

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.3.2015

CORAM:

THE HON'BLE MR.JUSTICE P.DEVADASS

Crl.O.P. No.7945 of 2015

1. S. Neelambal
2. Sampooranam
3. Baktavachalam
4. Purusothaman

.. Petitioners/Accused 1 to 4

Vs.

State, represented by its
Sub Inspector of Police,
Kannakkuruchi Police Station,
Salem.

(Crime No.264 of 2014)

.. Respondent/Defecto Complainant

Criminal Original Petition filed under Section 438 and 439 (2) of Cr.P.C. praying for extension of time of anticipatory bail granted by the Sessions Judge, Salem in C.M.P.Nos.187 & 188 of 2015 in C.M.P.No.2325 of 2012 dated 12.6.2012 in connection with Crime No.264 of 2012 on the file of the respondent police.

For Petitioner : Mr.E.C. Ramesh

For Respondent : Mr.M.Mohamed Riyaz
Govt. Advocate (crl.side)

O R D E R

This is a petition filed by the accused in Cr.No.264 of 2012 seeking extension of time to furnish the bail bond.

2. The learned Principal Sessions Judge, Salem in C.M.P.No.2325 of 2012 on 12.6.2012 granted anticipatory bail to the petitioners prescribing a time limit within which, the bail bond has to be executed. Since they could not execute it, they have filed an application in C.M.P.Nos.187 and 188 of 2015 to extend the time. Those petitions were dismissed by the learned Principal Sessions Judge on 20.1.2015 on the ground the reasons given is not satisfactory.

3. Aggrieved, the petitioners have approached this Court.

4. I have anxiously considered the submissions of both sides and perused the materials on record.

5. An order under Section 438 of Cr.P.C., has been passed by the learned Principal Sessions Judge, Salem. Because delay had occurred, they have filed time extension petition belatedly. Learned Principal Sessions Judge approached it as a petition filed under Section 5 of the Limitation Act.

6. Under Section 438 of Cr.P.C., power has been conferred upon the Court to grant anticipatory bail. It is bail before jail. Before police act, the accused acts. Orders passed under section 438 of Cr.P.C are also liberty orders. There may be so many reasons in not furnishing the bail bond in time. In this matter, the courts can be liberal. They need not count the days of delays. Even the Civil Courts are now liberal in condoning the delay.

7. Courts need not impose any self imposed limitations upon them. However by not allowing these kind of time extension petitions, some practical difficulty will arise. Already there is anticipatory bail order. There will be difficulty for the police to arrest the accused. Further, if he surrender before the concerned court, there will be difficulty by the Magistrate to remand the accused because already anticipatory bail order is there.

8. In the circumstances, by giving some current to the said order, we can activate the said order. As on today, the anticipatory bail passed by the learned Principal Sessions Judge, Salem is not dead. Once a bail order is granted, it should be cancelled only in a manner known to law.

9. Recently in connection with the Law College incident which took place in 2008, anticipatory bail was granted to a Law College student in 2008. Now he has become a lawyer and staying in his mother-in-law's house and regularly attending to the courts in Bangalore. When he came forward to this Court with a prayer to extend the time limit as he wished to participate in the judicial process, we have considered. Thus by extending the time limit Heaven is not going to fall on our head.

10. Thus prescribing the time limit in an order under Section 438 of Cr.P.C., is a self created procedure by the Court. Procedure is hand maid of justice and they are not justice itself. Actually by extending time limit, some headache will be over. Now by dismissing the time extension petition, another headache will be created. Otherwise again they will file another petition for anticipatory bail, again argument, again adjudication. Already we are suffering out of time. Why to add paper work and apart from that, it will be also taxing the litigant public. In the circumstances, I reiterate that the learned Magistrates and Sessions

Judges can liberal in time extension matters. Of course if they come across worst cases, they can refuse to exercise their judicial discretion.

11. In the circumstances, disagreeing with the view of the learned Principal sessions Judge, Salem, I think that we can activate the anticipatory bail order of the Sessions Court.

12. Ordered as under:

(i) Petition allowed.

(ii) Within 15 days from the date of receipt of copy of this order, the petitioners shall furnish the bail bond as per the terms and conditions of the learned Principal Sessions Judge, Salem passed in C.M.P.No.2325 of 2012 dated 12.6.2012.

msr

s/d-
Assistant Registrar(R)

True Copy

Sub-Assistant Registrar

To

1. The Principal Sessions Judge, Salem
2. The Chief Judicial Magistrate, Salem
3. The Judicial Magistrate IV, Salem
4. The Public Prosecutor, High Court, Chennai.
5. The Sub Inspector of Police,
Kannakkuruchi Police Station, Salem.

1.

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