

M.S.Guru Vs. State

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Court : Chennai

Decided On : Mar-15-2013

Judge : R.Subbiah

Appellant : M.S.Guru

Respondent : State

Judgement :

In the High Court of Judicature at Madras Dated 15.03.2013 Coram The Honourable Mr.Justice R.SUBBIAH, J., Criminal Original Petition Nos.2590 to 2583 of 2013 M.s.Guru @ Gurusamy .. Petitioner in all Petitions ..vs.. The State rep.by Inspector of Police, E.O.W.-II Namakkal, Namakkal District. .. Respondent in all Petitions Criminal Original Petitions filed under section 439(1)(b) of Criminal Procedure Code for the relief as stated therein. For Petitioner : Mr.N.Manokaran For Respondent : Mr.Shanmuga Velayutham, Public Prosecutor assisted by Mr.C.Iyyapparaj, Govt.Advocate (Crl.Side) COMMON ORDER All the Criminal Original Petitions are filed to modify the condition imposed by order dated 15.12.2012 in Crl.M.P.Nos.3838,3840,3841 and 3839 of 2012 on the file of learned Special Judge for the Tamil Nadu Protection of Interest of Depositors (in Financial Establishment) Act, 1997, (in short "TNPID" Act), Coimbatore.

2. Case, in brief, is as follows: On 04.09.2012, the respondent registered three cases in Crime Nos.1, 2 and 14 and on 05.10.2012, the respondent registered a case in Crime No.20 of 2012 as against the petitioner and others for the alleged offences under sections 120(B), 406 and 420 IPC and section 5 of TNPID Act on

the basis of a complaint given by one N.Rajendran alleging that the accused persons said to have committed the crime on 26.02.2012. As per the prosecution case, the complainant had invested a sum of Rs.3 lakhs in EMU Farm allegedly promoted by the petitioner believing the words of the accused persons; but thereafter, he was unable to get the returns, as allegedly promised by the accused persons. It is the further case of the prosecution that they have received 268 complaints against Emu farms involving Rs.6.83 crores and many fake Emu farms have been started to cheat the innocent farmers by making false promises.

3. It is the case of the petitioner that even without ascertaining the truth, the police have gone to the extent of registering the cases and started chasing the petitioner. The District Revenue Officer may be the competent authority under TNPID Act; but they have no power under any Statute for the time being in force either to attach the properties or to freeze his accounts. Subsequently, the Government has issued the following two Government Orders: (i) G.O.Ms.No.703 dated 21.09.2012 relating to four wheeler vehicles and bank accounts. (ii) G.O.Ms.No.711 dated 21.09.2012 relating to the immovable properties. Totally four cases have been registered against the petitioner and in all cases, he was arrested on 15.10.2012 and remanded to judicial custody. The petitioner was in judicial custody from the date of arrest for more than 110 days. Since the charge sheet has not been filed within the statutory period, the petitioner has filed bail application on 15.12.2012 under section 167(2) Crl.P.C.for bail under default clause in Crl.M.P.Nos.3838 to 3841 of 2012. In all the cases, the learned Special Judge while granting bail imposed a condition that the petitioner should execute a bond for Rs.25 lakhs with two sureties for a likesum each. Resultantly, he is not in a position to execute the bond even after 45 days. Hence, the present applications have been filed to modify the said condition imposed by the Court.

4. Learned counsel for the petitioner submitted that statutory bail was granted to the petitioner under section 167(2) of Cr.P.C.. As a matter of right, the petitioner is entitled to get statutory bail since the prosecution has failed to file the final report within the statutory period. The condition to furnish two sureties each in all the four cases with a capacity to execute a bond for Rs.25 lakhs is onerous, which is beyond the purview of section 167(2) Cr.P.C. The only condition under section

167(2) Cr.P.C.is, "the accused person shall be released on bail if he is prepared to and does furnish bail" and no other requirement is necessary for grant of statutory bail. Learned counsel further submitted that already properties worth about several crores of rupees are under attachment. In these circumstances, imposing the onerous condition is not proper and correct. Therefore, the condition has to be modified. In this regard, the learned counsel has relied on some judgments in support of his submissions.

5. Per contra, the learned Public Prosecutor opposed to modify the conditions stating that the amounts involved in the offences are several crores of rupees. The trial court by considering the facts and by using discretionary power has imposed a condition directing the petitioner to furnish two sureties in each case who are capable of executing bond for Rs.25 lakh. Therefore, there is no need to interfere with the condition imposed by the trial court.

6. Keeping in view the submissions made by both sides, I have perused the materials available on record. It is the court below, which imposed a condition in all the four cases directing the petitioner to furnish two sureties in each case, who are capable of executing a bond for Rs.25 lakhs. Since he finds it difficult to execute a bond for Rs.25 lakhs, he is unable to come out on bail even after 45 days. According to the petitioner, the statutory bail is a right of accused and imposition of onerous condition is not permissible under law. But, it is the reply of learned Public Prosecutor that since the charge sheet is not filed within a statutory period, the petitioner is entitled for a statutory bail. But imposing condition is purely a discretionary power of the court. Since the petitioner is entitled for bail under section 167(2) Cr.P.C., it does not mean that the Court should not impose necessary condition according to the facts and circumstances of each case.

