

HIGH COURT OF KERALA**Bench: Justice Bechu Kurian Thomas****Date of Decision: 16th January 2024**

Criminal Miscellaneous Case No. 10916 of 2023

VENUGOPAL ...PETITIONER**VERSUS****STATE OF KERALA ...RESPONDENT****Legislation:**

Sections 406, 420 of the Indian Penal Code, 1860

Section 21 of the Banning of Unregulated Deposit Act, 2019

Section 440, 441, 443 of the Cr.P.C.

Section 72(xiii) of the Kerala Court Fees and Suits Valuation Act, 1958

Subject: Petition challenging onerous bail conditions and payment of court fees for petitions filed by accused in prison, in a case involving 1726 crimes.**Headnotes:**

Onerous Bail Conditions – Petitioner accused in 1726 crimes – Difficulty in producing separate sureties for each case – Court’s view on impracticality of such conditions – Same surety can be accepted in different cases – Value of bond not necessarily commensurate with quantum involved in crime [Paras 2, 7-9, 11]

Legal Framework of Bail Bonds – Sections 440, 441, and 443 Cr.P.C. – Role of sureties in ensuring accused's presence at trial – No requirement for sureties to guarantee crime's monetary value – Respectability of surety sometimes more significant than property ownership [Paras 6, 7]

Court Fees for Prisoners’ Petitions – Section 72(xiii) of the Kerala Court Fees and Suits Valuation Act, 1958 exempts prisoners’ petitions from court fees – Court fees should not be demanded for petitions filed by accused in custody [Para 10]

Decision: Directed courts dealing with the petitioner's bail applications in 1726 crimes not to insist on separate sureties for each case – Accepted solvency and reliability of surety as sufficient – Petitions by prisoners exempted from court fees.

Representing Advocates:

C.S. Manu, Dilu Joseph, C.A. Anupaman C.Y. Vijay Kumar, Manju E.R., Anandhu Satheesh, Alint Joseph, Paul Jose for petitioner

Sri. M.C. Ashi (PP) for respondent

ORDER

The principle that conditions imposed while granting bail cannot be too onerous or incapable of performance rendering the bail granted illusory and even redundant, is elementary and needs no restatement. However, instances are numerous where the trial courts impose conditions that make the liberty ordered chimerical. This case indicates the hardships of an accused involved in numerous cases.

2. Petitioner is an accused before different police stations indifferent districts in Kerala, alleging offences punishable under sections 406 and 420 of the Indian Penal Code, 1860 apart from offences under Section 21 of the Banning of Unregulated Deposit Act, 2019. As many as 1726 crimes have already been registered against him in different districts. Petitioner was taken into custody on 10.10.2022. Though petitioner is eligible to be released on bail, either by directions of the court or by statutory bail, he has not been able to enjoy his liberty due to his inability to produce sureties to the satisfaction of the different courts.

3. Sri.C.S.Manu, learned Counsel for the petitioner submitted that some of the courts are insisting on different sureties to be furnished for each case and considering the large number of cases registered against the petitioner, it is impossible for him to obtain or produce different sureties. It was submitted that some of the Courts insists on separate sureties to be provided for more than a particular number of cases. Specific reference is made to the view expressed by a Court at Kollam, which had refused to accept the same sureties for more than 20 cases. Learned Counsel also submitted that some courts are even insisting on court fee to be paid for all applications filed by the petitioner.

4. Sri. Ashi M.C., learned Public Prosecutor pointed out that petitioner has not produced any order refusing to accept the sureties, and therefore, the reliefs now sought are based on assumptions.

5. I have considered the rival contentions. Though the contention raised by the Prosecutor has force, considering the importance of the issue the said technical objection cannot stand in the way of this Court considering the issues raised.

6. Orders for release of an accused on bail cannot be frustrated by the conditions imposed or the bonds directed to be furnished. Section 440 of the Cr.P.C. contemplates that the amount of every bond shall be fixed with regard to the circumstances of each case, and the same shall not be excessive. Section 441 Cr.P.C. lays down the nature and contents of the bail bonds to be executed by the accused and sureties before a

person is released on bail. The purpose of having one or more sureties is to ensure that the accused will appear for trial. Section 443 Cr.P.C. takes care of the situation where the sureties provided are found to be insufficient at a later point of time or when a mistake or fraud is committed.

7. As mentioned in the preceding paragraph, insisting on sureties and executing a bail bond is only to secure the presence of the accused during trial. The surety is not a person who can be called upon to guarantee the sum of money involved in the crime. The surety only guarantees the presence of the accused during trial and not for any money due from the accused. Sometimes a surety without any property can, by virtue of his respectability in society, be a better surety than one with immovable property. Therefore, it is not wholly prudent to correlate the quantum involved in the crime with the surety bond or fix a particular number of cases for a particular surety or to restrict a surety to stand as a guarantee only for a particular type of cases.

8. In cases where there are many crimes registered against an accused, this Court has come across a tendency on the part of the court granting bail to insist on furnishing separate sureties or to furnish bonds commensurate with the quantum involved in the criminal case. Insistence on the aforesaid two conditions is not based on any legally tenable principle and is in fact opposed to law.

9. As noted earlier, petitioner is facing accusations in 1726 crimes. If separate sureties are to be furnished by the petitioner in each of the cases registered against him, he will have to produce more than 3400 separate sureties, which is practically impossible, thereby rendering the concept of bail illusory. Insisting on separate sureties for 1726 cases can render the said condition incapable of performance, and the liberty of the petitioner may remain a mirage. Law does not prohibit the same surety being furnished in different cases. If the surety furnished can inspire confidence of the court on his ability to ensure the presence of the accused during trial, there is nothing that restrains the court from accepting the same surety in all the different crimes. Even the value of the bond cannot be insisted to be commensurate with the quantum involved in a crime. The courts must bear in mind that insistence on sureties and execution of bail bonds cannot be another ordeal or a punishment for the accused.

10. Apart from the above, insisting on court fees to be paid on petitions filed by accused who are in custody is also contrary to Section

72(xiii) of the Kerala Court Fees and Suits Valuation Act, 1958. As per the said provision, a petition preferred by a prisoner is not exigible to any court fee. Section 72 of the Act reads as below:

S.72. Exemption of certain documents.— Nothing contained in this Act shall render the following documents chargeable with any fee:

(xiii) petition by a prisoner or other person in duress or under restraint or any Court or its officer;

In view of the said provision, it needs no elaborate discussion that court fees cannot be insisted on petitions filed by accused who are in prison.

11. Therefore, the courts dealing with bail applications filed by the petitioner in 1726 crimes against him are directed not to insist on separate sureties in all the cases. As long as the surety is solvent and inspires the confidence of the courts, insistence on the production of separate sureties for each case is opposed to law.

The Crl.M.C. is disposed of as above.

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