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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 23/08/2024

PRESENT

The Hon`ble Mr.Justice D.BHARATHA CHAKRAVARTHY

CRL OP(MD). No.13729 of 2024

Mahalingam,
S/o.Thangavel,
No.1/165, Samusigapuram,
South Street,
Chartrapatti Post,
Virudhunagar District.

... Petitioner/Accused

Vs

A.Gopinath,
S/o.Anandhakrishnan,
No.3/845-A9-1,Muthuvai Tipper Road,
Lic Backside,
Paramakudi.

... Respondent/Complainant

For Petitioner : Mr.K.Dinesh,
Advocate.

For Respondent : Mr.G.Vishnuram,
Advocate

PRAYER :- This Petition is filed under Section 483(2) BNSS, 2023, to modify the condition imposed by the Judicial Magistrate Court, Paramakudi, in Crl.M.P.No.10349/2024 order dated 08.08.2024 that the petitioner has to deposit 20 % of cheque amount on the file of the Judicial Magistrate Court, Paramakudi.



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ORDER : The Court made the following order :-

This petition is filed to modify the condition imposed by the learned Judicial Magistrate, Paramakudi, in CrI.M.P.No.10349 of 2024, dated 08.08.2024, that the petitioner has to deposit 20% of cheque amount on the file of the learned Judicial Magistrate, Paramakudi.

2. The case is a private complaint, complaining the offence under Section 138 of the Negotiable Instruments Act. The Cheque is for sum of Rs.10,00,000/-. The accused did not appear in the month of November 2023 and as such, an N.B.W. was issued. In execution of the non-bailable warrant, the accused was arrested on 25.06.2024 and still, he continues to be in jail. The trial Court ordered bail on condition to deposit 20% of the cheque amount.

3. The learned counsel for the petitioner submitted that had the petitioner had a source, he would have deposited the amount and come out of jail. The very fact that he is still languishing in jail for the past two months, would itself demonstrate that the condition is onerous and at present, he has got no wherewithal to deposit such a huge sum. The



learned counsel would also rely upon the judgment of the Hon'ble Supreme Court in ***Girish Gandhi V. The State of Uttar Pradesh***, reported in **2024-INSC-617** in support of his submission that while grant of bail, onerous conditions should not be imposed by the trial Court.

4. The learned counsel appearing on behalf of the complainant would oppose the application by saying that so far the petitioner / accused has not paid any amount. The total amount is Rs.10,00,000/-. He was absconding for about 8 months and it is with very great difficulty the complainant had to execute the warrant. The accused is also not attending the Court, only to protract the trial as the examination of the complainant sought appearance.

5. I have heard the learned counsel on either side and perused the material records of the case.

6. In a cheque bounce case, if the accused is absconding and evading trial, it cannot be said that the condition imposed by the trial Court is onerous as 20% of the cheque amount was reasonable. But however, it can be seen that in this case, the accused is unable to deposit



that amount and even though he is arrested on 24.06.2024, he still continues to be under incarceration. The learned counsel for the petitioner submits that because the accused does not have money to pay part of the cheque amount, this Court can impose appropriate costs on the accused, so that, he can be released on bail. He further submits that the petitioner undertakes to appear for all the hearings without fail. The learned counsel for the petitioner would also submit that the petitioner would pay a cost of Rs.20,000/-.

7. In view of the submissions made on behalf the learned counsel for the petitioner, the condition imposed by the learned Judicial Magistrate, Paramakudi, in CrI.M.P.No.10349 of 2024, dated 08.08.2024, is modified inasmuch as it imposes a condition of deposit of 20% of cheque amount. Instead, the petitioner shall pay a sum of Rs. 20,000/- as costs to the complainant. The cost can be paid either to the learned counsel appearing before the High Court or to the complainant counsel appearing before the trial Court or to the complainant by way of Demand Draft or by bank transfer. Upon such payment of cost and on producing proof thereof and upon complying with the other conditions imposed by the learned Magistrate, the petitioner is enlarged on bail.



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8. Accordingly, this Petition is allowed.

(D B C J)
23.08.2024

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To

The Judicial Magistrate Court,
Paramakudi.

Note: Issue order copy on 27.08.2024



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D.BHARATHA CHAKRAVARTHY,J

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ORDER
IN
CRL OP(MD) No.13729 of 2024

Date : 23/08/2024