



Crl.OP(MD).No.1000 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 25.02.2025

Pronounced on : 09.04.2025

COROM

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

Crl.OP(MD).No.1000 of 2025

R.Mohanraj

... Petitioner / Defacto Complainant

Vs.

1.The State of Tamil Nadu rep by
The Inspector of Police,
District Crime Branch,
Theni District.
(Crime No.15 of 2019)

... 1st Respondent / Respondent /
Complainant

2.P.Arun Babu

... 2nd Respondent / Petitioner /
Sole Accused

PRAYER :- Criminal Original Petition filed under Section 483(2) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 praying to cancel the bail granted to the second respondent / sole accused in Crl.M.P.No.3316 of 2021 dated 21.10.2021 on the file of the Principal District and Sessions Court, Theni.

For Petitioner : M/s.L.Maithili,
Advocate.

For R1 : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor

For R2 : Mr.S.Muniyandi, Advocate.



Crl.OP(MD).No.1000 of 2025

ORDER

WEB COPY

This Criminal Original Petition has been filed by the petitioner on 20.01.2025 under Section 483(2) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 praying to cancel the bail granted to the second respondent / sole accused in Crl.M.P.No.3316 of 2021 vide order dated 21.10.2021 by the learned Principal District and Sessions Judge, Theni.

2. The petitioner / defacto complainant is working as Regional Manager of Radiant Cash Management Private Limited. The second respondent / sole accused was working as a supervisor under the petitioner. According to the petitioner, in the course of office duty, 2nd respondent had misappropriated a sum of Rs.1,01,70,863/- (Rupees One Crore One Lakh Seventy Thousand Eight Hundred and Sixty Three only). Hence, the petitioner lodged a police complaint with the Inspector of Police, District Crime Branch, Theni on 21.08.2019. Based on the complaint, the case in Crime No.15 of 2019 was registered against the second respondent for the offences punishable under Sections 409 and 420 of Indian Penal Code, 1860. The second respondent / sole accused moved pre-arrest bail before this Court in Crl.OP(MD). No.12484 of 2019 and the same was dismissed as withdrawn on 09.09.2019. Thereafter, the second respondent surrendered before the Metropolitan Magistrate Court No.V, Chennai on 13.09.2019. Thereafter, the second respondent moved the



Crl.OP(MD).No.1000 of 2025

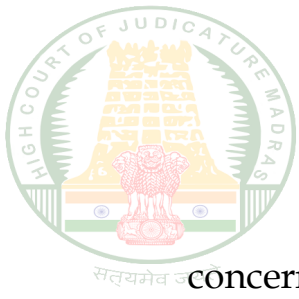
bail application under Section 439 of the Code of Criminal Procedure, 1973 in Crl.OP.
WEB COPY
(MD).No.15372 of 2019 and the same was dismissed on 31.10.2019.

3. Thereafter, the second respondent filed Crl.M.P.No.7241 of 2019 before the Judicial Magistrate Court, Theni under Section 437 of Cr.P.C, 1973. The learned Magistrate allowed the petition on 13.12.2019 and enlarged the petitioner on default bail under Section 167(2) of Cr.P.C., 1973, subject to conditions interalia that the second respondent shall execute a bond for Rs.10,000/- (Rupees Ten Thousand Only) with two sureties for like sum. Further, the learned Magistrate directed the second respondent to appear before the first respondent as and when required for investigation.

4. Then the petitioner moved an application in Crl.OP(MD). No.3695 of 2020 before this Court under Section 439(2) of Cr.P.C, 1973, praying to cancel the bail granted to the second respondent / sole accused in Crl.M.P.7241 of 2019 by the Judicial Magistrate, Theni. The said petition was allowed by this Court on 23.11.2020.

It is appropriate to extract the relevant portions hereunder:-

“21.In view of the above discussions, the default bail granted to the second respondent is liable to be cancelled. However the learned counsel for the second respondent submitted that the second respondent is ready and willing to deposit original title deed to show his bonafide before the



Crl.OP(MD).No.1000 of 2025

WEB COPY

concerned Court in the crime number. The said submission cannot be considered for the reason that the petition has been filed for cancellation of default bail granted under Section 167(2) of Cr.P.C.

22. Accordingly this Petition is allowed and the bail granted to the second respondent in Crl.MP(MD)No.7241 of 2019 dated 13.12.2019 by the learned Judicial Magistrate, Theni is hereby cancelled and the first respondent is directed to secure the second respondent and proceed in accordance with law. However, the second respondent is at liberty to file a fresh bail petition before the Court concerned and the concerned Court is directed to consider the submission of deposit of title deed and pass orders on merits and in accordance with law”

5. Thereafter, the second respondent / sole accused once again filed Crl.M.P.No.2585 of 2020 before the learned Judicial Magistrate, Theni seeking bail. The learned Judicial Magistrate, Theni, after hearing the first respondent, allowed the petition subject to conditions. It is also appropriate to extract the relevant portion of the order hereunder:-

“Petitioner side heard. Reply from I.O. received. Records perused.