7. In view of the said submissions, the question that falls for consideration is, when the petitioner is entitled for bail under section 167(2) Cr.P.C., whether onerous condition should be imposed which ultimately disable him from coming out of incarceration 8. In this regard, it would be appropriate to refer some of the judgments relied on by the petitioner. In *HUSSAINARA KHATOON AND OTHERS .vs. HOME SECRETARY, STATE OF BIHAR* ((1980) 1 SCC 81), the Hon'ble Apex

Court has held as follows: "4. The decision as regards the amount of the bond should be an individualised decision depending on the individual financial circumstances of the accused and the probability of his absconding. The amount of the bond should be determined having regard to these relevant factors and should not be fixed mechanically according to a schedule keyed to the nature of the charge. Otherwise, it would be difficult for the accused to secure his release even by executing a personal bond. Moreover, when the accused is released on his personal bond, it would be very harsh and oppressive if he is required to satisfy the Court and what we have said here in regard to the court must apply equally in relation to the police while granting bail that he is solvent enough to pay the amount of the bond if he fails to appear at the trial and in consequence the bond is forfeited. The inquiry into the solvency of the accused can become a source of great harassment to him and often result in denial of bail and deprivation of liberty and should not, therefore, be insisted upon as a condition of acceptance of the personal bond. We have no doubt that if the system of bail, even under the existing law, is administered in the manner we have indicated in this judgment, it would go a long way towards relieving hardship of the poor and help them to secure pre-trial release from incarceration. It is for this reason we have directed the undertrial prisoners whose names are given in the two issues of the Indian Express should be released forthwith on their personal bond.

8. What should be the amount of security required or the monetary obligation demanded in a bond is a matter calling for the careful consideration of several factors. The entire object being only to ensure that the undertrial does not flee or hide himself from trial, all the relevant considerations which enter into the determination of that question must be taken into account (Sec.440 Cr.P.C.). A synoptic impression of what the considerations could be may be drawn from the following provision in the United States Bail Reform Act of 1966: In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offence charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions and his record of appearance at court proceedings or of flight to avoid

prosecution or failure to appear at court proceedings (18 US.S.314(b)). These are considerations which should be kept in mind when determining the amount of the security or monetary obligation. Perhaps, if this is done the abuses attendant on the prevailing system of pre-trial release in India could be avoided or, in any event, greatly reduced (Moti Ram .vs. State of M.P. ((1978)4 SCC 47).

11. The deprivation of liberty for the reason of financial poverty only is an incongruous element in a society aspiring to the achievement of these constitutional objectives. There are sufficient guarantees for appearance in the host of considerations to which reference has been made earlier and, it seems to me, our law-makers would take an important step in defence of individual liberty if appropriate provision was made in the statute for non-financial releases".

9. A learned single Judge of this Court, while dealing with the same situation in the case of BASKAR AND OTHERS .vs. STATE BY INSPECTOR OF POLICE reported in 2001-1-L.W.(CrI.) 88), has held that once the bail application is filed after expiry of the prescribed period and before challan is filed, the court has no business to look into the gravity of the crime committed to justify the judicial custody beyond the prescribed period under Section 167(2) Cr.P.C." 10. A reading of the above judgments would show that once when the petitioner is entitled for statutory bail, the court cannot, by imposing onerous condition, make that person not to come out from the judicial custody by considering the gravity of the offence. In fact, what was relevant for considering the bail application is the court has to satisfy, after taking into account, on the basis of information placed before it, that the accused has his roots in the community and is not likely to abscond and if satisfied, it can safely release the accused by imposing reasonable condition according to the facts and circumstances of that case but by not imposing onerous condition; otherwise it would amount to granting bail on one hand and denying it on another hand.

11. So far as the present case is concerned, it is not the case of the prosecution that the petitioner is likely to abscond once the bail is granted. Even according to the petitioner, the properties worth about several crores of rupees have already been attached in view of the Government Orders stated supra. Considering the

facts and circumstances of the case, I am of the view that the condition imposed by the trial court directing the petitioner to execute a bond for Rs.25 lakhs appears to be onerous, particularly when the statutory bail is granted and hence, the same is liable to be modified. For the foregoing reasons, the condition imposed by the trial court is modified to the effect that Petitioner, in each case, shall execute a bond for a sum of Rs.5,00,000/- (Rupees five lakhs only) with two sureties for a likesum each. Except this, the other conditions imposed by the trial court remain unaltered. All the criminal original petitions are ordered accordingly. To The Special Judge, Tamilnadu Protection of Interest of depositors (in Financial Establishment), Act cases at Coimbatore

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