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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2015

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

CRL.O.P (MD) NO.13599 of 2015

and

M.P. (MD) .No.1 of 2015

Senthil Kumar @ Thatha Senthil

... Petitioner

Vs.

1. The State rep. by
The Deputy Superintendent of Police,
Kanyakumari Sub Division,
Kanyakumari District.

2. Inspector of Police,
Suchindram Police Station,
Kanyakumari District.
(Crime No.1061/2011)

... Respondents

PRAYER: Criminal Original Petition filed under section 482 of Criminal Procedure Code, praying to call for the entire records pertaining to the order passed by the learned Judicial Magistrate No.III, Nagercoil, Kanyakumari District in Cr.M.P.No.3955 of 2015 vide his order dated 15.07.2015 and set aside the same.

For Petitioner

: Mr.R.Anand

For Respondents

: Mr.K.Anbarasan

Government Advocate (Crl. Side)

ORDER

The petitioner has been arrayed as A3 for the alleged offence under Section 302 of IPC. The allegation is that the co-accused hired the petitioner, who in turn committed the double murder. The petitioner could not be apprehended and he was produced before the court on the execution of P.T.Warrant. The application was filed, seeking police custody in Crl.M.P.No.3955 of 2015 by filing an affidavit stating that, in view of the confession statement given by the co-accused to the effect that the petitioner is one among the other accused, who committed the offence alleged and thereafter took away the jewels of the deceased, custodial interrogation is required. It has also been stated that some of the co-accused are yet to be secured. The learned Judicial Magistrate after going through the affidavit, accept the reasons mentioned thereunder and granted three days police custody subject to the conditions imposed. Challenging the same, the present petition has been filed.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondents and perused the available materials on record.



3. The learned counsel for the petitioner submitted that the criminal Rule 76 of the Criminal Rules of Practise and Circular Order 1958 has not been followed and he made reliance upon the judgment of this court in **Oli Mohammed vs. State.** (2015(1) LW(Cr1) 634).

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4. This court is not inclined to entertain this petition. In the case on hand, an affidavit has, in fact, been filed by the officer concerned. Further, the said officer is competent to file the said affidavit, while Rule 76 of the Criminal Rules of Practice Order 1958, bars, only a general statement. Accordingly, any affidavit may be filed and signed by the officer concerned. The Rule requires that an affidavit to be filed and signed by the officer concerned with the parameter required namely, the brief prior history of the case and the need for police custody. In the case on hand, the said affidavit has been satisfied, as stated by the court below.

5. The court below has perused the affidavit as well as the relevant records and heard the objections of the petitioner and granted only three days time. This court does not find any illegality in the order passed in the light of the ratio laid down by this court.

6. Accordingly, this petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. However, it is made clear that other conditions made by the learned Judicial Magistrate will be scrupulously followed.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

PJL

To

1.The Deputy Superintendent of Police,

Kanyakumari Sub Division, Kanyakumari District.

2. Inspector of Police,

Suchindram Police Station, Kanyakumari District.

3. The Judicial Magistrate No.III, Nagercoil at Kanyakumari District.

4.The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

+one cc to M/s. R.Anand, Advocate, SR.No.39243.

CRL.O.P(MD).13599 of 2015
and M.P.(MD).No.1 of 2015
16.07.2015



06/08/2015

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