



Crl.O.P.No.27618 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM

THE HONOURABLE MR. JUSTICE **C.V.KARTHIKEYAN**

CRL.O.P.No.27618 of 2023

K. Kowsalya

.. Petitioner

Vs.

The State Rep. by  
Inspector of Police,  
District Crime Branch,  
Coimbatore  
( Crime No.22 of 2023)

... Respondent

**PRAYER:** Criminal Original Petition filed under Section 439 (1) (b) of Cr.P.C to modify the condition of depositing a sum of Rs.20,00,000/- as ordered by the District Munsif-cum-Judicial Magistrate, Madukarai in Crl.M.P.No.4014 of 2023 dated 16.11.2023 and pass orders

For Petitioner : Mr.K. Govi Ganesan

For Respondent: Mr.R. Vinothraja  
Government Advocate



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## **ORDER**

This petition has been filed by the accused to modify the condition imposed by the Judicial Magistrate, Madukarai in Crl.M.P.No.4014 of 2023 by order dated 16.11.2023 whereby, while considering an application seeking bail under Section 167 (2) of Cr.P.C, the learned Magistrate has granted bail, but imposed a condition that the petitioner should deposit a sum of Rs.20,00,000/- as a pre-condition to execute sureties and to be released on bail.

2. The learned counsel for the petitioner has raised a legal point which is correct, namely that while considering an application seeking bail under Section 167 (2) of Cr.P.C, the only aspect to be examined by the learned Magistrate is whether the final report had been filed by the investigating officer within the stipulated period of 60 days or 90 days as the offence may be and if not filed, then if the accused is prepared to furnish sureties then he must be released on sureties without imposing conditions.



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3. Therefore, on the face of it the directions given by the learned Magistrate to deposit a sum of Rs.20,00,000/-, has to be interfered with and set aside.

4. There is another aspect which is placed by the learned Government Advocate(crl side) appearing for the respondent that the finding of the learned Magistrate that the charge sheet has not been filed within the stipulated period itself is not correct, since, the respondent had filed a final report on 11.11.2023 by e-filing. In view of that particular submission, this Court had called for the records from the District Munsif cum Judicial Magistrate, Madukarai in CrI.M.P.No.4014 of 2023 in Cr.No.22 of 2023 registered for the offence registered under Sections 408,420 of I.P.C by the respondent herein against the petitioner/K.Gowsalya.

5. Records have been forwarded and in the records, there is a reference to e-filing by the Inspector of Police, District Crime Branch,



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Coimbatore in LTN20220002279C202300006 dated 11.11.2023 at 17.51. hours. This had been rejected on 23.11.2023 at 13.22.02 hours on the ground that necessary documents had not been filed. But it is a fact that the final report has actually been filed. Once the final report has been filed, then it is a question of taking cognizance of the same and if the Magistrate is of the opinion that supporting documents have not been filed, then it is an issue between the concerned Magistrate and the investigating officer.

6. The petitioner herein had been remanded to custody on 14.09.2023. The order in Crl.M.P.No.4014 of 2023, was passed on 16.11.2023. It had been observed by the learned Judicial Magistrate that the petitioner had been in custody for a period of 63 days and that the final report had not been filed. I am not able to understand as to why the learned Magistrate had not referred to the final report which had actually been filed on 11.11.2023 by e-filing.

7. In the order granting bail, there is no reference at all about the final report having been filed. In the records forwarded by the learned



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Judicial Magistrate as perused by this Court, there is specific reference about the final report having been filed on 11.11.2023 which would indicate that the final report has been filed within the statutory period i.e within 60 days.

8. The learned counsel for the petitioner stated that the petitioner is still in custody since, he could not comply with the condition to deposit Rs.20,00,000/- which had been stipulated as pre-condition for grant of bail. The entire order of the learned Judicial Magistrate has to be set aside as bereft of any reason. If it had been an order under Section 167(2) of Cr.P.C he should not have imposed the condition to deposit Rs.20,00,000/-. But, since the final report had been filed, under Section 167(2) of C.P.C is not attracted. Either way the order dated 16.11.2023 by the Judicial Magistrate, Madukarai in Crl.M.P.No.4014 of 2023 in Cr.No.22 of 2023 against the petitioner herein by the learned District Magistrate is bad in law and hereby set aside.

9. However, let me give one more opportunity to the petitioner to go back to the said Court and file a fresh application seeking bail, keeping in mind that the final report has been filed on 11.11.2023 and



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also raise additional grounds if any.

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10. While considering that application for bail, the learned Magistrate may also hear the intervenor. The learned Magistrate is further directed to ignore the order in Crl.M.P.No.4014 of 2023 and examine the issues raised afresh by considering the nature of the offence committed and the period of incarceration suffered by the petitioner and every other relevant factor.

With the above observations this petition is disposed of.

01.02.2024

smn

**Note: The Registry is directed to issue order copy on 05.02.2024.**

**To.**

1. The District Munsif-cum-Judicial Magistrate, Madukarai
2. The Inspector of Police,  
District Crime Branch,  
Coimbatore
3. Central Prison, Coimbatore.



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**C.V.KARTHIKEYAN, J.**

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