

Before the Madurai Bench of Madras High Court

Date: 05-02-2015

Coram:

The Hon'ble Mr.Justice S.Vaidyanathan

Crl.O.P.(MD)Nos.19196 & 19197 of 2014 & M.P(MD)No.1 of 2014 in
Crl.OP.(MD)No.19196 of 2014

1.Amaldoss

2.Kannan

3.Meganathan

4.Saminathan

5.Santhana Raju

.. Petitioners in Crl.O.P.(MD)No.
19196 of 2014

1.Mathialagan

2.Tamilalagan

3.Karunanithi

4.Tamilarasan

5.Kalaiyaran

.. Petitioners in Crl.O.P.(MD)No.
19197 of 2014

Versus

State,
Rep. by the Inspector of Police,
Patteeswaram Police Station,
Thanjavur District.

.. Respondent
in both petitions

Prayer: These Criminal Original Petitions are filed under Section 482 of Cr.P.C., praying to set aside the second condition imposed by the learned Principal Sessions Judge, Thanjavur in his order, dated 14.10.2014 in Crl.M.P.No.3779 and 3827 of 2014.

For Petitioners : Mr.M.Karunanithi
For Respondents : Mr.P.Kandasamy
Government Advocate (Crl.
Side) for R1
Mr.B.Jameel Arasu for
Intervenor

COMMON ORDER

By order, dated 14.10.2014 in Crl.M.P.Nos.3779 and 3827 of 2014, while granting anticipatory bail to the petitioners herein, the learned Principal District and Sessions Judge, Thanjavur, apart from other conditions, imposed a condition, directing the petitioners to deposit a sum of Rs.15,000/- each before the learned Judicial Magistrate, Kumbakonam.

2. Aggrieved by the said condition, the petitioners have come forward with the present petitions, seeking to set aside the same.

3. The learned counsel for the appearing for petitioner would submit that the petitioners are agricultural coolies and they find difficulty even to eke out their day-to-day livelihood and hence, they are unable to comply with the condition imposed by the Court below in respect of making deposit of Rs.15,000/- before the learned

Magistrate. He would contend that the learned Judge is not having jurisdiction to impose such condition and in fact there is no statutory provision nor any judicial pronouncement empowering the learned Judge to impose condition for depositing of money upon a person at the time of granting bail to him. Therefore, he contended that condition imposed by the Court below is onerous and it tantamounts to abuse of the process of the Court. In support of his contention, the learned counsel relied upon decisions of this Court, in "**Alluddin versus Inspector of Police, Vandhavasi Police Station**"(2001 Cr.L.J.2672); "**N.Sasikala versus Enforcement Officer, Enforcement Directorate, Madras**"(1997 Cr.L.J.2120) and also of the Hon'ble Supreme Court reported in "**Ramathal & others versus Inspector of Police and another**" (2009 Cr.L.J.2271).

4. On the other, the learned Government Advocate (Crl.side) would contend that in cases where there would be no possibility of granting anticipatory bail, if the Court comes to the conclusion on facts and satisfied that the person is entitled to anticipatory bail on certain terms and conditions, the same should be not ordinarily interfered with by this Court.

5. Chapter XXXIII of the Code of Criminal Procedure deals with the provisions as to 'Bail and Bonds'.

6. Section 437 of Cr.P.C. empowers the authority of law to impose any condition while granting bail to any person accused of, which reads as under:

"437. When bail may be taken in case of non-bailable offence.

1[(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court other than the High Court or Court of Session, he may be released on bail, but-

(i) Such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) Such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non- bailable and cognizable offence:

Provided that the court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the court may also direct that a

person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the court.] (2) If it appears to such officer or court at any stage of the investigation, inquiry or trial as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, 2[the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail], or, at the discretion of such officer or court on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code 45 of 1860 or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) the court may impose any condition which the court considers necessary-

- (a) In order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or
 - (b) In order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or
 - (c) Otherwise in the interests of justice.
- (4) An officer or a court releasing any person on bail under sub-section (1), or sub-section (2), shall record in writing his or its 3[reasons or special reasons] for so doing.
- (5) Any court which has released a person on bail under sub-section (1), or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to Custody.
- (6) If, any case triable by a Magistrate, the trial of a person accused of any non bailable offence is not Concluded within a period of sixty days from the first date fixed for - taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.
- (7) If, at any time after the conclusion of the trial of a person accused of a non bailable offence and before Judgment is delivered the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the

accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered."

7. Sub-Section 2 of Section 438 envisages conditions which can be imposed while granting anticipatory bail, which as under:

"438 (2) When the High Court or the Court of Session makes a direction under sub- section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks fit, including -

(i) A condition that the person shall make himself available for interrogation by a police officer and when required;

(ii) A condition that the person shall not, directly or indirectly,- make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer,

(iii) A condition that the person shall not leave India without the previous permission of the court;

(iv) Such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted -under that section."

