

2025 LiveLaw (SC) 686

IN THE SUPREME COURT OF INDIA

K.V. VISWANATHAN; J., NONGMEIKAPAM KOTISWAR SINGH; J.

Petition(s) for Special Leave to Appeal (Crl.) No(s).9111/2025; 23-06-2025

KUNDAN SINGH *versus* THE SUPERINTENDENT OF CGST AND CENTRAL EXCISE

Bail - Supreme Court disapproves of parties securing anticipatory or regular bail by voluntarily offering to deposit substantial amounts, only to later challenge the condition as onerous or claim lack of counsel's authority. Such tactics preclude merit-based consideration of bail applications and undermine judicial integrity. In a case involving alleged tax evasion of Rs. 13.7 crores, the petitioner's counsel offered to deposit Rs. 2.5 crores before the High Court, which granted bail subject to a Rs. 50 lakh deposit. The petitioner then challenged the condition as onerous before the Supreme Court, alleging lack of counsel's authority. The Court criticized this as "approbating and reprobating," noting that while excessive bail conditions are impermissible, parties cannot manipulate the judicial process by retracting voluntary offers. The Court initially set aside the High Court's orders, directing the petitioner to surrender and remanding the matter for reconsideration on merits. However, considering the petitioner's personal circumstances, the Court permitted interim release to continue. (Paras 8 - 13)

[Arising out of impugned final judgment and order dated 14-05-2025 in CRLOP No.14718/2025 passed by the High Court of Judicature at Madras]

For Petitioner(s): Mr. V. Chitambaresh, Sr. Adv. Ms. Aswathi M.K., AOR Mr. J.arul Pragasam, Adv.

ORDER

1. We have heard Shri V. Chitambaresh, learned senior counsel for the petitioner.
2. This case presents a scenario which is becoming common place before us in this Court. When parties move applications for anticipatory bail or for regular bail, voluntary offer is made by their counsel that the parties would deposit substantial amounts to show the *bona fide* and secure their liberty. The Courts' hearing the bail applications are thereby foreclosed from considering the merits of the matter and orders are made recording the undertaking of counsel about willingness to deposit amounts and orders for anticipatory bails/bails are granted.
3. Thereafter, grievance is made before the higher Courts that the condition imposed for bail is onerous and illegal. We do nothing more than to notice the facts that have transpired in this case.
4. The petitioner is alleged to have committed offences under Sections 132(1)(a), 132(1)(i) and 132(5) of the Central Goods and Services Tax Act, 2017. The case of the prosecution was that the petitioner has evaded the tax to the tune of Rs.13,73,00,000/-. The petitioner was arrested on 27.03.2025. When the bail application came up before the High Court, at the very outset, learned counsel for the petitioner made a submission that the petitioner has already deposited Rs.2,86,00,000/- and that he is in custody since 27.03.2025. It was further submitted that the petitioner is willing to abide by any stringent conditions. Thereafter, the prosecutor was heard, who vehemently opposed the grant of bail.
5. At that stage, learned counsel for the petitioner voluntarily submitted that without prejudice to his defence and contentions, the petitioner is ready and willing to deposit a sum of Rs.2,50,00,000/- to the credit of the crime number within a period of 10 days from

the date of his release. He further submitted that no application for extension of time for such payment will be filed after his release and if any such application is filed, the same may be dismissed out-rightly. Considering this submission, the High Court, with no further discussion, granted bail to the petitioner with a direction to make a deposit of Rs.50,00,000/- to the credit of case in RR No.15/2025 pending before the Trial Court. Further direction was given that the remaining sum of Rs.2,00,00,000/- be deposited within a period of 10 days from the date of his release. It was further directed that on proof of payment of Rs.50,00,000/-, the petitioner be released on bail on his executing a bond for a sum of Rs.10,000/-. This order was made on 08.05.2025. It was further directed that on breach of any of the aforesaid conditions, the Trial Court is entitled to take appropriate action.

6. On 12.05.2025, a prayer for modification was made before the High Court by filing Crl.M.P. No.10067/2025. In the petition for modification, it was averred that the condition to deposit Rs.50,00,000/- before his release was highly impossible due to the circumstances set out in the petition (i.e. pregnancy of his wife and the ill-health of his father) and all that was prayed was that Rs.50,00,000/- also be directed to be made after his release within the time fixed by this Court in the original bail order. The modification application was heard on 14.05.2025 when the petitioner was granted liberty to deposit the entire amount including Rs.50,00,000/- (i.e., Rs.2 crores originally ordered plus Rs.50 lakhs) within a period of 10 days from the date of his release, failing which it was directed that the bail petition was to be treated as dismissed. The other conditions were to remain unaltered.

7. It is this order of modification which is challenged in the present special leave petition and Shri V. Chitambareish, learned senior counsel has drawn attention to a whole host of precedents cited in the petition about how onerous conditions cannot be imposed while bail orders are granted.

8. There cannot be any dispute that excessive bail is no bail and onerous conditions ought not to be imposed while bail is granted. As to what is an onerous condition would no doubt depend on the facts and circumstances of the individual case. What is troubling however, is when attempts are made to foreclose consideration of bail application on merits by voluntarily offering deposits of amounts and thereafter reneging on it by stating that a counsel had no authority and/or that the condition is onerous.

9. We are not able to countenance this practice. Even in this case the argument is that the counsel has no authority to offer monetary deposit, when in the modification application no such averment was made and all that was averred was that the amount of Rs.50,00,000/-, as directed, be also deferred to the point after the release of the petitioner.

10. We strongly deprecate this practice. If the offer for monetary deposit had not been made, at the outset, the High Court may have considered the case on merits and may have granted or may not have granted relief to the petitioner. Today the petitioner is approbating and reprobating. We are conscious of his rights under Article 21 of the Constitution of India, but we have to be equally conscious of the sanctity of the judicial process and cannot allow parties to play ducks and drakes with the Court. In this scenario, the only conclusion possible is that both, the original bail order of 08.05.2025 and the order of modification dated 14.05.2025 granting final relief, will have to be set aside and the matter be remitted to the High Court for fresh consideration on merits uninfluenced by any of the observations of this Court.

11. The situation now is that the petitioner, taking advantage of the order of the High Court, has secured his release. Ordinarily the consequence would have been to put the

petitioner back in jail. However, considering the averments made in the modification application in this case, we are inclined to grant a limited interim protection to the petitioner from surrendering.

12. Crl. O.P. No.14718/2025 will stand restored to file of the High Court of Judicature at Madras. Let the papers be placed before the Chief Justice of the High Court of Madras on or before 30.06.2025 with a request to the Chief Justice to place the matter before the appropriate Court immediately. We request the High Court to dispose of the matter expeditiously and in accordance with law uninfluenced by any of the observations that we have made in this order.

13. The petitioner will have interim protection from surrendering on the same bond executed by him pursuant to the order of the High Court till the first date of listing before the High Court after remand. The High Court is free to pass appropriate orders on merits in accordance with law.

14. The Special Leave Petition is, accordingly, disposed of in the above terms.

15. All pending applications, if any, also stand disposed of.

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