



CrI.O.P.(MD).No. 3938 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

CrI.O.P.(MD).No.3938 of 2023

Sankar

...Petitioner/Petitioner

Vs.

The State Rep. by
The Inspector of Police,
Pappanadu Police Station,
Thanjavur District.
Crime No.107 of 2023

...Respondent/Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to set aside the order passed in Cr.M.P.No.1152 of 2023, dated 24.02.2023 on the file of the learned Principal Sessions Judge, Thanjavur and modify the condition imposed by the learned Principal Sessions Judge, Thanjavur in Cr.M.P.No.923 of 2023, dated 15.02.2023, insofar as the condition that the petitioner to pay a sum of Rs.75,000/- which is non-refundable to the credit of the “Chief Educational Officer, Thanjavur Development Fund, Account No.05350100020509” of Bank of Baroda, Thanjavur.

For Petitioner
For Respondent

: Mr.R.Ponkarthikeyan
: Mr.A.Albert James
Government Advocate (Crl. side)



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ORDER

This Criminal Original Petition has been filed to set aside the order passed in Cr.M.P.No.1152 of 2023, dated 24.02.2023 on the file of the learned Principal Sessions Judge, Thanjavur and modify the condition imposed by the learned Principal Sessions Judge, Thanjavur in Cr.M.P.No.923 of 2023, dated 15.02.2023, insofar as the condition that the petitioner to pay a sum of Rs.75,000/- which is non-refundable to the credit of the “Chief Educational Officer, Thanjavur Development Fund, Account No.05350100020509” of Bank of Baroda, Thanjavur.

2.The case of the prosecution is that the petitioner was found in illegal possession of 198 numbers of TASMAL (each containing 180ml) brandy liquor bottles. Hence, the case.

3.The learned counsel for the petitioner would submit that the petitioner was arrested in Crime No.107 of 2023 registered by the respondent police for the offence punishable under Sections 4(1)(a) and 4(1-A) of TNP Act and remanded to judicial custody on 05.02.2023. He had filed an application for bail in Cr.M.P.No. 923 of 2023 before the learned Principal Sessions Judge, Thanjavur and the learned



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Sessions Judge had granted bail vide order dated 15.02.2023 on condition that the petitioner shall deposit Rs.75,000/-, which is non-refundable, to the credit of the Education Department, by means of Demand Draft to be drawn in any one of the Nationalized Banks in favour of “The Chief Educational Officer, Thanjavur (Development Fund) – Account No.05350100020509” of Bank of Baroda, Thanjavur, IFSC: BARB0TANJOR payable at Thanjavur and produce the original demand draft before the said office and obtain its proper acknowledgment receipt in his name with Crl.M.P.No., from the said office and produce the receipt, xerox copy of Demand Draft along with memo before Jurisdictional Magistrate. He would further submit that the petitioner is a poor man without any means and he is unable to raise funds to comply with the condition and thereby, the petitioner had filed a petition in Crl.M.P.No.1152 of 2023 before the same Judge seeking for modification of the said condition and the same was dismissed on 24.02.2023. He would further submit that though the petitioner was granted bail as early as on 15.02.2023, due to his inability, he is unable to raise funds and languishing in jail which would sufficiently indicate that he is not able to make out money. He would further submit that the Hon'ble Apex Court as well as this Court had time and again held that excessive conditions cannot be imposed while granting bail/suspension of sentence, conditions of bail cannot be so onerous that their existence itself tantamounts to



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refusal of bail. He would further submit that keeping 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. The learned counsel would further 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**. The following paragraphs are extracted hereunder:-

“ . . . 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.



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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 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.



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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 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.”

4.In support of his contention, the learned counsel for the petitioner would also rely on the Judgment of the Hon'ble Apex Court in ***Subhash Chouhan Vs. Union of India and Another reported in 2023 Livelaw (SC) 61***, wherein, it has been held that the onerous condition directing the petitioner to deposit money cannot be imposed while granting of bail. Hence, he would seek to modify the above said condition. He would further submit that the petitioner, without prejudice to his defence, is ready and willing to deposit a sum of Rs.10,000/- in compliance of the said condition.



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5.The learned Government Advocate (Crl. side) would submit that the petitioner was found in illegal possession of 198 numbers of TASMAL (each containing 180ml) brandy liquor bottles and the learned Principal Sessions Judge has rightly imposed the condition on the petitioner and thereby, he would oppose for allowing this petition.

6.Heard. Perused the materials available on record.

7.This Court is of the opinion that the condition No.1 imposed in Crl.M.P.No.923 of 2023 by the learned Principal Sessions Judge, Thanjavur, dated 15.02.2023 is onerous and excessive.

8.In view of the above, the order passed by the learned Principal Sessions Judge, Thanjavur in Crl.M.P.No.1152 of 2023, 24.02.2023 is set aside and this Criminal Original Petition is allowed. Further, in view of the voluntary submission made by the counsel that the petitioner is ready and willing to deposit Rs.10,000/- (Rupees Ten Thousand Only), the condition No.1 imposed in Crl.M.P.No.923 of 2023, dated 15.02.2023 shall stand modified to the effect that the “*the petitioner is*



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directed to deposit Rs.10,000/- (Rupees Ten Thousand Only), which is non-refundable, to the credit of the Education Department, by means of Demand Draft to be drawn in any one of the Nationalized Banks in favour of “The Chief Educational Officer, Thanjavur (Development Fund) – Account No. 05350100020509” of Bank of Baroda, Thanjavur, IFSC: BARB0TANJOR payable at Thanjavur and produce the original demand draft before the said office and obtain its proper acknowledgment receipt in his name with Crl.M.P.No., from the said office and produce the receipt, xerox copy of Demand Draft along with memo before Jurisdictional Magistrate”. All other condition in the said order dated 15.02.2023 shall remain unaltered.

02.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Note: Issue order copy on 02.03.2023.



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To

1.The Principal Sessions Judge, Thanjavur.

2.The Inspector of Police,
Pappanadu 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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