

DEFAULT BAIL

SARAVANAN

VERSUS

STATE REPRESENTED BY THE INSPECTOR OF POLICE

CITATION : Criminal Appeal Nos. 681682 OF 2020

JUDGMENT PRONOUNCED BY : M.R. SHAH, J.

JUDGMENT PRONOUNCED ON : 15TH OCTOBER 2020

LAW POINT :

Court Cannot Impose Condition Of Deposit of Money While Granting Default/Statutory Bail U/s 167(2) Criminal Procedure Code (Hereinafter as Cr.P.C.)

FACTS :

The Appellant accused herein was arrested and remanded to the Judicial custody on 31.01.2020 for the offence punishable under Section 420 of the IPC. Appellant filed an application before the Magistrate seeking bail under Section 437 Cr.P.C. The wife of the Appellant filed an affidavit before the said Magistrate and assured to pay Rs.7,00,000 and balance amount later. Magistrate released the Appellant on the condition of this payment being made. Aggrieved by the imposition of the condition on bail, Appellant approached the High Court wherein he was directed to rather approach the Magistrate Court for modification of condition. But, The Appellant filed an application before the Sessions Court for release on default bail/statutory bail under Section 167(2) Cr.P.C. He averred that he has been inside the jail for more than 101 days and the police has not filed the final report. This application was also dismissed on the ground that condition laid out by Magistrate Court of payment of money has not been complied with and also that the Appellant should have exercised his option of approaching Magistrate Court for modification of condition. The Appellant then again approached the High Court for release on default bail. The High Court granted bail but keeping in consideration earlier undertaking by the Appellant's wife via affidavit, it imposed the condition that sum of Rs. 8,00,000 has to be deposited and also that the Appellant to report before the concerned police station daily at 10:00 a.m., until further orders, for interrogation. The Appellant then approached the hon'ble Supreme Court.

ISSUE :

Whether while releasing the Appellant accused on default bail/statutory bail under Section 167(2) Cr.P.C., any condition of deposit of amount as imposed by the High Court, could have been imposed?

CONTENTION OF THE APPELLANT :

1. Non deposit of any amount which was required to be deposited pursuant to the order passed by the Magistrate, was imposed while releasing the Appellant on regular bail under Section 437 Cr.P.C., and it shall not come in the way of the Appellant in getting default bail/statutory bail under Section 167(2) Cr.P.C. The right to default bail/statutory bail under Section 167(2) Cr.P.C. is mandatory bail, provided the conditions in Section 167 Cr.P.C. are satisfied.
2. Conditions imposed by the High Court are contrary to the scheme of Section 167 Cr.P.C. Default Bail is due recognition of the personal liberty of the accused. The accused need not make out any grounds for grant of default bail but only needs to state that 60/90 days, as the case may be, have expired, chargesheet has not filed, and thereupon he is entitled to bail and is willing to furnish the same.

CONTENTION OF THE RESPONDENT :

Earlier the wife of the Appellant filed an affidavit before the Magistrate to deposit Rs.7,00,000 and the High Court has imposed conditions keeping in consideration the very affidavit and thus directed the Appellant to deposit Rs.8,00,000/. Thus, the Conditions imposed while granting default bail are just and valid.

DECISION OF THE APEX COURT :

1. The Apex Court in catena of decisions and more particularly in the case of **Rakesh Kumar Paul v. State of Assam (2017 SC)**, has held that where the investigation is not completed within 60 days or 90 days, as the case may be, and no chargesheet is filed, accused gets an “indefeasible right” to default bail. The accused becomes entitled to default bail once he 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 Section 167(2) Cr.P.C.

2. Considering the scheme and the object and purpose of default bail/statutory bail, the High Court has committed a grave error in imposing condition that the Appellant shall deposit a sum of Rs.8,00,000. The circumstances while considering the regular bail application under Section 437Cr.P.C. are different and do not come in the way while considering the application for default bail/statutory bail. Under the circumstances, the condition imposed while releasing Appellant on statutory bail is unsustainable.
3. So far as the other condition imposed by the High Court, namely, directing the Appellant to report before the concerned police station daily at 10:00 a.m., it is too harsh. Instead, condition which can be imposed is directing the Appellant to cooperate with the investigating officer in completing the investigation and to remain present before the concerned police station for investigation/interrogation as and when called for, and on breach, the Investigating Officer can approach the concerned Court for cancellation of the bail on breach of such condition.

DECISION :

The Appeal was thus allowed. The condition of deposit of money was quashed and set aside and the condition to report was modified to the extent that it directed that the Appellant shall cooperate with the Investigating agency and shall report the concerned police station as and when called for investigation/interrogation and on non cooperation, the consequences including cancellation of the bail shall follow.