8. Section 440, 441 and 445 of Cr.P.C. are also relevant and they are extracted as under:

“440. Amount of bond and reduction thereof. (1) The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive. (2) The High Court or Court of Session may direct that the bail required by a police officer or Magistrate be reduced.

“441. Bond of accused and sureties. (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be. (2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition. (3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge. (4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

“445. Deposit instead of recognizance. When any person is required by any Court or officer to execute a bond with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may if in lieu of executing such bond. ”

9. A careful consideration of the provisions of Sections 437(3) and 438(2) Criminal Procedure Code shows that conditions which can be imposed are primarily with a view to ensure availability of the accused during investigation, enquiry or trial and his non-interference with the course of justice. Other conditions which Court may think fit can also be imposed but idea should be to ensure his presence as and when required and his non-interference with the investigation, enquiry or trial.

10. Section 440 Cr.P.C. denotes that the amount of every bond executed shall be fixed with due regard to the circumstances of the case and shall not be excessive. Section 441 Cr.P.C. reads that before any person is released on bail or released on his own bond, a bond for such sum of money as the Court thinks sufficient shall be executed by such person. Section 441 does not speak about deposit of any cash security. Only in certain contingencies, where the accused is unable to

secure sureties for his release, he is permitted to deposit a sum of money or Government promissory Note as the Court may fix in lieu of executing such bond, under Section 445, Cr.P.C.

11. Keeping in view of the above, the issue for consideration is whether the Court below can insist for deposit of money as a condition for grant of bail to the petitioners?

12. In fact, this issue is no longer *res integra* as in catena of decisions, various High Courts as well as the Hon'ble Supreme Court have consistently held that imposing condition of depositing money is excessively onerous and unreasonable and such condition may even amount to denial of bail itself.

13. In "**Sreenivasulu Reddy versus State of Tamil Nadu**" reported in (2002) 10 SCC 653, wherein, this Court granted anticipatory bail to the accused on condition to deposit total Rs.50 crores apart from other conditions, which was also complied with by the accused, however aggrieved by imposition of such condition, the accused preferred appeal before the Hon'ble Apex Court. While dealing with the same, the Hon'ble Supreme Court had emphasized that while exercising jurisdiction under Section 438(2) of the Cr.PC, the Court ought only to impose such conditions/terms for enlarging an accused on bail as would ensure that the accused does not abscond. In para 6,

it has been held as under:

“6. Having considered the rival submissions and the provisions of Section 438 Cr. PC, we are of the considered opinion that the Court while exercising jurisdiction under Section 438 Cr. PC, must bear in mind and be satisfied that the accused will not abscond or otherwise misuse liberty and this can be ascertained from several factors like conduct of the accused in the past, his assets in the country and so on. But, while granting such anticipatory bail, though the Court may impose such conditions as it thinks fit, but the object of putting conditions should be to avoid the possibility of the person hampering investigation. The discretion of the Court while putting conditions should be an exercise of judicial discretion.

14. In “**Sandeep Jain v. State of Delhi**” reported in (2000) 2 SCC 66, wherein, a direction of the Metropolitan Magistrate, to deposit Rs. 2 lacs apart from furnishing of a bond of Rs. 50,000 with two solvent sureties as a condition precedent for bail, was held to be unreasonable. In “**Sheikh Ayub v. State of M.P.**” (2004) 13 SCC 457, wherein, the Supreme Court deleted the direction to deposit a sum of Rs. 2,50,000/-, which was the amount allegedly misappropriated by the accused.

15. In “**Shyam Singh v. State**” reported in (2006) 9 SCC 169,

wherein, the Hon'ble Supreme Court, has held in para 4 as under :

"4. 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 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."

16. In "**Keshab Narayan versus State of Bihar**" reported in AIR 1985 SC 1666, the Hon'ble Supreme Court held that the condition to furnish cash security with sureties for the likesum appears to be excessively onerous and such conditions may virtually amount to denial of bail itself.

17. In "**Hussainara Khaton (I) v. Home Secy., State of Bihar**", reported in (1980) 2 SCC 81, the Hon'ble Supreme Court has held as under in para 3:

"3. Now, one reason why our legal and judicial system continually denies justice to the poor by keeping them for long years in pre-trial detention is our highly unsatisfactory bail system. It suffers from a property oriented approach which seems to proceed on the erroneous assumption that risk of monetary loss is the only deterrent against fleeing from justice. The Code of Criminal Procedure, even after its re-enactment, continues to adopt the same antiquated approach as the earlier Code enacted towards the end of the last century and where an accused is to be released on his personal bond, it insists that the bond should contain a monetary obligation requiring the accused to pay a sum of money in case he fails to appear at

