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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 01/03/2023

PRESENT

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

CRL OP(MD) . No.3157 of 2023

1. Kanthavel
2. Manikandan
3. Manikandan
4. Ananth

... Petitioners/Accused

Vs

The State Rep.by
The Sub Inspector of Police,
Surandai Police Station,
Tenkasi District. (Crime No.275/2022)..

... Respondent/Complainant

PRAYER :-

This Criminal Original Petition filed under Section 439(1)(B) of Cr.P.C., to call for the records relating to the impugned order passed in Cr.MP.No.1757 of 2023 in Crl.MP.No.1227 of 2023, on the file of the Principal Sessions Court, Tirunelveli, dated 09.02.2023 and set aside the same and modify the order passed in Cr.MP.No.1227 of 2023.

For Petitioners : M/s.Karthick R J,
For Respondent : Mr.M.Veeranthiran,
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed to set aside the order passed in Cr.MP.No.1757 of 2023 in Crl.MP.No.1227 of 2023, on the file of the Principal Sessions Court, Tirunelveli, dated 09.02.2023 and modify the condition imposed in the order passed in Cr.MP.No.1227 of 2023, dated 31.01.2023.

<https://www.mhc.tn.gov.in/judis> 2.Heard Mr.R.J.Karthick, learned counsel for the
petitioners as well as Mr.M.Veeranthiran, learned Government



Advocate (Crl.Side) for the respondent.

3. The learned counsel for the petitioners would submit that the petitioners are the accused in Crime No.275 of 2022, registered by the respondent Police for the offence under Section 379 IPC and they were arrested on 26.12.2022. The petitioners have filed a bail petition before the Principal Sessions Judge, Tirunelveli in Crl.MP.No.1227 of 2023 and the learned Judge while granting bail to the petitioners have imposed an onerous condition that the petitioners shall execute a bond for a sum Rs.10,000/- each with two sureties each for a likesum to the satisfaction of the learned Judicial Magistrate, Alangulam, out of the above two sureties one surety must be the blood relative of the petitioners/accused and the petitioners each should also produce a Solvency Certificate for Rs.1,00,000/-. Since the petitioners are the lower level workers hailing from a lower strata of society, neither the petitioners nor their relatives/friends are owning any property and no one having property, has come forward to stand as a surety to them. He would submit that despite bail being granted on 31.01.2023, the petitioners are unable to obtain solvency certificate for Rs.1 lakh and furnish the sureties, thereby, they are in custody from 26.12.2022. Two other accused have been granted bail and no such onerous condition is imposed on them by the learned Judge.

4. The learned counsel for the petitioners would further submit that the petitioners have also moved a petition in Crl.MP.No.1757 of 2023 seeking for modification, before the learned Principal Sessions Judge, Tirunelveli, whereas, on a wrong instruction given by the Public Prosecutor that the petitioners are Srilankan Refugees, the learned Judge had dismissed the said petition. He would further submit that the petitioners are Indians and it is also been confirmed by the respondent Police. He would also 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 can be passed, thereby thwarting and making the order inexecutable. It would amounts to denial of bail.

5.The learned counsel for the petitioners in support of his contentions 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)

6.The learned Government Advocate (Crl.Side) would submit that the petitioners are Indians and whereas it was mistakenly represented before the lower Court that the petitioners are Srilankan Refugees. However, he would submit that they are having



one previous case to their credit. Hence, prays to dismiss the petition.

7. At this juncture, the learned counsel for the petitioners would submit that the petitioners are ready to furnish the blood sureties to them to ensure the presence of the petitioners during the trial.

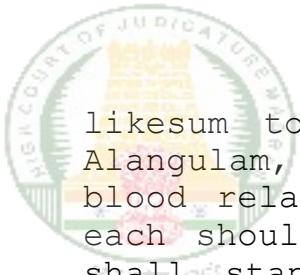
8. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

9. 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 (Cr1.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.

10. The lower Court had directed the petitioners to execute a bond for Rs.10,000/- each with two sureties each for a likesum to the satisfaction of the learned Judicial Magistrate, Alangulam, out of the above two sureties, one surety must be the blood relative of the the petitioners/accused and the petitioners each should also produce a Solvency Certificate for Rs.1,00,000/-. It is the case of the petitioners that the petitioners are from the lower strata of the society and they do not have any property and no propertied person is ready to stand as sureties to them. In the opinion of this Court, the condition imposed by the lower Court to produce solvency certificate for Rs.1 lakh while granting bail 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 the accused or surety to be a propertied person.

11. In the result, ***the Criminal Original Petition stands allowed.*** Consequently, *the order passed by the learned Principal Sessions Judge, Tirunelveli in modification petition in Cr.MP.No.1757 of 2023 in Cr1.MP.No.1227 of 2023, dated 09.02.2023 is hereby set aside* and the condition imposed on the petitioners in Cr1.MP.No.1227 of 2023, dated 31.01.2023, that the petitioners shall execute a bond for Rs.10,000/- each with two sureties each for a



likesum to the satisfaction of the learned Judicial Magistrate, Alangulam, out of the above two sureties, one surety must be the blood relative of the the petitioners/accused and the petitioners each should also produce a Solvency Certificate for Rs.1,00,000/- shall stand modified to the effect that the petitioners shall execute a bond for Rs.10,000/- each with two sureties each for a likesum, who shall be the blood relatives of the petitioners, to the satisfaction of the learned Judicial Magistrate, Alangulam. All other conditions imposed in the order in Crl.MP.No.1227 of 2023, dated 31.01.2023 shall remain intact.

sd/-
01/03/2023

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01/03/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1.THE PRINCIPAL SESSIONS JUDGE,TIRUNELVELI.
- 2 THE JUDICIAL MAGISTRATE,
ALANGULAM
- 3 DO THROUGH
THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI.
- 4 THE SUB INSPECTOR OF POLICE
SURANDAI POLICE STATION, TENKASI DISTRICT.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

ORDER
IN
CRL OP(MD) No.3157 of 2023
Date :01/03/2023

MGJ/SSS/SAR II/01/03/2023/3P/6C