

[ 3168 ]

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD**

TUESDAY, THE FIFTH DAY OF JANUARY  
TWO THOUSAND AND TWENTY ONE

**:PRESENT:**

**THE HONOURABLE SRI JUSTICE K.LAKSHMAN**

**IA No. 1 OF 2020**

**IN**

**CRLP NO: 5782 OF 2020**

**Between:**

Ayush Mahendra, S/o. Mr. Ajay Mahendra

...Petitioner/Accused

(Petitioner in CRLP 5782 OF 2020  
on the file of High Court)

**AND**

The State of Telangana, Rep.by its Public Prosecutor. High Court at Hyderabad  
through S.H.O. Madhapur P.S,

...Respondent/Complainant  
(Respondents in-do-)

Petition under Section 482 of Cr.P.C., praying that in the circumstances stated in the grounds filed Crl.P, the High Court may be pleased to extend the two weeks time granted by this Court to the petitioner in Crl.P.No.5782/2020, dt.19.11.2020 to surrender before the Station House officer Madhapur Police Station, by ten days, Pending disposal of CRLP No.5782 of 2020, on the file of the High Court.

**CRLP.No.5782 of 2020**

Petition under Section 438 of Cr.P.C, praying that in the circumstances stated in the petition filed herein, the High Court may be pleased to enlarge the petitioner/Accused on bail in the event of his arrest by the respondent P.S., Madhapur, in FIR No.913/2020

The petition coming on for hearing, upon perusing the Petition and the grounds filed in support thereof and the order of the High Court dated 19.11.2020 made in Crl.P. and upon hearing the arguments of Sri B Shiva Ram Sharma Advocate for the Petitioner, and of Public Prosecutor for the Respondent, the Court made the following

**ORDER**

**HONOURABLE SRI JUSTICE K. LAKSHMAN**

**I.A. No.1 OF 2020 in Crl. Petition No.5782 OF 2020**

**ORDER:**

This application is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code'), to extend two (02) weeks time to the petitioner - accused so as to comply with the order dated 19.11.2020 passed by this Court in Crl.P. No.5782 of 2020 of his surrender before the Station House Officer, Madhapur Police station.

2. Heard Mr. B. Shiva Ram Sharma, learned counsel for the petitioner - accused and the learned Public Prosecutor appearing on behalf of respondent - State.

3. The petitioner is accused in Crime No.913 of 2020 on the file of Madhapur Police Station. The offences alleged against him are under Sections 417 and 420 of IPC. The petitioner herein has filed an application vide Crl.P. No.5782 of 2020 seeking anticipatory bail. This Court vide order dated 19.11.2020, granted anticipatory bail to the petitioner herein by imposing certain conditions including the condition that he shall surrender before the Station House Officer, Madhapur Police Station within two (02) weeks from that day, and on such surrender, the Station House Officer shall release the petitioner on his executing a personal bond for Rs.20,000/- (Rupees twenty thousand only) with one surety from his native place and one local surety for a like sum each to his satisfaction.

4. While so, the petitioner herein has filed the present application specifically contending that his grandfather has expired on 21.11.2020 due to dementia, had to attend his funeral rites and he had to arrange other needs of family. Thereafter, the petitioner along with his mother, who wanted to stand as native place surety, have traveled to Hyderabad on 01.12.2020 and after obtaining fixed deposit receipts reached the Madhapur Police Station on 02.12.2020 at around 12.00 noon. It is further contended that the Station House Officer, Madhapur Police Station has refused to accept the native surety, who is mother of the petitioner, without assigning any reason. The said action of the Station House Officer, Madhapur Police Station is contrary to the principles of law and also in violation of the orders granted by this Court on 19.11.2020 in CrI.P. No.5782 of 2020.

5. The learned counsel for the petitioner would submit that this Court has directed the Station House Officer, Madhapur Police station to release the petitioner on his executing a personal bond for Rs.20,000/- with two sureties of which one native place and the other one from local. In compliance of the same, the petitioner approached the Station House Officer, Madhapur along with his mother to stand as one of the sureties being native place with Fixed Deposit Receipts and necessary documents and local surety, the Station House Officer has refused to receive the same on the ground that this Court directed him to release the petitioner on executing a personal bond with two sureties as mentioned above to his (SHO) satisfaction and that he has

not satisfied with the sureties furnished by the petitioner and, therefore, he has not accepted the same.

