

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

**MONDAY, THE THIRTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY THREE**

:PRESENT:

THE HONOURABLE MS JUSTICE B S BHANUMATHI

CRIMINAL PETITION NO: 908 OF 2023

Between:

Ummadi Mahesh @ Maheswara @ Mahesh, S/o Ummadi Hanumanthu, Hindu, aged 30 years, native of D.No.19/26-2, Lakshmipuram S.T.Colony, K. Buduguntapalle, Venkatapathiraju Kandrika, Railway Kodur Mandal, Annamayya District, now resident of S.T.Colony, Karempakam Varadayypalem Mandal, Tirupati District.

...Petitioner/A12

AND

The State of Andhra Pradesh, Rep. by its Public Prosecutor, High Court of Andhra Pradesh at Amaravathi.

...Respondent/Complainant

Petition under Section 482 r/w 439(1) of Cr.P.C, praying that in the circumstances stated in the memorandum of grounds filed in Criminal Petition, the High Court may be pleased to relax the condition in the order dt.25.01.2023 in CrI.M.P.No.69 of 2023 on the file of the Additional District and Sessions Judge for trial of Red Sanders Smuggling cases, Tirupati in Cr.No.35 of 2018 of Chitvel Police Station, by relaxing the following clause "one of such surety shall produce a registered deed of conveyance stand in his/her name for the immovable property for acceptance of his/her solvency to the satisfaction of learned Judicial Magistrate of First Class -cum -Special Court for trial of cases relating to Red Sander Smugglers, Tirupati."

The petition coming on for hearing, upon perusing the Petition and the memorandum of grounds filed in support thereof and upon hearing the arguments of Sri O Udaya Kumar, Advocate for the Petitioner and of Asst. Public Prosecutor for the Respondent, the Court made the following;

ORDER:

HONOURABLE MS. JUSTICE B.S. BHANUMATHI**Criminal Petition No.908 of 2023****ORDER:**

This Criminal Petition under Section 439 (1) of the Code of Criminal Procedure, 1973 ('CrPC'), is filed by the petitioner/A.12, to relax the condition in the common order dated 25.01.2023 passed in CrI.M.P.No.69 of 2023 on the file of the Special Court in the cadre of Additional District and Sessions Judge for Trial of Red Sanders Smuggling Cases, Tirupati in Crime No.35 of 2018 of Chitvel Police Station, Tirupati.

2. The learned Judge while passing the order of bail directed the petitioners as follows:

"Consequently, petitioner/A-12 is enlarged on bail on his executing a bond for a sum of Rs.1,00,000/- (Rupees one lakh only) each with two sureties for like sum each and one of such surety, shall have a permanent fixed abode and shall produce a registered deed of conveyance stands in his/her name for the immovable property for acceptance of his/her solvency to the satisfaction of learned Judicial Magistrate of First Class-cum-Special Court for trial of Cases relating to Red Sanders Smuggling, Tirupati. Further, on such release, the petitioner/A-12 is directed to be appeared before SHO, Railway Kodur Police Station, on every Sunday and Wednesday between 10:00 AM and 5:00 PM for a period of three months or till filing of charge sheet, whichever is earlier. Accordingly, the petition is allowed".



3. Heard the learned counsel for the petitioner/A.12 and the learned Assistant Public Prosecutor representing the respondent/State.
4. The learned counsel for the petitioner/A.12 submitted that the condition imposed by the learned Sessions Judge directing the petitioner to produce title deed of at least one of the sureties has become onerous and therefore, the condition may be modified to that extent. He further submitted that in all cases, it is not possible to secure the original title deed, though one may have property worth more than the value directed by the Court and therefore, in spite of grant of bail, it is becoming difficult for the petitioners to secure sureties. He further submitted that in similar circumstances, this Court in Crl.P.No.9938 of 2022 has relaxed the condition by order dated 20.12.2022, referring to the decision of Apex Court in **Pervez Noordin Lokhandwalla Vs State of Maharashtra and another¹**. It was held at para 14 of the decision of the Supreme Court as follows:

"14 The language of Section 437(3) of the CrPC which uses the expression "any condition... otherwise in the interest of justice" has been construed in several decisions of this court. Though the competent court is empowered to exercise its discretion to impose

¹ (2020) 10 ~~Supreme Court Cases~~ 77

“any condition” for the grant of bail under Sections 437 (3) and 439 (1) (a) of the CrPC, the discretion of the court has to be guided by the need to facilitate the administration of justice, secure the presence of the accused and ensure that the liberty of the accused is not misused to impede the investigation, overawe the witnesses or obstruct the course of justice. Several decisions of this Court have dwelt on the nature of the conditions which can legitimately be imposed both in the context of bail and anticipatory bail.”

5. Further, the Supreme Court referred to its earlier decision in **Kunal Kumar Tiwari v. State of Bihar**², wherein it was held that the conditions cannot be arbitrary, fanciful or extend beyond the ends of the provision and explained the phrase ‘interest of justice’ used in Section 437(3) (c) Cr.P.C. as meaning ‘good administration of justice’ or ‘advancing the trial process’ and inclusion of broader meaning should be shunned because of purposive interpretation.

6. The learned Assistant Public Prosecutor submitted that this court, if inclined to relax the condition, may direct the petitioner to produce one local surety to ensure the presence of the petitioner for facing trial.

7. In the light of the above direction impugned in this petition, the bail granted becomes ineffective because, in most of

² (2018) 16 SCC 74

the cases, petitioner may not be able to procure a surety with such a document, as rightly submitted, as the document may not be available or readily available, for instances like mortgaging the property or the property being ancestral etc. Any condition onerous to one person may not be onerous to another person. Therefore, in each case, court has to examine. The fact that the petitioner could not come out in spite of having an order of bail is indicating in this case that it has become onerous.

8. As such, the condition only to the extent of producing the registered deed of conveyance can be relaxed and the rest of the conditions remain intact.

9. Accordingly, the criminal petition is allowed.

Pending miscellaneous petitions, if any, shall stand closed.

Sd/- G. HELA NAIDU
ASSISTANT REGISTRAR

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SECTION OFFICER

To,

1. The Judicial Magistrate of First Class -cum -Special Court for trial of cases relating to Red Sanders Smuggling, Tirupati.
2. The Station House Officer, Chitvel Police Station, Annamayya District.
3. One CC to Sri. O Udaya Kumar, Advocate [OPUC]
4. Two CC to Public Prosecutor, High Court of AP [OUT]
5. One spare copy.

MSB

HIGH COURT

BSB,J

DATED:13/02/2023

BAIL ORDER

CRLP.No.908 of 2023

ALLOWED

