

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP Nos.16886 and 16887 of 2016

Y.K.Hamie ..Petitioner in both Crl.O.Ps./2nd Accused

Vs

State rep by
T.S.Thamilchelvi, B.Pharm
Senior Drugs Inspector & Mylapore i/c
Georgetown - I Range
O/o Asst.Director of Drugs Control
Zone-III
DMS Cmpus, No.359 Anna Salai
Chennai 600 006. .. Respondent in both Crl.O.Ps./Complainant

Prayer:- Criminal Original Petitions filed under Section 482 Cr.P.C., (i) to permit the petitioner to answer the charges that may be framed in C.C.No.9161 of 2010 on the file of IV Metropolitan Magistrate, Saidapet, Chennai through his Pleader and (ii) to permit the petitioner to answer questions raised in C.C.No.9161 of 2010 without being physically present before the IV Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.Roshan Balasubramanian

For Respondent : Mr.C.Emalias,
Addl.Public Prosecutor

C O M M O N O R D E R

These petitions have been filed to permit the petitioner to answer the charges that may be framed in C.C.No.9161 of 2010 on the file of IV Metropolitan Magistrate, Saidapet, Chennai through his Pleader and to permit the petitioner to answer questions raised in C.C.No.9161 of 2010 without being physically present before the IV Metropolitan Magistrate, Saidapet, Chennai.

2. Heard the learned Senior Counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State.

3. The short point that falls for consideration is, whether the plea of the petitioner can be recorded by the trial Court in his absence through his counsel on record. The petitioner and 11 others are facing prosecution in C.C.No.9161 of 2010 for various offences under the Drugs and and Cosmetics Act, 1940 on the

complaint lodged by the respondent before the IV Metropolitan Magistrate, Saidapet. In CrI.O.P.No.14985 of 2016, this Court has passed the following order on 19.07.2016:

8 However, taking into consideration the fact that A.1 to A.5 were on special vakalat, to meet the ends of justice, the following order is passed:

The non-bailable warrant issued against the accused on 24.06.2016 in C.C. No.9161 of 2010 is hereby recalled on condition that the accused shall appear before the IV Metropolitan Magistrate, Saidapet, Chennai on 08.08.2016 and on their appearance, the Magistrate shall release them on bail under Section 436 Cr.P.C. on condition that they execute a bond for Rs.5,000/- with one surety each to the satisfaction of the Magistrate and also submit themselves for questioning by the Magistrate for the purpose of framing charges.

9 With the above direction, this Criminal Original Petition stands disposed of."

4. Now the petitioner, who has been arrayed as A2, has come up with the above prayer.

5. Mr.B.Kumar, learned Senior Counsel for the petitioner placed strong reliance on the judgment of the Supreme Court in Basavaraj R. Patil v. State of Karnataka [2000 (8) SCC 740] wherein, the Supreme Court has stated that in appropriate cases, the Advocate for the accused can answer the questions on his behalf under Section 313 Cr.P.C. The learned Senior Counsel submitted that the petitioner suffers from a very serious ailment and produced his medical records in a sealed cover for perusal of this Court. This Court perused the medical records and found that the petitioner is an octogenarian and the ailment he suffers from is indeed serious. The petitioner is taking treatment for his ailment in Weill Cornell Medical Centre, New York. After perusal, the medical records in sealed cover is returned to Mr.B.Kumar, learned Senior Counsel for the petitioner.

6. In view of the above, the presence of the petitioner for questioning under Section 246 Cr.P.C. is dispensed with and the petitioner is directed to file an affidavit as laid down by the Supreme Court in Basavaraj case and on such affidavit and petition being filed, the trial Court shall consider the same on humanitarian grounds and record the plea of the petitioner through his Advocate. It is also seen that the petitioner is represented by a counsel under special vakalat under Section 205 Cr.P.C.

The Criminal Original Petitions are ordered accordingly.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1. T.S.Thamilchelvi, B.Pharm
Senior Drugs Inspector & Mylapore i/c
Georgetown - I Range
O/o Asst.Director of Drugs Control
Zone-III
DMS Cmpus, No.359 Anna Salai
Chennai 600 006.

2. The IV Metropolitan Magistrate, Saidapet, Chennai.

3.The Public Prosecutor,High Court, Madras.

+2 cc's to Mr.Roshan Balasubramanian,advocate,sr.44481,82

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krd 5/8

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