6. The learned counsel for the petitioner would further submit that the said action of the Station House Officer is illegal and in violation of the orders of this Court passed in CrI.P. No.5782 of 2020. He would further submit that the Station House Officer cannot take advantage of the word used "to his satisfaction" and also cannot refuse the surety of the mother of the petitioner. The learned counsel also would submit that the mother of the petitioner whether she is a co-accused or not, can stand as a surety and there is no prohibition in the Code that mother cannot stand as surety to his son whether she is an accused or not. In support of the same, he has placed reliance on the principle laid down **Kamla Bai Gopalrao Jamdar v. Chief Judicial Magistrate, Gwalior**<sup>1</sup>, **Moti Ram v. State of Madhya Pradesh**<sup>2</sup>, **Sagayam @ Devasagayam v. State rep. by the Inspector of Police, Chetpet Police Station, Chennai**<sup>3</sup>, **State of Maharashtra v. Dadamiya Babumiya Sheikh**<sup>4</sup> and **Babu Singh v. State of U.P.**<sup>5</sup>.

7. On the other hand, the learned Public Prosecutor, on instructions, would submit that there are allegations against the mother of the petitioner - accused also. The petitioner herein is from Lucknow and, therefore, considering the said fact, this Court has directed him to furnish one surety of native place and the other one of

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<sup>1</sup> 1989 SCC Online MP 253 = 1990 CrI.L.J. 2550

<sup>2</sup> (1978) 4 SCC 47

<sup>3</sup> 2017 SCC OnLine Mad 1653

<sup>4</sup> AIR 1971 SC 1722

<sup>5</sup> (1978) 1 SCC 579

local. The purpose of surety is to ensure the presence of accused in concluding the investigation and also the trial. Whereas, in the present case, the mother of the petitioner is also from Lucknow and, therefore, there is every possibility of the petitioner jumping on bail, in which event, the Investigating Officer may not be in a position to complete the investigation and file final report.

8. The learned Public Prosecutor, on instructions, would further submit that the Investigating Officer is having power to include the mother of the petitioner against whom there are allegations in the complaint, as an accused in the present crime and, therefore, she cannot stand as a surety to the petitioner. If the surety offered by the mother of the petitioner is accepted as a surety, the very purpose of surety would be defeated.

9. With the above submissions, the learned Public Prosecutor sought to dismiss the present application.

10. In view of the above rival submissions, the important point that arises for consideration by this Court in the present application is:

Whether co-accused can stand as a surety to an accused or not?

11. It is trite to note certain provisions of the Code for the purpose of deciding the *lis* involved in the present application. Section - 441 of the Code deals with 'Bond of accused and sureties' and the same is reproduced hereunder:

**"441. Bond of accused and sureties.**

(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition, is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either, hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness."

Section - 441-A of the Code deals with 'declaration by sureties, which is as under:

"Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars."

Section 444 of the Code deals with 'discharge of sureties', which is as under:

**"444. Discharge of sureties.**

(1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail."

12. In **Moti Ram**<sup>2</sup>, the Hon'ble Supreme Court had an occasion to deal with the scope of bail which includes with or without sureties, amount of bond Court should insist upon and propriety of insisting that surety be from the same district etc. The Apex Court has categorically held that the principal purpose of bail is to insure that an accused person will return for trial if he is released after arrest. It further held that Article - 14 of the Constitution of India protects all Indians qua Indians, within the territory of India. Article - 350 sanctions representation to any authority, including a court, for redress of grievances in any language used in the Union of India. Equality before the law implies that even a *vakalat* or affirmation made in any State language according to the law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an *adivasi* will be unfree in Free India, and likewise many other minorities. This divagation has become necessary to still the judicial beginnings, and to inhibit the process of making Indians aliens in their own homeland. *Swaraj* is made of united stuff. India is a Bharat, any person, from anywhere in India can stand as surety. In the said case, the Magistrate has demanded sureties from his own District. On consideration of the facts of the

said case, the Apex Court has also discussed about the law that prescribes sureties from outside or non- regional linguistic, some times legalistic, applications etc., and held at paragraph No.33 as follows:

