

**"C.R."**

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN**

**WEDNESDAY, THE 29<sup>TH</sup> DAY OF NOVEMBER 2023/ 8TH AGRAHAYANA, 1945**

**CRL.MC NO. 10253 OF 2023**

**CRIME NO.1295/2023 OF Cheranelloor Police Station, Ernakulam**

**CRMC 3258/2023 OF DISTRICT COURT & SESSIONS COURT, ERNAKULAM**

**PETITIONER/ACCUSED NO.1:**



BY ADVS.  
ARUN ROY  
ASHITHA RIA MERIN

**RESPONDENT:**

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

**OTHER PRESENT:**

SRI MP PRASANTH , PP

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR  
ADMISSION ON 29.11.2023, THE COURT ON THE SAME DAY  
PASSED THE FOLLOWING:**

**“CR”**

**P.V.KUNHIKRISHNAN, J.**

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**Crl.M.C. No.10253 of 2023**  
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**Dated this the 29<sup>th</sup> day of November, 2023**

**ORDER**

The point to be decided in this case is whether stringent conditions can be imposed while granting default bail under Section 167(2) of the Code of Criminal Procedure, 1973 (for short, Cr.P.C.).

2. Petitioner is arrayed as 1<sup>st</sup> accused in Crime No.1295/2023 registered by Cheranalloor Police Station. The above case is registered alleging offences punishable under Sections 22(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, Act 1985).

3. The prosecution case is that, on 12.09.2023 at about 04.55 P.M. the accused persons were found inside a hotel room at Edapally, in possession of 1.75 grams of MDMA kept hidden beneath the bed which was placed next to the

northern wall of the room. The petitioner was arrested from the alleged place of occurrence and was produced before the jurisdictional Magistrate and was sent to judicial custody.

4. The petitioner filed two bail applications before the Sessions Court and those bail applications were dismissed by the learned Sessions Judge. Thereafter, the petitioner filed Crl.M.C.No.3258/2023 before the Sessions Court, Ernakulam, for bail, because the investigation was not completed within the statutory period of sixty days. The learned Sessions Judge allowed that petition as per Annexure-A1 order, with the following conditions:

- “1. The petitioner shall be released on bail on executing bond for Rs.1,00,000/- with two solvent sureties each for the like sum, to the satisfaction of the jurisdictional Court.
2. The petitioner shall appear before the investigating officer on every Saturdays between 10.00 am and 11.00 am, till the final report is filed.
3. One of the sureties shall be a close relative of the petitioner. The relative is not solvent, there shall be 3 sureties, of which one shall be the relative and others solvent sureties.
4. The sureties shall produce the original title deeds of their property along with a copy

thereof. The original shall be returned after verification.

5. The petitioner shall not intimidate or influence the witnesses or interfere with the investigation.
6. The petitioner shall not involve in any other crime during the bail period.
7. The petitioner shall not leave the State without the leave of the jurisdictional Court.
8. In case of violation of any of the conditions, the bail granted to the petitioner will result in cancellation of bail.”

5. The petitioner is aggrieved by Condition Nos.(3) and (4) in the impugned order. It is stated that the petitioner hails from a poor family and his family does not own any land of their own. It is also stated that the relatives of the petitioner are not willing to stand as surety for him. It is submitted that the petitioner remains in custody even after the bail order and he is unable to furnish bail bonds due to the unwarranted conditions, especially Condition Nos.(3) and (4) in Annexure-A1 order. Therefore this Criminal Miscellaneous Case is filed to set aside Condition Nos.(3) and (4) in Annexure-A1 order granting bail.

6. Heard the learned counsel for the petitioner and

the learned Public Prosecutor.

7. On a perusal of Annexure-A1, it is clear that the petitioner was granted default bail. There is no dispute on that from the prosecution also. Default bail is granted based on Section 167(2) Cr.P.C. Section 167 (2) says that, after the period of detention mentioned in it, the accused shall be released on bail if he is prepared to and does furnish bail. It is the statutory right of an accused to get released based on default bail. When default bail is granted, there cannot be any stringent conditions. The Apex Court in **Shaik Nazneen v. State of Telangana and Others [2023 (9) SCC 633]** considered this point. Relevant portion is extracted hereunder:

“15. The other reason assigned is that the trial court while granting bail did not lay down any conditions. This is again a wrong presentation of the case. Conditions were not imposed simply as it was a default bail, and in bail of this nature conditions are not liable to be imposed.”

8. The default bail is a statutory right of an accused. The Court cannot deny statutory bail to an accused by

imposing stringent conditions which cannot be complied by the accused. While imposing conditions in default bail, the Court can only impose such conditions to ensure that the accused will appear before the court concerned for trial and will also co-operate with the investigation. An accused in detention shall be released on bail after the period of detention mentioned in Section 167(2), if he is prepared to and furnish bail. This statutory right cannot be circumvented by imposing onerous conditions. Such arbitrary condition imposed while granting statutory bail amount to infringement of the fundamental right of the detenu under section 21 of the constitution of India. When the petitioner submits before this Court that Condition Nos.(3) and (4) are onerous conditions, in the light of the dictum laid down by the Apex Court, I am of the considered opinion that those conditions are to be lifted. The sureties can be directed to produce tax receipts instead of original title deeds of their property.

Therefore, this Criminal Miscellaneous Case is allowed in the following manner:

1. Condition Nos.(3) and (4) in the order dated 15.11.2023 in Crl.M.C. No.3258/2023 of the

VIII Additional Sessions Judge, Ernakulam  
Division, is set aside.

2. The sureties shall produce tax receipts  
instead of original title deeds of their  
property.

sd/-  
**P.V.KUNHIKRISHNAN**  
**JUDGE**

**APPENDIX OF CRL.MC 10253/2023**

PETITIONER ANNEXURES

Annexure1

THE TRUE COPY OF THE ORDER DATED  
15.11.2023 IN CRL. M. C. NO. 3258/2023  
OF THE HON'BLE DISTRICT AND SESSIONS  
COURT -II, ERNAKULAM