



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Date : 24/02/2023

PRESENT

The Hon`ble Mr.Justice A.D.JAGADISH CHANDIRA

WEB COPY

CRL OP(MD) . No.3491 of 2023

Murugan

... Petitioner/Sole Accused

Vs

The State rep.by
The Inspector of Police,
Alanganallur Police Station,
Madurai District.
(In Crime No.279/2022).

... Respondent/Complainant

For Petitioner : Mr.SELVAM J., Advocate

For Respondent : Mr.M.VEERANTHIRAN,
Government Advocate (Crl.Side)

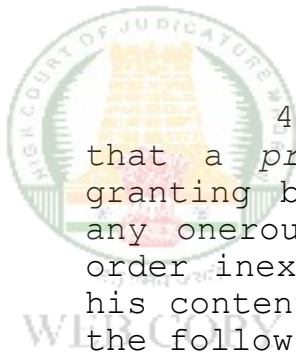
PRAYER :- This Criminal Original Petition filed under Section 439 (1)(B) of Cr.P.C., to modify the conditions imposed on the petitioner in Cr.MP.No.5264/2022, dated 19.10.2022, on the file of the learned Judicial Magistrate, Vadipatti.

O R D E R

This Criminal Original Petition has been filed to modify the condition imposed in the order, dated 19.10.2022 in Crl.M.P.No.5264 of 2022, passed by the learned Judicial Magistrate, Vadipatti.

2.Heard Mr.J.Selvam, learned counsel for the petitioner as well as Mr.M.Veeranthiran, learned Government Advocate (Crl.Side) for the respondent.

3.Mr.J.Selvam, learned counsel for the petitioner would submit that the petitioner was arrested in Crime No.279 of 2022, for having found in possession of 250 grams of ganja and he was granted bail by the learned Judicial Magistrate, Vadipatti in Crl.MP.No.5264 of 2022, dated 19.10.2022, with a condition that the petitioner shall execute a bond for a sum of Rs.25,000/- with two sureties, out of which, one person must be a permanent employee of the recognised institution or a person having a property worth more than Rs.1,00,000/-, within the same locality of the accused. Since the petitioner hails from a lower strata of society, he has no friend or relatives owning properties and further no one having property elsewhere has come forward to stand as surety to him. He would submit that despite bail being granted on 19.10.2022, the petitioner is unable to furnish the sureties, thereby, he is in custody from 13.10.2022. The conditions imposed is onerous.



4. He would further submit that when the Court takes a view that a *prima facie* case has been made out for the purpose of granting bail or anticipatory bail, by no stretch of imagination, any onerous condition be passed, thereby thwarting and making the order inexecutable. It amounts to denial of bail. In support of his contention, the learned counsel for the petitioner has relied on the following judgments:

1. ***In Sakthivel Vs. Inspector of Police Belukurichi Police Station Namakkal District (2015 (2) MWN (Cr.) 438)***
2. ***In Navaneetha Krishnan Vs. Inspector of Police Natrampalli Police Station Vellore District [2015 (2) MWN (Cr.) 53]***
3. ***In Sundar @ Ashok vs. Inspector of Police, T-16 Nazarathpet Police station (Crl.O.P.No.993 of 2017 dated 18.1.2017)***

5. The learned Government Advocate (Crl.Side) would submit that the petitioner is a habitual offender and involved in 10 previous cases of similar nature. The petitioner is working as a coolie. Hence, prays to dismiss the petition.

6. At this juncture, the learned counsel for the petitioner would submit that the petitioner's wife and daughter are ready to stand as sureties to him to ensure the presence of the petitioner during the trial.

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

8. This Court as well as the Hon'ble Apex Court in number of occasions has held that imposition of onerous condition while granting bail is nothing but denial of bail.

- ***In Sakthivel Vs. Inspector of Police Belukurichi Police Station Namakkal District (2015 (2) MWN (Cr.) 438)***, this Court 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 had observed that the conditions which are in the nature of 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 18.1.2017)*** this Court held that Court cannot expect accused or surety to be a propertied person.

9. The Court had directed the petitioner to furnish two sureties each, out of which, one person must be a permanent employee of the recognised institution or a person having a property



worth more than Rs.1,00,000/-, within the same locality accused. It is the case of the petitioner that he being a person from the lower strata of the society, no propertied person is ready to stand as surety to him. In the opinion of this Court, the condition imposed by the lower Court is onerous. The conditions which are in the nature of 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. The Court cannot expect accused or surety to be a propertied person.

9. In the result, the Criminal Original Petition stands allowed. Consequently, the condition imposed on the petitioner in Crl.MP.No.5264 of 2022, dated 19.10.2022, that the petitioner shall execute a bond worth sum of Rs.25,000/- with two sureties, out of which, one person must be a permanent employee of the recognised institution or a person having a property worth more than Rs.1,00,000/-, within the same locality of the accused shall stand modified to the effect that the petitioner shall execute a bond for a sum of Rs.10,000/- with two sureties, who shall be his wife and daughter. All other conditions imposed in the order in Crl.MP.No.5264 of 2022, dated 19.10.2022 shall remain intact.

sd/-

24/02/2023

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/ /2023

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

PNM

TO

1 THE JUDICIAL MAGISTRATE,
VADIPATTI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.

3 THE INSPECTOR OF POLICE,
ALANGANALLUR POLICE STATION,
MADURAI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.SELVAM J Advocate SR.No.2859

ORDER IN

CRL OP(MD) No.3491 of 2023

Date :24/02/2023

SA/SBN/SAR. /24.02.2023/3P/6C

<https://www.mhc.tn.gov.in/judis>