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Crl.O.P.No.19381 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

CORAM

THE HON'BLE MR. JUSTICE P.DHANABAL

Crl.O.P.No.19381 of 2024

Surenthiran

... Petitioner

Vs.

State rep by its
The Inspector of Police,
PEW Namakkal Police Station,
Namakkal District
Crime No.406 of 2024

... Respondent

PRAYER: Criminal Original Petition filed under Section 483 (1)(b) of Cr.P.C to modify the condition the petitioner/A4 should execute a bond each for a sum of Rs.10,000/- with two sureties for a like sum each to the satisfaction of this Court and the sureties should be parents or close relatives or friends are necessary and to prove their identity of the sureties they should have file a passport size photos along with their Aadhar Card or Ration Card or Voter ID Card Proof”

For Petitioner : Mr.S.Santhosh

For Respondent : Mr.S. Santhosh
Government Advocate (Crl Side)



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ORDER

This petition is filed to modify the condition imposed by the Special Judge for EC / NDPS Act cases, Salem that the petitioner/A4 should execute a bond each for a sum of Rs.10,000/- with two sureties for a like sum each to the satisfaction of this Court and the sureties should be parents or close relatives or friends are necessary and to prove their identity of the sureties they should have file a passport size photos along with their Aadhar Card or Ration Card or Voter ID Card Proof”

2. The learned counsel for the petitioner submitted that the learned Special Judge insisted to produce solvency certificates and documents for immovable properties like patta, chitta and Adangal certificates in the name of the petitioner and in the name of sureties. The said condition is not all mentioned in the bail order and further he placed reliance on the Rule 14 of Criminal Rules of practice, 2019 and the same is extracted hereunder:

14. Verification of Solvency of sureties.- The responsibility for accepting the surety as solvent for the required amount is primarily that of the presiding officer of the Court and he should discharge it himself by making such summary enquiry as in the circumstances of the case, he may



think fit.

(2) The production of a solvency certificate from the Revenue Authorities is not always essential and may be insisted upon only in cases of doubt and cases involving large sums.

(3) For the purpose of determining whether the surety is solvent or not, the Court may, if it thinks fit, accept affidavits in proof of the facts contained therein relating to the solvency of the sureties, or may make such further inquiry as it deems necessary.

(4) Insistence upon the possession of immovable property by surety for bond of small amounts not exceeding Rs.15,000/- would cause serious inconvenience to the accused in procuring a surety. The Judge or Magistrate may, therefore, in suitable cases, where the amount of bond does not exceed Rs.15,000/- assess the solvency of the surety even upon the basis of his movable property and assets. The intending surety should present his application for suretyship in Judicial Form No.46. The Head Ministerial Officer should check the proofs accompanying the applications and thereafter, place the matter before the Judge or Magistrate with his remarks. However, in the Court of the Metropolitan Magistrate, if the amount of bond exceeds Rs.15,000/- the head Ministerial Officer should consider the application in the light of the proofs produced and examine the surety personally and may also call for further and better proof. The Judge or Magistrate, after holding a summary enquiry, may pass an order either accepting the surety or rejecting the application.

(5) To avoid abscondence of accused due to furnishing of bogus surety bond by a stock surety, in addition to the proof as mentioned in sub-rule(4) of



the format of application of surety, the surety, in all cases in which the offence is serious and the sentence provided is of more than 7 years imprisonment or the cases under the special enactments like the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985), the Schedules Casetes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Central Act 33 of 1989), the Protection of Children from Sexual Offences Act, 2012 (Central Act 32 of 2012), the Unlawful Activities (Prevention) Act, 1967 (Central Act 37 of 1967), the Prevention of Money Laundering Act, 2002 (Central Act 15 of 2003), etc., shall produce copy of at least one of the following documents:-

- (i) Passport;*
- (ii) Identity Card issued by the Election Commission of India;*
- (iii) Permanent Account Number Card., i.e PAN Card issued by the Income Tax Department;*
- (iv) ATM/Debit Card or Credit Card issued by any nationalised or private bank of standing at the nation level, having photograph of the holder thereon may be accepted in conjunction with any other authentic document like telephone bill or electric bill as proof of residential address;*
- (v) Identity Card issued by the Government Authorities or the Public Statutory Corporations;*

(6) Every surety shall submit two copies of the latest pass post size photograph. Which is not older than six months before the date of submission. In the event of the accused absconding, the Court shall give on photograph



to the police for tracing the surety.

(7) Accused surrendering before a Court for furnishing bond on the order of the High Court/Sessions Court made under Section 438 of the Code, shall affix his photograph in the surrender application and also submit his identification proof as stipulated above for the surety. He shall also furnish at least two of his identification marks in the surrender application.

(8) Orders of bail and suspension of sentence granted by superior Courts shall be communicated by the said Courts via email, officially, to the Court to the satisfaction of which, bond has been directed to be executed, apart from the regular process.

(9) If the accused is not able to produce sureties, the Magistrate may act under Section 445 of the Code.

3. A careful reading of Rule 14(4) of the Criminal Rules of Practice ,2019 it is seen that the the production of solvency certificate from the revenue authorities is not always essential and may be insisted upon only in case of doubt and cases involving large sums and for the purpose of determining whether the surety is solvent or not, the Court may, if it thinks fit, accept affidavits in proof of the facts contained therein relating to the solvency of the sureties or may make such further inquiry as it deems necessary and insistence upon the possession of immovable property by



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surety for bond of small amounts not exceeding Rs.15,000/- would cause serious inconvenience to the accused in procuring a surety. The Judge or Magistrate may therefore in suitable cases where the amount of bond does not exceed Rs.15,000/- assess the solvency of the surety even upon the basis of his movable property and assets.

4. That being so the learned Magistrate cannot insist to produce title document and insolvency certificate as per the Criminal Rules of Practice, 2019. Further the learned Magistrate can not insist for blood sureties. Therefore, the conditional order passed by the learned Judges is modified to the effect that the petitioner /accused should execute a bond for a sum of Rs.10,000/- with two sureties for a like sum each to the satisfaction of the Special Judge for EC / NDPS Act cases Court, Salem. To prove the identity of the sureties, they should have filed a passport size photo along with any one of the identity proof as stated in the Rule 14 of the Criminal Rule of Practice.

5. The learned Judge is directed to accept the sureties as per the Criminal Rules of Practice, 2019 as stated above. Except the above



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modification, all other conditions imposed in the order dated 26.07.2024 remains intact. This petition is disposed of accordingly.

12.08.2024

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Note: The Registry is directed to issue order copy on 13.08.2024

P.DHANABAL, J.

smn

To

1. The Special Judge for EC/NDPS Act Cases, Salem
2. The Inspector of Police,
PEW Namakkal Police Station,
Namakkal District
Crime No.406 of 2024

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