“To add insult to injury, the magistrate has demanded sureties from his own district. (We assume the allegation in the petition). What is a Malayalee, Kannadiga, Tamilian or Andhra to do if arrested for alleged misappropriation or them or criminal trespass in Bastar , Port Blair ,Port Blair . Pahalgam of Chandni Chowk? He cannot have sureties owning properties in these distant places. He may not know any one there and might have come in a batch or to seek a job or in a morcha. Judicial disruption of Indian unity is surest achieved buy such provincial allergies. What law prescribes sureties from outside or non- regional linguistic, some times legalistic. applications? What law prescribes the geographical discrimination implicit in asking for sureties from the court district? This tendency takes many forms, sometimes, geographic, sometimes linguistic, some times legalistic. Art 14 protects all Indians qua Indians, within the territory of India. Art 350 sanctions representation to any authority, including a court, for redress of grievances in any language used in the Union of India. Equality before the law implies theat even a vakalat or affirmation made ill any State language according to the law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an adivasi will be unfree in Free India, and likewise many other



minorities. This divagation has become necessary to still the judicial beginnings, and to inhibit the process of making Indians aliens in their own homeland. Swaraj is made of united stuff.”

Thus, the Apex Court held that the Court, which is dealing with bail application, shall consider the said aspects, and finally held as follows:

“An After word We leave it to Parliament to consider whether in our socialist republic, with social justice as its hallmark, monetary superstition, not other relevant considerations like family ties, roots in the community, membership of stable organizations, should prevail for bail bonds to ensure that the 'bailee' does not flee justice. The best guarantee of presence in court is the reach of the law, not the money tag. A parting thought. If the indigents are not to be betrayed by the law including bail law re-writing of many processual laws is in urgent desideratum; and the judiciary will do well to remember that the geo-legal frontiers of the Central Codes cannot be disfigured by cartographic dissection in the name of language of province.”

13. In **Kamla Bai Gopalrao Jamdar**<sup>1</sup>, the Madhya Pradesh High Court (Gwalior Bench) had an occasion to discuss about the object of furnishing surety, and it held that discretionary power of a Judge provides claws to laws. Not all situations can be contemplated and foreseen even by the best of human talent and ingenuity. Of necessity some space is invariably left uncovered by statutes where judicial discretion may play, lest the law should be reduced to the

status of an inflexible iron rod which would break but not bend. A Judge has to devise his own procedure, sometimes mechanism, sometimes laying down his own guidelines to act, and sometimes to take decision where to nail the board, of course, within its four corners and as demanded by exigencies of situation. The discretion conferred by Section 441 of the Code of Criminal Procedure, 1973, on a Magistrate (or a court, for the matter of that) and nature of power conferred thereby is a quasi-judicial discretionary power on a judicial authority. It is not a judicial act in the sense in which the term is understood. Nor it is unbridled executive power.

14. In **Sagayam @ Devasagayam**<sup>3</sup>, the Madras High Court has extensively discussed about the scope of the bail and surety, and it held that 'right to life' and 'right to live' with human dignity is very important for human existence. Less of that human beings becomes mere chattles, motionless machines and feelingless robots. Dr. B. R. Ambedkar, the draftsman of the Indian Constitution, with so much foresightedness, knowing that in this country, people with power and money will simply rob the personal liberty of the people, introduced Article - 21 in our Constitution, which is Cinderella of the lovers of Civil liberties. It is a magnum opus and genius of our Founding Fathers. It is more than British *Magna Kartha* and Bill of Rights. Article - 21 is the soul of the Indian Constitution. It exhibits the zeal of our Constitutional makers. The bail provisions and the provisions relating to bail bonds and surety bonds cannot run contrary

to Article - 21 of the Constitution of India. Thus, any bottle necks or curbs to secure the liberty of the accused in pursuance of a bail order, requires deep study.

15. By referring to various provisions of the Code including Sections 441, 445 and 446, the Madras High Court held that surety should be a fit person and the sureties are expected to file surety affidavits. If the Court considers it necessary, it can conduct enquiry by itself or it can direct a Subordinate Court to conduct enquiry as to the fitness of the person to stand as surety. It is called surety verification. This enquiry is to ascertain the fitness of a person, who files surety affidavit, who came to execute the surety bond. Only if the Court needs or consider it necessary this enquiry can be conducted. Under the garb of conducting surety verification, there cannot be a crueling exercise. There cannot be indignation to a surety, which will make him to run away from the Court without offering surety. The only thing the court is expected is to ascertain, whether the surety is willing to stand as a surety for the accused. A person coming as a surety shall not be made to feel, why he should stand as a surety for the accused. The word 'surety', although comes in several places in Chapter 33 of the Code has not been explained anywhere in the Code.

