

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No. 1832 of 2015

ORDER:

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The present Criminal Petition is filed under Section 438 Cr.P.C. seeking release in the event of arrest in connection with execution of non-bailable warrant issued against the petitioner in CrI.M.P.No.485 of 2013 in M.C.No.175 of 2013 on the file of the Additional Metropolitan Sessions Judge for trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad.

The facts in nutshell are that the second respondent herein filed M.C.No.175 of 2013 against the petitioner claiming maintenance at Rs.10,000/- per month to herself and Rs.5,000/- per month to her daughter apart from Rs.25,000/- towards legal expenses. After a full fledged trial, the learned Magistrate awarded maintenance at Rs.3000/- to the second respondent and Rs.2,000/- to her daughter from the date of petition. The said order came to be passed on 07.06.2014. Since the petitioner failed to pay any amount, the second respondent herein filed an application under Section 125 (3) Cr.P.C. Pursuant to which, N.B.W.s came to be issued on 08.12.2014 and the matter was directed to be listed on 05.01.2015. But, the matter was advanced to 15.12.2014 and the non-bailable warrants issued against the petitioner were cancelled. On 05.01.2015, the trial Court was forced to issue non-bailable warrant as the petitioner was not present before the Court. Thereafter, the matter was directed to be listed on 28.01.2015. Meanwhile, on 09.01.2015 the matter was again listed pursuant to a petition filed and in view of the representation made, the non-bailable warrants were kept in abeyance till 28.01.2015. It is stated that as on today the non-bailable warrants issued against the petitioner are pending existence. The present application is filed seeking release in the event of his arrest in connection with execution of non-bailable warrants

issued in maintenance case.

First of all it is to be noted that the question of releasing the petitioner in the event of arrest in connection with non-bailable warrants in maintenance case do not arise under Section 438 Cr.P.C. The proceedings in M.C. are quasi criminal in nature and the question of invoking 438 Cr.P.C. would not arise. Section 438 Cr.P.C. can be invoked where any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence. The non-bailable warrant in the present case came to be issued when the petitioner failed to appear before the Court in an application filed under Section 125 (3) Cr.P.C. The remedy available to the petitioner lies elsewhere but definitely not under Section 438 Cr.P.C. Hence, I see no reason to interfere with the order passed by the trial Court.

Accordingly, the Criminal Petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

13.03.2015
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