This petitioner is surrendered today as per order of the Hon'ble High Court in CRL.OP No.3695/2020, dated 23.11.20. The Hon'ble High Court



Crl.OP(MD).No.1000 of 2025

WEB COPY

in the above said order has pleased to give direction to this court to consider the bail application on merit on the same day. Accordingly, this petition is disposed off today itself after giving due notice to IO/ APP. In reply the I.O have stated that the petitioner is bound to produce original title documents. For which, the council for petitioner argued that the said condition is waived by Hon'ble High Court by accepting their representation during the hearing. This court is accepted the said argument as the Hon'ble High Court did not specify the said condition in the later part of order in para 2 and 3.

As far as merit of bail application is concerned, the investigation is already over and final report is filed in this case. Moreover, the I.O was given police custody and this petitioner was interrogated for two days. Since the charge against this petitioner is only u/s 409 IPC. There is no further custody is required by police. Hence this court upon consider the facts and circumstance of this case is inclined to grand bail to this petitioner on condition that the petitioner shall execute his own bond for Rs. 10,000/- along with two sureties for like sum. Further he shall appear before respondent police daily at 9.00 A.M. and sign until further orders."



Crl.OP(MD).No.1000 of 2025

WEB COPY

6. Aggrieved with the order, the petitioner (defacto complainant) moved an application before this Court under Section 439(2) of Cr.P.C, 1973, in Crl.OP.(MD). No.5043 of 2021. This Court, after hearing both sides, disposed of the said petition vide order dated 26.07.2021. The operative portions of the order is extracted hereunder:-

“15. Considering the fact that final report has been filed in this case, this Court directs the second respondent to produce the original title deed as submitted earlier during the hearing in Crl.O.P.(MD) No.3695 of 2020, within 30 days from the date of receipt of a copy of this order before the concerned Court, failing such production, the bail granted to the second respondent in Cr.M.P.No.2585 of 2020, on 05.12.2020 by the learned Judicial Magistrate, Theni shall stand automatically cancelled. Then the learned Judicial Magistrate, Theni is directed to take steps to secure the second respondent and remand him into judicial custody for facing the trail.

16. This Criminal Original Petition is disposed of in the above terms.”

7. Thereafter, the second respondent / sole accused filed an application in Crl.M.P(MD).No.6925 of 2021 in Crl.OP(MD).No.5043 of 2021 praying to modify the condition imposed in the aforesaid order dated 26.07.2021 made in Crl.OP(MD).



Crl.OP(MD).No.1000 of 2025

No.5043 of 2021. This Court, after hearing both sides, dismissed the said petition also
WEB COPY
on 15.09.2021.

8. Thereafter, the second respondent was arrested and remanded to judicial custody on 23.09.2021. Thereafter, the second respondent moved bail application before the learned Judicial Magistrate, Theni, in Crl.M.P.No.4865 of 2021. The learned Judicial Magistrate dismissed the said petition on 05.10.2021. The petitioner moved another application before the Principal District and Sessions Court, Theni, in Crl.M.P.No.3316 of 2021 seeking bail and the same was granted subject to the conditions. The operative portion of the order reads as follows:-

“ In result this petition is allowed with condition to report before the respondent-police station daily at 10.30 a.m. and 05.0 p.m. Until further orders.”

9. Thereafter, the present petitioner filed Crl.M.P.(MD).No.6810 of 2024 in Crl.O.P(MD).No.5043 of 2021 seeking direction to the learned Judicial Magistrate, Theni to comply with the order of this Court passed in Crl.OP(MD).No.5043 of 2021 dated 26.07.2021 and to secure the second respondent / accused. Though the second respondent has been arrayed as an accused, it is learnt that no notice was served on the second respondent. After hearing the defacto complainant and the first respondent, this Court directed the Judicial Magistrate to comply with the order



Crl.OP(MD).No.1000 of 2025

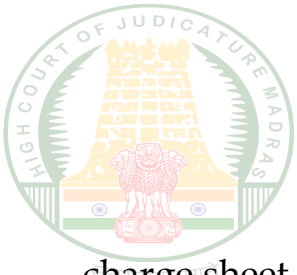
passed in Crl.OP(MD).No.5043 of 2021 dated 26.07.2021 within a week from the date

WEB COPY

of receipt of a copy of that order.