16. In general English, 'surety' means, a person giving assurance for another person. In Civil law, a surety is also known as 'guarantor'. Under Civil law, 'the liability of the surety is co-

extensive with that of the principal debtor'. If the principal debtor fails to pay the assured amount, the surety will have to pay the amount. Under Criminal law, the person, who offers surety cannot be sent to jail if the accused fails to attend the Court. Actually, the surety bond is given to the Court. It is not a bond between the accused and the surety. It is a bond between the surety and the Court. The surety undertakes, assures, guarantees the appearance of the accused in the Court. If the accused fails to appear, surety cannot be punished. The surety amount given by him could be forfeited to the State after a due enquiry in accordance with the procedure laid down under Section 446 of the Code.

17. Further, if the surety has doubt on the appearance of the accused, or he does not like to stand as a surety, he can apply to the Court for discharging himself from the surety bond. When a surety makes such a request, the Court cannot compel the surety to continue as a surety. In such an event, liberty should be given to the accused to substitute the surety. If any fraud is practiced upon the Court in furnishing surety bond, the Court has the power to cancel the surety bond in accordance with the procedure laid down under Section 446-A of the Code. Under the Code, there is provision for offering Cash surety in accordance with the provision under Section 445 of the Code. Even in fixing the cash surety, the amount should not be excessive. In the first instance, Court cannot demand Cash surety from the accused. The offer to make cash surety must come from the

accused. Some times an accused, who is an utter stranger to the area or he has no friends or relatives in the area or he could not secure a person to stand as surety can offer cash surety. The Court can accept cash surety, instead of personal surety. But the Court cannot demand personal surety, property surety and cash surety, at a time. It is not cumulative. It is alternative.

18. It further held that there is a system of granting bail by the police. It is called 'Station bail'. In a bailable offence under Section 436 of the Code, the police is bound to release the accused on bail. In such circumstances, police can obtain bail bond from the accused. Police cannot demand any property document from him. A station bail cannot be cancelled by the police. Cancellation of bail is the exclusive power of the Court. A Magistrate or a Sessions Judge or any Court, demanding production of property documents or R.C. book or any other document to show proof of property either movable or immovable with respect to the bail bond or surety bond amount is against law. It is against Article 21 of Constitution of India. It is against the dictum of the Hon'ble Supreme Court judgment laid down in **Maneka Gandhi vs. Union of India** [AIR 1978 SC 597].

19. In **Dadamiya Babumiya Sheikh**<sup>4</sup>, the Apex Court held that a surety bond is a contract and it is a question as to how far its terms can be considered to have been varied by any unilateral act. Each bond, it may be pointed out, has to be construed on its own terms. But in construing the terms of a surety bond for the production

of an accused person, the purpose and object of executing it must be kept in view. Such a bond is executed for the purpose of ensuring the presence of the accused concerned in Court, in which he is standing his trial for a criminal offence at the hearing of the case. But for the execution of such a bond, the accused would have to remain in custody so that the trial may proceed smoothly. It further held that surety bonds in criminal cases must be held to be designed to an extent to serve a public purpose. In some cases it is of course said that surety bonds call for a strict construction. But the construction must not be so unduly strained as to result in defeating its essential purpose. Each bond has of course to be construed on its own terms, subject to what has just been stated.

20. In view of the above said authoritative pronouncements of law, coming to the case on hand, as discussed supra, this Court has granted bail to the petitioner vide order dated 19.11.2020 in CrI.P. No.5782 of 2020 by imposing certain conditions including the condition that the petitioner herein shall execute a personal bond for Rs.20,000/- with two sureties of which one native and other local to the satisfaction of the Station House Officer, Madhapur Police Station. Pursuant to the said order, when the petitioner approached the Station House Officer on 02.12.2020 along with fixed deposit receipts and other documents and the sureties as directed by this Court, the Station House Officer has refused to receive the said surety on the ground that mother of the petitioner cannot stand as surety.

According to him, mother of the petitioner is also going to be included as an accused in the present crime as there are specific allegations against her.

