

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-01-2016

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Original Petition No. 29932 of 2015

1. Anusha Mahesh
2. Prema Ravi

.. Petitioners

Versus

State by
Inspector of Police
Uthukkuzhi Police Station
Avinashi Taluk
Tirupur

.. Respondent

Criminal Original Petition filed under Section 438 of Criminal Procedure Code praying to enlarge the petitioners on bail in the event of their arrest by the respondent police in C.C. No. 219 of 2015 on the file of the Judicial Magistrate, Avinashi.

For Petitioners	:	Mr. Karthikeyan
For Respondent	:	Mr. M. Mohamed Riyaz Government Advocate (Crl.side)

ORDER

The petitioners are arrayed as A-5 and A-2 respectively in C.C. No. 219 of 2015 on the file of the learned Judicial Magistrate, Avinashi. The trial court issued non-bailable warrant to the petitioners for their non-appearance and posted the case for hearing on 08.01.2016. On the basis of the non-bailable warrant issued by the learned Judicial Magistrate, Avinashi, the petitioners are before this Court with this Criminal Original Petition seeking to grant anticipatory bail to them in the event of their arrest.

2. The learned counsel for the petitioners would contend that the defacto complainant has filed a private complaint alleging that the accused 1 to 5 in the complaint have indulged in misappropriation of funds in their capacity as Trustees of Tiruppur Educational Foundation, which was founded by the defacto complainant. The private complaint itself was dismissed on 02.07.2014 by the trial Court. Challenging the same, the defacto complainant filed CrI.R.C. No. 717 of 2014 before this Court and it was allowed on 22.04.2015. Thereafter, the complaint was taken on file by the learned Judicial Magistrate, Avinashi in C.C. No. 219 of 2015 for the alleged offences under Sections 120 (A), 468, 471, 420, 418, 423, 424 and 405 of IPC. After taking the complaint on file, the trial Court issued summons to the accused for their appearance on 25.11.2015. However, it is contended on behalf of the accused that the case was taken on file even on 06.04.2015 and it was adjourned to on 04.12.2015, 06.12.2015 and 14.12.2015, whereas, they received summons for their appearance only on 25.11.2015. Therefore, according to the accused, the summons have not been properly issued. It is also contended that the copy of the complaint itself has not been served on the accused and the trial court did not follow the procedures contemplated under the Code of Criminal Procedure in the matter of issuing summons. It is further contended that the trial court without considering the petition filed on behalf of the petitioners under Section 205 of Cr.P.C. has issued non-bailable warrant on 14.12.2015 for appearance of the petitioners.

3. The learned counsel for the petitioners would vehemently contend that the second petitioner herein is admitted in Christian Medical College Hospital, Vellore in a critical condition as an in-patient. Even though the medical records

have been produced, they were not taken into consideration by the trial court before issuing the non-bailable warrant for the appearance of the petitioners on 14.12.2015. It is further contended that the second petitioner herein - Mrs. Prema Ravi is currently admitted in Neurology unit in ICU and diagnosed to have Autoimmune Encephalitis. It is further contended that the second petitioner require complete medical support and therefore she could not appear before the trial Court. Further, the first petitioner, who is the daughter of second petitioner, is assisting and attending the second petitioner in the hospital. The second petitioner is taking treatment in the hospital from May 2015 onwards. Earlier, the petitioners along with others have filed CrI.R.C. No. 12 of 2016 before this Court praying to set aside the order dated 14.12.2015 passed in CrI.MP No. 9962 of 2015 in C.C. No. 219 of 2015 by which the petition filed by the accused under Section 205 of Cr.P.C. was dismissing by the trial court. In the Criminal Revision Case, it was contended that even though affidavits have been filed before the learned Judicial Magistrate, Avinashi as directed by this Court in the order dated 22.04.2015 in CrI.R.C. No. 717 of 2014, the trial court did not accept the same and insisted for presence of the accused. By order dated 05.01.2016 in CrI.R.C. No. 12 of 2016, this Court granted interim stay of operation of the order dated 14.12.2015 passed by the trial Court. In the meantime, apprehending arrest on the basis of the order dated 14.12.2015, the petitioners have filed this petition seeking anticipatory bail.