the trial. Moreover, as if this were not sufficient deterrent to the poor, the courts mechanically and as a matter of course insist that the accused should produce sureties who will stand bail for him and these sureties must again establish their solvency to be able to pay up the amount of the bail in case the accused fails to appear to answer the charge. This system of bails operates very harshly against the poor and it is only the non-poor who are able to take advantage of it by getting themselves released on bail. The poor find it difficult to furnish bail even without sureties because very often the amount of the bail fixed by the courts is so unrealistically excessive that in a majority of cases the poor are unable to satisfy the police or the Magistrate about their solvency for the amount of the bail and where the bail is with sureties, as is usually the case, it becomes an almost impossible task for the poor to find persons sufficiently solvent to stand as sureties. The result is that either they are fleeced by the police and revenue officials or by touts and professional sureties and sometimes they have even to incur debts for securing their release or, being unable to obtain release, they have to remain in jail until such time as the court is able to take up their cases for trial, leading to grave consequences,

namely, (1) though presumed innocent, they are subjected to psychological and physical deprivations of jail life, (2) they are prevented from contributing to the preparation of their defence, and (3) they lose their job, if they have one, and are deprived of an opportunity to work to support themselves and their family members with the result that the burden of their detention almost invariably falls heavily on the innocent members of the family. It is here that the poor find our legal and judicial system oppressive and heavily weighted against them and a feeling of frustration and despair occurs upon them as they find that they are helplessly in a position of inequality with the non-poor. The Legal Aid Committee appointed by the Government of Gujarat under the chairmanship of one of us, Mr Justice Bhagwati, emphasised this glaring inequality in the following words:

“The bail system, as we see it administered in the criminal courts today, is extremely unsatisfactory and needs drastic change. In the first place it is virtually impossible to translate risk of non-appearance by the accused into precise monetary terms and even its basic premise that risk of financial loss is necessary to prevent the accused from fleeing is of doubtful validity. There are several considerations which deter an accused from running away from justice and risk of financial loss is only one of them and that too not a major one. The

experience of enlightened Bail Projects in the United States such as Manhattan Bail Project and D.C. Bail Project shows that even without monetary bail it has been possible to secure the presence of the accused at the trial in quite a large number of cases. Moreover, the bail system causes discrimination against the poor since the poor would not be able to furnish bail on account of their poverty while the wealthier persons otherwise similarly situated would be able to secure their freedom because they can afford to furnish bail. This discrimination arises even if the amount of the bail is fixed by the Magistrate is not high, for a large majority of those who are brought before the courts in criminal cases are so poor that they would find it difficult to furnish bail even in a small amount."

18. In "***Mahesh Chandra versus State of U.P.***" reported in (2006) 6 SCC 196, wherein, while remitting the matter for fresh consideration, the Hon'ble Supreme Court set aside the order of the High Court of U.P., in and by which, as a condition for grant of anticipatory bail, the High Court has recorded the undertaking of the petitioners to pay to the victim daughter-in-law a sum of Rs. 2000 per month and failure to do so would result in vacation of the order granting bail. The Hon'ble Supreme Court observed that the parties cannot be made liable to deposit Rs.2000 per month for the maintenance for the victim and while deciding a bail application, it is

not the jurisdiction of the High Court to decide civil disputes as between the parties.

19. Therefore, the practice of imposing condition for depositing of money for granting the bail has been deprecated by the High Courts and the Hon'ble Supreme Court. Of course, while granting the bail, the Court of law is entitled to put certain conditions at its discretion, however, it should not be ignored that such conditions must be reasonable and judicious and should not be arbitrary. In fact, no provision in Code of Criminal Procedure contemplates cash deposit as a condition precedent for grant of bail, but may permit the person to deposit a sum of money in lieu of executing a bond and giving surety of one or two persons. It is needless to state that granting or denying the bail depending upon the circumstances of each case, is within the exclusive discretion of the Court of law or authority, however, such discretion should not be exercised arbitrarily. Once the court comes to the conclusion on the facts and circumstances of the case that a person is entitled to the benefit of bail, then no condition other than those enumerated in Section 437(3) or 438(2) can be imposed. Imposition of such unreasonable condition is not only beyond the purview of the provisions of Code of Criminal Procedure but also

beyond the powers of the court. Discretion does not mean that it has no arena or boundary. No Court having howsoever absolute power can traverse beyond the arena carved out for it. Even absolute discretion does not admit element of arbitrariness or whimsicality or capriciousness.

20. Having regard to the above, this Court is of the view that the condition imposed by the learned Principal Sessions Judge, Thanjavur in his order, dated 14.10.2014 in CrI.M.P.No.3779 and 3827 of 2014, while granting anticipatory bail to the petitioners, to deposit a sum of Rs.15,000/-, is onerous and unreasonable and hence, it is set aside.

Accordingly, these Criminal Original Petitions are allowed. Consequently, the connected Miscellaneous petition is closed.

Suk

05-02-2015

Index: Yes/No

Internet:Yes/No

S.VAIDYANATHAN, J.

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PRE DELIVERY ORDER IN
CRL.OP.NOS.19196 &
19197 OF 2014

05-02-2015