21. As discussed supra, the prime object of the surety is to secure the presence of an accused for the purpose of concluding investigation and the trial after filing charge sheet. A surety should be a fit person. Who is a fit person is not defined or explained anywhere in the Code. Generally, the surety must be a genuine person. He should not be a bogus person. Sureties come to the Court and give undertakings to the Court that he will ensure the presence of accused. If the accused fails to appear before the Court, surety bond executed by the surety will be forfeited. Thus, the Station House Officer has to ascertain the genuineness of surety. It is also relevant to note that there is no prohibition in the Code that the co-accused cannot stand as surety to any accused. It is also relevant to note that the prosecution has not filed any document to show that the mother of the accused is added as accused No.2 in Crime No.913 of 2020. Therefore, the Station House Officer, Madhapur Police Station is not justified in refusing to accept the surety of the mother of the accused. The mother of the accused whether she is co-accused or not can stand as a surety.

22. The apprehension of the prosecution is that both the petitioner and her mother are from Lucknow and there is every possibility of accused jumping on bail in which event the

Investigating Officer will not be in a position to ensure the presence of the accused in concluding the investigation.

23. In view of the said apprehension, it is relevant to point out that there is provision in the Code to arrest the surety in the event of accused fails to appear before the Investigating Officer or trial Court for concluding investigation or trial respectively. There is no provision in the Code to take any other step / action against surety except forfeiting the surety amount, and initiating the procedure laid down under Sections 82 and 83 of the Code which is lengthy procedure.

24. At the cost of repetition, as discussed supra, the object of surety is to ensure the presence of accused for the purpose of completion of investigation and concluding of trial in case of filing of charge sheet. The surety should be a fit person and a genuine person. He/She should not be a bogus person. The Court or the Station House Officer has to ascertain and take an undertaking from the surety that he/she will ensure the appearance of the accused for the purpose of completing the investigation and concluding the trial in case of filing charge sheet. The Station House Officer should be satisfied the genuineness and identity of the surety including residential address of surety. The Station House Officer cannot reject or refuse to accept surety offered by mother of the accused, whether she is a co-accused or otherwise.



25. In the case on hand, the petitioner has filed copies of fixed deposit receipts obtained in the name of the mother of the petitioner, local surety and also filed copies of death certificate of his grandfather, flight tickets etc. After completion of funeral rites of his grandfather, he has reached the Hyderabad to offer sureties. But, the Station House Officer has refused to receive the same. In view of the above discussion, the Station House Officer, Madhapur, cannot refuse to accept the surety offered by the mother of the petitioner whether she is a co-accused or otherwise.

26. In view of the above discussion and also the authoritative principles of law, the Station House Officer, Madhapur Police Station, Cyberabad Commissionerate, is directed to accept the surety of mother of the petitioner - accused in compliance of the order dated 19.11.2020 passed by this Court in Crl.P. No.5782 of 2020. The time granted for surrender of the petitioner in the said order is extended by two weeks from the date of receipt of copy of this order.

27. Accordingly, the present I.A. No.1 of 2020 in Criminal Petition No.5782 of 2020 is allowed.

As a sequel, miscellaneous petitions, if any, pending in the Criminal Petition shall stand closed.

//TRUE COPY//

SD/- CH.VENKATESWARLU  
ASSISTANT REGISTRAR

SECTION OFFICER

**One fair copy to,**

The Honourable Sri Justice K.Lakshman, High Court of Telangana at Hyderabad  
(for kind perusal)

**To,**

1. The XV Additional Metropolitan Sessions Judge, Ranga Reddy District at Kukatpally.
2. XII Addl. Metropolitan Magistrate, Cyberabad, Kukatpally
3. The Under Secretary, Ministry of External affairs, Union of India, New Delhi
4. The Secretary, Advocate Association, High Court of Telangana, Hyderabad
5. 10 LR Copies
6. The S.H.O. Madhapur Police Station, Cyberabad
7. One CC to Sri B Shiva Ram Sharma Advocate [OPUC]
8. Two CCs to the Public Prosecutor, High Court of Telangana at Hyderabad [OUT]
9. One spare copy

**HIGH COURT**

**KLJ**

**DATED:05/01/2021**

**ORDER**

**IA No. 1 OF 2020  
IN  
CRLP NO: 5782 OF 2020**

**DIRECTION**