4. The learned counsel for the petitioners would further contend that the second petitioner is taking treatment in Christian Medical College Hospital, Vellore. The second petitioner is in a critical condition and she could not appear before the trial Court. Therefore, the learned counsel for the petitioners would contend that in

the event of grant of anticipatory bail by this Court, the counsel for the petitioners may be permitted to execute necessary surety bond and to comply with other formalities for and on behalf of the petitioners. In this context, the learned counsel for the petitioners relied on the decision of this Court in the case of (**Sirugudugu Naga Venkata Durgakumari and others vs. Sirugudu Jhansilakshmi**) reported in **(2007) 2 MLJ (Cri) 1668** to contend that for re-calling the non-bailable warrant issued by the trial Court, it is not necessary that the accused must be present before the Court to file necessary application.

5. The learned counsel for the petitioners also relied on the decision of this Court in the case of (**Kannan vs. State by Inspector of Police, B-3, Kattor Police Station, Coimbatore - 9 and another**) reported in **2007 (1) Chennai Law Times 683**. In that case, the trial Court dismissed the petition seeking suspension of sentence on the ground that on the date of pronouncement of judgment, the accused was not present. It is contended on behalf of the accused in that case that since the accused was in hospital on the date of pronouncement of the judgment, he could not be present and therefore sought for suspension of sentence. The trial Court rejected such a contention which was challenged before this Court by filing Criminal Revision Case. This Court held that when it is established that the accused was in hospital and taking treatment for his ailment, his non-appearance on the date of pronouncement of judgment cannot be construed as wilful or wanton. Relying on the decision of in the case of (**Ibrahim vs. State of Kerala**) reported in **(1979) KLT 857** it was held that surrender of the accused is not a condition precedent to seek for suspension of sentence.

6. Relying on the aforesaid decisions of this Court, the learned counsel for the petitioners would contend that the presence of the petitioners is not necessary for filing the petition under Section 70 (2) of Cr.P.C. to recall the non-bailable warrant issued by the trial Court in the event of showing necessary reasons like acute ill-health. Therefore, the learned counsel for the petitioners prayed this Court to permit the petitioners to file necessary application under Section 70 (2) of Cr.P.C. to recall the non-bailable warrant without the surrender and in the absence of the petitioners.

7. The learned Government Advocate (Crl.side), on instructions, submitted that the second petitioner is in hospital and taking treatment for her ailment.

8. I heard the counsel for the petitioners and the learned Government Advocate (Crl.side) appearing for the prosecution. It is an admitted fact that the second petitioner, who is 76 years old, was admitted in Christian Medical College Hospital, Vellore during May 2015 and she is taking treatment. The first petitioner is assisting the second petitioner during the course of her hospitalisation. The second petitioner is none other than the mother of the first petitioner. Further, it is seen from the order dated 05.01.2016 passed in Crl.R.C. No. 12 of 2016 that the order passed by the trial Court issuing non-bailable warrant against the petitioners itself has been stayed. Even before filing of the Criminal Revision Case No.12 of 2016, the petitioners, apprehending arrest, have filed the present Criminal Original Petition seeking anticipatory bail. Further, the learned Government Advocate (Crl.side), on instructions submitted that the second petitioner is taking treatment in

Christian Medical College Hospital, Vellore and she is assisted by first petitioner.

9. As rightly pointed out by the learned counsel for the petitioners, it is not necessary for the accused to be present before the trial Court to file an application for surrender or recalling the non-bailable warrant issued by the trial Court. Such application can very well be filed by the counsel for the accused, if the accused is really sick like admitted in hospital as in this case. This was the view taken by this Court in the decisions mentioned supra. In any event, the validity or otherwise of the order passed by the trial court issuing non-bailable warrant against the petitioners is the subject matter of Criminal Revision Case No.12 of 2016 before this Court. In such circumstances, I have no hesitation to hold that the petitioners are entitled for grant of anticipatory bail in their favour in the event of their arrest on condition. In the event of arrest, on behalf of the petitioners, the first petitioner shall execute a personal bond for Rs.10,000/- (Rupees Ten Thousand Only) with one surety for a like sum to the satisfaction of the Judicial Magistrate, Avinashi. Accordingly, the Criminal Original Petition is ordered.

28-01-2016

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Index : Yes / No

Internet : Yes / No

To

The Judicial Magistrate
Avinashi

B. RAJENDRAN, J

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