing this petition.

4.Heard. Perused the materials available on record.

5.The learned Principal Sessions Judge, Thanjavur in Crl.M.P.No.646 of 2023, while granting bail to the petitioner, has directed him to deposit Rs.25,000/- to the credit of the Chief Educational Officer, Thanjavur (Development Fund)-Account No.05350100020509". Though the petitioner was granted bail on 03.02.2023 in Crl.M.P.No.646 of 2023 with certain conditions , till today he is unable to comply with the condition of paying the amount and coming out on bail. Thereafter he had approached the learned Principal Sessions Judge, Thanjavur for modification of the said condition in Crl.M.P. No.819 of 2023 and the learned Sessions Judge by an order dated 09.02.2023 had dismissed the petition and thereby, the present petition



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has been filed seeking for modification of the condition.

6.This Court as well as the Hon'ble Apex Court have held that the onerous conditions cannot be imposed for grant of bail. In the case of ***Guddan @ Roop Narayan Vs. State of Rajasthan*** reported in ***2023 Live Law (SC) 45***, the Hon'ble Apex Court has held that the excessive conditions imposed on the appellant, in practical manifestation, acted as a refusal to grant bail and the Apex Court has also deprecated the practise of imposing onerous conditions at the time of grant of bail. The relevant paragraphs are extracted hereunder:-

“...9.This Court, time and time again has held that jail is the exception and grant of bail is the rule, and in such a scenario, the conditions imposed on bail must not be unreasonable.

10. In the case of Munish Bhasin and Others Vs. State (Government of NCT of Delhi) and Another (2009) 4 SCC 45, the Appellant had approached the Supreme Court in Appeal against an order of the High Court that had imposed onerous conditions for grant of Anticipatory Bail in a Domestic Violence case. This Hon'ble Court in its reasoning held that harsh and excessive conditions cannot be imposed while granting bail, the relevant observations of this Court are reproduced hereunder:

“10.It is well settled that while exercising discretion to release an accused under Section 438 of the Code neither the High



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Court nor the Sessions Court would be justified in imposing freakish conditions. There is no manner of doubt that the court having regard to the facts and circumstances of the case can impose necessary, just and efficacious conditions while enlarging an accused on bail under Section 438 of the Code. However, the accused cannot be subjected to any irrelevant condition at all.

12. While imposing conditions on an accused who approaches the court under Section 438 of the Code, the court should be extremely chary in imposing conditions and should not transgress its jurisdiction or power by imposing the conditions which are not called for at all. There is no manner of doubt that the conditions to be imposed under Section 438 of the Code cannot be harsh, onerous or excessive so as to frustrate the very object of grant of anticipatory bail under Section 438 of the Code.”

11. In the case of Sanjay Chandra Vs. Central Bureau of Investigation (2012) 1 SCC 40, while hearing a bail Application in a case of an alleged economic offence, this court held that the object of bail is neither punitive nor preventative. It was observed as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person



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will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

25. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual.



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27. *This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution.*”

12. *Further, in the case of Sandeep Jain Vs. National Capital Territory of Delhi (2000) 2 SCC 66, this Court, while hearing a bail application held that conditions for grant of bail cannot become so onerous that their existence itself is tantamount to refusal of bail. This Court held as under:*

“We are unable to appreciate even the first order passed by the Metropolitan Magistrate imposing the onerous condition that an accused at the FIR stage should pay a huge sum of Rs 2 lakhs to be set at liberty. If he had paid it is a different matter. But the fact that he was not able to pay that amount and in default thereof he is to languish in jail for more than 10 months now, is sufficient indication that he was unable to make up the amount. Can he be detained in custody endlessly for his inability to pay the amount in the range of Rs 2 lakhs? If the cheques issued by his surety were dishonoured, the Court could perhaps have taken it as a ground to suggest to the payee of the cheques to resort to the legal remedies provided by law. Similarly if the Court was dissatisfied with the conduct of the surety as for his failure to raise funds for honouring the cheques issued by him, the Court could have directed the



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appellant to substitute him with another surety. But to keep him in prison for such a long period, that too in a case where bail would normally be granted for the offences alleged, is not only hard but improper. It must be remembered that the Court has not even come to the conclusion that the allegations made in the FIR are true. That can be decided only when the trial concludes, if the case is charge-sheeted by the police.”

13. In the present case, the Appellant has been granted bail by the High Court. However, while granting bail, the High Court has imposed the excessive conditions of a deposit of fine amount of Rs. 1,00,000/- along with a surety of another Rs.1,00,000/- and two further bail bonds of Rs.50,000/- each.

14. We are unable to appreciate the excessive conditions of bail imposed by the High Court. The fact that bail has been granted to the Appellant herein is proof enough to show that he is not to be languishing in jail during the pendency of the case.

15. While bail has been granted to the Appellant, the excessive conditions imposed have, in-fact, in practical manifestation, acted as a refusal to the grant of bail. If the Appellant had paid the required amount, it would have been a different matter. However, the fact that the Appellant was not able to pay the amount, and in default thereof is still languishing in jail, is sufficient indication that he was not able to make up the amount.

16. As has been stated in the Sandeep Jain case (supra), the conditions of bail cannot be so onerous that their existence itself tantamounts to refusal of bail. In the present case, however, the excessive



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conditions herein have precisely become that, an antithesis to the grant of bail.

17. Any other accused in a similar circumstance at this point would not be in custody, however, the present Appellant, because of the conditions imposed, has not been able to leave the languish of jail. Can the Appellant, for not being able to comply with the excessive requirements, be detained in custody endlessly? To keep the Appellant in jail, that too in a case where he normally would have been granted bail for the alleged offences, is not just a symptom of injustice, but injustice itself.”

7.This Court is of the opinion that the condition Nos.1 and 2 imposed in Crl.M.P.No.646 of 2023 by the learned Principal Sessions Judge, Thanjavur, dated 03.02.2023 is erroneous and excessive.

8.In view of the above, the order passed by the learned Principal Sessions Judge, Thanjavur in Crl.M.P.No.819 of 2023, 09.02.2023 is set aside and this Criminal Original Petition is allowed. Further, the condition No.1 imposed in Crl.M.P.No.646 of 2023, dated 03.02.2023 shall stands deleted and the condition No.2 is modified to the effect that “*the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the*



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satisfaction of the Jurisdictional Magistrate". All other condition in the said order dated 03.02.2023 shall remain unaltered.

15.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Note: Issue order copy on 16.02.2023.

To

- 1.The Principal Sessions Judge, Thanjavur
- 2.The Inspector of Police,
Kumbakonam PEW Police Station,
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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A.D. JAGADISH CHANDIRA, J.

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