



CRL OP NO. 31512 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-01-2025

CORAM

THE HONOURABLE MR JUSTICE A.D.JAGADISH CHANDIRA

CRL OP NO. 31512 of 2024

Prathmesh Prasad Madye

S/o. Prasad Ramachandra Madye, Door No. 104, Zinnia Vasant,
Oasis, Marol, Andheri East, Mumbai.

Petitioner(s)

Vs

State Represented By, The Inspector Of Police

District Crime Branch Police Station, Tiruppur Crime No. 11 Of
2023

Respondent(s)

For Petitioner(s):

K.Balasubramaniam

R.Prabhakaran

R.Hemalatha

For Respondent(s):

S.Santhosh

Government Advocate (criminal Side)

Madras High Court.

ORDER

This petition has been filed to modify the condition imposed on the petitioner in Paragraph No.10 in Cr.M.P.No.7816 of 2024 passed by the Judicial Magistrate No.II, Tiruppur, to give bank guarantee of Rs.3 Crores (Rupees three crores only).



2. The learned counsel for the petitioner would submit that the petitioner was arr

30.10.2023 in Crime No.11 of 2023, registered for the offences under Section 420 of IPC,

later altered to Sections 120(b), 409 and 420 of IPC. Subsequently, the respondent completed

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the investigation, filed the final report, and the case has been taken up for trial in C.C.No.159

of 2024 on the file of the Judicial Magistrate No.II, Tiruppur. He would submit that the

petitioner had applied for bail in C.M.P.No.7682 of 2024, and the learned Magistrate granted

bail for the petitioner on 24.10.2024. He would submit that even before the petitioner

produced the sureties, the respondent police filed an application for the cancellation of bail

under Section 480(5) of BNSS before the Judicial Magistrate No.II, Tiruppur, in CMP 7816

of 2024. The learned Magistrate, after dismissing the application seeking for cancellation,

modified the condition imposed in CMP No.7682 of 2024 and directed the petitioner to

furnish a bank guarantee to the tune of Rs.3 Crores vide order dated 04.11.2024. He would

further submit that due to the condition imposed, the petitioner is unable to furnish a bank

guarantee and secure release on bail. He would also submit that it is a case of the commercial

transaction concerning the receipt of receiving the money and non supply of goods. He would

also submit that the co-accused in this case, one Avantikka Kapur, has approached the

Hon'ble Apex Court seeking anticipatory bail and the Hon'ble Apex Court, by an order dated

22.01.2025, has granted anticipatory bail to the co-accused without imposing any conditions.



3. Relying on the decision of the Apex Court in *Mithun Chatterjee Vs. State of C*

(*Special Leave to Appeal (crl.) No.4705 of 2021 dated 12.11.2021*) he would submit that the

imposition of an onerous condition for grant of bail tantamount to denial of bail and thereby,

he seeks indulgence of this Court in setting aside the specific condition that directing the petitioner to furnish bank guarantee to the tune of Rs.3 Crores.

4. The learned Government Advocate (Crl.Side) would submit that the accused, being the supplier, received money from the defacto complainant but failed to supply the goods as agreed, thereby committed an act of cheating. He would submit that the investigation has been completed and final report has been filed.

5. Mr.Deepan Uday, learned counsel for Intervenor appearing for the defacto complainant, vehemently opposed that the total amount cheated in this case is Rs.4.60 Crores and the learned Magistrate, taking into consideration the quantum, had rightly imposed such a condition directing the petitioner to furnish the bank guarantee and he objected for modification of the condition.

6. Heard the learned counsel appearing for the parties and perused the materials available on record.



7. A condition precedent to make a bank guarantee to the tune of Rs. 3 Crores for

bail imposed on the petitioner has been challenged in this petition. As rightly pointed out by

the learned counsel for the petitioner, the law is well settled that the conditions of bail cannot

be so onerous so that their existence itself tantamounts to refusal of bail.

8. The Apex Court, following its various decision on the issue, has held in a recent decision in ***Guddan @ Roop Narayan vs. State of Rajasthan (2023 LiveLaw (SC) 45*** as under:-

"9. This Court, time and time again has held that jail is the exception and grant of bail is the rule, and in such a scenario, the conditions imposed on bail must not be unreasonable.

10. In the case of Munish Bhasin and Others Vs. State (Government of NCT of Delhi) and Another (2009) 4 SCC 45, the Appellant had approached the Supreme Court in Appeal against an order of the High Court that had imposed onerous conditions for grant of Anticipatory Bail in a Domestic Violence case. This Hon'ble Court in its reasoning held that harsh and excessive conditions cannot be imposed while granting bail, the relevant observations of this Court are reproduced hereunder:

"10. It is well settled that while exercising discretion to release an accused under Section 438 of the Code neither the High Court nor the Sessions Court would be justified in imposing freakish conditions. There is no manner of doubt that the court



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having regard to the facts and circumstances of the case can impose necessary, just and efficacious conditions while enlarging an accused on bail under Section 438 of the Code. However, the accused cannot be subjected to any irrelevant condition at all.

12. While imposing conditions on an accused who approaches the court under Section 438 of the Code, the court should be extremely chary in imposing conditions and should not transgress its jurisdiction or power by imposing the conditions which are not called for at all. There is no manner of doubt that the conditions to be imposed under Section 438 of the Code cannot be harsh, onerous or excessive so as to frustrate the very object of grant of anticipatory bail under Section 438 of the Code.”

11. In the case of Sanjay Chandra Vs. Central Bureau of Investigation (2012) 1 SCC 40, while hearing a bail Application in a case of an alleged economic offence, this court held that the object of bail is neither punitive nor preventative. It was observed as under:

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for



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the purpose of giving him a taste of imprisonment as a lesson.

25. The provisions of CrPC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual.

27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution.”

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. Similarly if the Court was dissatisfied with the conduct of the surety as for his failure to raise funds for honouring



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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.

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.”

10. Following the above decision, this court in Rajaram vs. State (Crl.O.P.(MD).No.2976 of 2023 dated 1.2.2023) and in Sankar vs. State (Crl.O.P.(MD).No.3938 of 2023 dated 2.3.2023) has set aside the condition imposed by the court below in those cases holding



that imposing such onerous conditions tantamounts to refusal of bail.”



9. As stated above, in this case, the petitioner has been arrested on 30.10.2023 and despite the grant of bail on 24.10.2024, the petitioner is unable to furnish bank guarantee and is unable to come out on bail and this Court finds that the imposition of the said onerous conditions are unsustainable.

10. In view of the above, the condition imposed directing the petitioner to furnish bank guarantee to the tune of Rs.3 Crores is set aside and the other conditions imposed by the Court shall remain unaltered.

11. Accordingly, this Criminal Original Petition is ordered.

24-01-2025

Note : Order Copy issued on 27.01.2025

To

1. State Represented By, The Inspector Of Police

District Crime Branch Police Station,

Tiruppur

Crime No. 11 Of 2023



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A.D.JAGADISH CHAND



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