

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
TUESDAY, THE 30TH DAY OF MAY 2023 / 9TH JYAISHTA, 1945

CRL.MC NO. 3385 OF 2023

PETITIONER/S:

- 1 RAJESH @ MALAKKA RAJESH
AGED 46 YEARS
S/O RAGHAVAN, KANDARATH HOUSE, MALAKKA,
WADAKKANCHERY, THRISSUR DISTRICT, PIN - 680582

- 2 SHIJO PAUL
AGED 45 YEARS
S/O PAUL, PALLISERRY HOUSE, LALOOR,
THRISSUR DISTRICT, PIN - 680611

BY ADVS.
ANAND KALYANAKRISHNAN
C.DHEERAJ RAJAN

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

SRI TR RENJITH PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
30.05.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

This petition is filed challenging Annexure-1 order passed by the learned Judicial Magistrate of First Class-I, Alathur, in CrI.M.P. No. 648/2023. The grievance of the petitioners concerns the direction issued by the learned magistrate to furnish cash security while granting statutory bail.

2. The petitioners herein are the accused Nos. 1 and 2 in Crime No. 1103/2022 of the Vadakkancherry Police Station. They are accused of having committed offenses punishable under Sections 406 and 420 r/w Section 34 of the IPC.

3. As the final report was not laid within the statutory period, an application for statutory bail was preferred and the same was allowed. One of the conditions imposed by the learned magistrate was a direction to the accused to deposit a sum of Rs. 50,000/- as cash security for appearance. In order to justify the direction to deposit cash security, the learned Magistrate has relied on a judgment rendered by the Apex Court in **Sumit Mehta v. State** [2013 (2) KLD 677] and also the judgment rendered by this Court in **Lekha v. State** [2019 (3) KLJ 825].

4. Sri. Dheeraj Rajan, the learned counsel appearing for the petitioners, submits that the judgments relied on by the learned Magistrate

relate to the imposition of conditions while granting anticipatory bail. According to the learned counsel, in the instant case, the petitioners herein were granted default bail, and in view of the law laid down by the Apex Court in **Saravanan v. State represented by the Sub Inspector of Police** [2020 (9) SCC 101], there was no justification on the part of the learned Magistrate in imposing a condition that the petitioners shall furnish cash security.

5. I have considered the submissions advanced and have gone through the records.

6. In **Saravanan** (supra), had occasion to answer the very question posed in this case and had ordered as under

Having heard the learned counsel for the respective parties and considering the scheme and the object and purpose of default bail / statutory bail, we are of the opinion that the High Court has committed a grave error in imposing condition that the appellant shall deposit a sum of Rs.8,00,000/- while releasing the appellant on default bail / statutory bail. It appears that the High Court has imposed such a condition taking into consideration the fact that earlier at the time of hearing of the regular bail application, before the learned Magistrate, the wife of the appellant filed an affidavit agreeing to deposit Rs.7,00,000/-. However, as observed by this Court in catena of decisions and more particularly in the case of Rakesh Kumar Paul (supra), where the investigation is not completed within 60 days or 90 days, as the case may be, and no chargesheet is filed by 60th or 90th day, accused gets an "indefeasible right" to default bail, and the accused becomes entitled to default bail once the accused applies for default bail and furnish bail. Therefore, the only requirement for getting the default bail / statutory bail under S.167(2), Cr.P.C. is that the accused is in jail for more than 60 or 90

days, as the case may be, and within 60 or 90 days, as the case may be, the investigation is not completed and no chargesheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail. No other condition of deposit of the alleged amount involved can be imposed. Imposing such condition while releasing the accused on default bail / statutory bail would frustrate the very object and purpose of default bail under S.167(2), Cr.P.C. As observed by this Court in the case of Rakesh Kumar Paul (supra) and in other decisions, the accused is entitled to default bail / statutory bail, subject to the eventuality occurring in S.167, Cr.P.C., namely, investigation is not completed within 60 days or 90 days, as the case may be, and no chargesheet is filed by 60th or 90th day and the accused applies for default bail and is prepared to furnish bail.

7. As held by the Apex Court, no other condition of deposit of the amount involved can be imposed while granting statutory bail as it would frustrate the very object and purpose of default bail under S.167(2) of the Cr.P.C. The judgments relied on by the learned Magistrate were not applicable to the facts and circumstances.

In that view of the matter, the petition is only to be allowed.

This petition will stand allowed. Condition No. 2 in Annexure-1 order will stand set aside. All other conditions shall remain as such.

Sd/-
RAJA VIJAYARAGHAVAN V
JUDGE

APPENDIX OF CRL.MC 3385/2023

PETITIONER ANNEXURES

Annexure1

THE TRUE COPY OF THE ORDER DATED 20.02.2023 IN
CRL.M.P 648/2023 ON THE FILES OF JUDICIAL
FIRST CLASS MAGISTRATE 1 ALATHUR