10. M/s.L.Maithili, the learned counsel for the petitioner, submitted that this Court directed the second respondent to produce original documents while seeking bail application but the learned Principal District and Sessions Judge, Theni, without considering the order passed by this Court, mechanically granted bail to the second respondent / sole accused. She further submitted that Charge sheet has been filed. She further submitted that the cheated amount has not been fully recovered from the second respondent. She further submitted that the first respondent failed to bring notice of the order of this Court, when stated that while the second respondent files a petition seeking bail, the Court should consider the production of the title deed as a condition precedent. Further, she submitted that without notice to the petitioner, the learned Session Judge granted bail which is against the earlier order passed by this Court and the principle of natural justice. Accordingly, she prays to cancel the bail granted to the second respondent in Crl.M.P.3316 of 2021 dated 21.10.2021 passed by the learned Principal District and Sessions Judge, Theni.

11. In response, Mr.R.Meenakshi Sundaram, the learned Additional Public Prosecutor, submitted that the impugned order was passed only during COVID-19 period, considering the situations which prevailed then. He further submitted that



Crl.OP(MD).No.1000 of 2025

charge sheet has been filed in this case.

WEB COPY

12. Mr.S.Muniyandi, the learned counsel appearing for the second respondent, submitted that the second respondent does not possess any title deed. In fact, the second respondent owns one immovable property, which was also mortgaged, and the original document was produced to Canara Bank in the year 2015 for the said mortgage. Hence, the second respondent does not possess any original document. He further submitted that the second respondent filed a petition seeking modification of the order for production of registration copy of the title deed, but the said request was declined. Since the second respondent has no power or right over the original title deed, and the same is not in the custody of the second respondent, he could not comply with the conditions. He further submitted that the investigation has been completed and the charge sheet has been filed. He also submitted that the custody of the second respondent may not be necessary for the investigating agency. He further submitted that the learned Principal District and Sessions Judge, after thoroughly hearing all the facts and circumstances of the case, granted bail and the petitioner has not established sufficient grounds to cancel the bail order. Accordingly, he prayed to dismiss the petition.

13. This Court has considered the submissions made on either side and perused all the materials available on record.



Crl.OP(MD).No.1000 of 2025

WEB COPY

14. The second respondent has not violated any of the conditions imposed by the learned Principal District and Sessions Judge. The second respondent / sole accused states that he owns one property, and the title deed of said property was produced to Canara Bank in the year 2015 for mortgage. As a result, the second respondent / sole accused does not possess the original title deed. In these circumstances, the directions of this Court cannot be complied with.

15. Further, the petitioner, who seeks to cancel the bail order, has failed to establish that the second respondent / sole accused is in possession of the original title deed. In these circumstances, this Court is of the view that no person can be compelled to perform a particular act that he is unable to perform.

16. If the second respondent truly possesses the property or has the power to deal with it, the first respondent can very well invoke the provisions of the Criminal Law Amendment Act, 2013. It is apposite to cite the case law, of this Court in V. Sundaram & Another vs. The Deputy Superintendent of Police, Kancheepuram District & Another in W.P. No. 11221 of 2025, wherein it has been held as follows:

“.....if a person is involved in an offence under section 406 or 420 ipc and the victim is a private person, the provisions of the Criminal Law Amendment Ordinance, 1944 can be invoked in the State of Tamil Nadu for attaching the properties of the



Crl.OP(MD).No.1000 of 2025

offender.....”

WEB COPY

17. Since the charge sheet has already been filed, further custody of the second respondent / sole accused would not serve any purpose. Moreover, the learned Principal District and Sessions Judge, Theni, considering the COVID-19 pandemic that prevailed at the time and the order passed by the High Court, granted bail. Therefore, this Court finds no infirmity or illegality in the said order. Hence, this petition lacks merit and deserves to be dismissed. Accordingly, the petition is dismissed.

18. As stated supra, if the second respondent truly possesses any property, the first respondent can very well invoke the provisions of the Criminal Law Amendment Act, 2013 and attach the property as per the law.

19. With the above observations, this Criminal Original Petition is dismissed.

sd/-

09/04/2025

/ TRUE COPY /

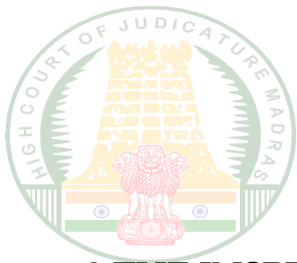
/04/2025

Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

PAL

TO

1 THE PRINCIPAL DISTRICT & SESSIONS JUDGE,
THENI.



Crl.OP(MD).No.1000 of 2025

2 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
THENI DISTRICT.

3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 cc to M/s.L.MAITHILI, Advocate, SR.No.24015 (F) DT.09/04/2025

ORDER
IN
CRL OP(MD) No.1000 of 2025
Date :09/04/2025

SA/SAR. /25.04.2025/12P/5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.