



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Twenty Third day of September Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice C.T.SELVAM

CRL OP(MD) No.16316 of 2016

MANIKANDAN

... PETITIONER/ACCUSED NO.5

Vs

THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH,
MADURAI DISTRICT
(CRIME NO.35 of 2012)

... RESPONDENT/ COMPLAINANT

FOR PETITIONER : M/S.R.PRABU RAMACHANDRAN ADVOCATE

FOR RESPONDENT : M/S.K.V.RAJARAJAN, GOVERNMENT ADVOCATE (CRL. SIDE)

FOR INTERVENOR : Mr.R.PANDI MAHARAJA, ADVOCATE

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

Petitioner, who is arrayed as accused, prays for the grant of anticipatory bail under Section 438 of Cr.P.C. for the offences punishable under Sections 120(b), 406, 468, 471, 420, 506(i) IPC in Crime No. 35 of 2012 on the file of the respondent police.

2. Heard learned counsel for petitioner, learned Government Advocate (Crl.side) for respondent and learned counsel for intervenor.

3. Learned Government Advocate (Crl.Side) submits that investigation stands completed and the case is pending trial in C.C.No.94 of 2015 on the file of the learned Judicial Magistrate I, Madurai.

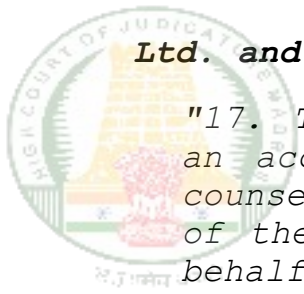
4. In the said circumstances, the order of interim anticipatory bail dated 08.09.2016 is made absolute.

5. Learned counsel for petitioner submits that the petitioner is a Soldier and is presently working at Kashmir and as such he is unable to attend the Court.

6. Learned counsel for the intervenor submits that the case is being unduly delayed owing to non-appearance of the petitioner.

7. This Court, under orders in Crl.R.C.Nos.1625 and 1626 of 2008 dated 23.12.2008, has considered the following decisions:

(i) **M/s.Bhaskar Industries Ltd. v. M/s.Bhiwani Denim and Apparels**



Ltd. and others [AIR 2001 SC 3625], wherein it has been held thus:

"17. Thus, in appropriate cases the Magistrate can allow an accused to make even the first appearance through a counsel. The magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. Section 317 of the Code has to be viewed in the above prospective as it empowers the Court to dispense with the personal attendance of the accused (provided he is represented by a counsel in that case) even for proceeding with the further steps in the case. However, on precaution which the court should take in such a situation is that the said benefit need be granted only to an accused who gives an undertaking to the satisfaction of the court that he would not dispute his identity as the particular accused in the case, and that a counsel in his behalf would be present in court and that has no objection in taking evidence in his absence. This precaution is necessary for the further progress of the proceedings including examination of the witnesses."

(ii) **Keeya Mukherjee v. Magma Leasing Ltd. and another [2008 Cr1.L.J.2597]**, wherein it has been observed thus:

"27.If the court is satisfied of the genuineness of the statements made by the accused in the said application and affidavit it is open to the court to supply the questionnaire to his advocate (containing the questions which the court might put to him under section 313 of the Code) and fix the time within which the same has to be returned duly answered by the accused together with a properly authenticated affidavit that those answers were given by the accused himself. He should affix his signature on all the sheets of the answered questionnaire. However, if he does not wish to give any answer to any of the questions he is free to indicate that fact at the appropriate place in the questionnaire (as a matter of precaution the court may keep photocopy or carbon copy of the questionnaire before it is supplied to the accused for an answer). If the accused fails to return the questionnaire duly answered as aforesaid within the time or extended time granted by the court, he shall forfeit his right to seek personal exemption from court during such questioning. The court has also to ensure that the imaginative response of the counsel is intended to be availed to be a substitute for taking statement of the accused."

In conclusion, this Court had observed as follows:

11. At the outset, it has to be pointed out that the learned Magistrate while rejecting the petitions filed under section 205 Cr.P.C. does not appear to have kept in mind the principles laid down by the Hon'ble Apex court in



various decisions. In the light of the law laid down in the aforesaid decisions relied upon by the learned counsel for the petitioner, it could without any hesitation be held that the order cannot be sustained.

12. In the affidavit, as pointed out above, the petitioner has stated his difficulties as to why he is unable to appear before the court. Learned Magistrate ought to have considered the fact that the offences alleged against the petitioner are technical in nature and the accused having pleaded guilty before the court in writing, the learned Magistrate could have allowed the petitions filed under section 205 Cr.P.C. so that hardship to the petitioner could have been avoided and an early disposal could also be given to the cases by the Court. Therefore, in the light of the legal principles laid down by the Apex Court in the decisions relied upon by the learned counsel for the petitioner which are squarely applicable to the facts of the present cases, the above criminal revisions are allowed and the impugned orders dated 26.11.2008 passed in CrI. M.P.Nos. 1515 of 2008 in C.C.No.524 of 2008 and CrI.M.P.No.1513 of 2008 in C.C.No.523 of 2008 are set aside. However, it is made clear that petitioner shall file separate affidavits in C.C.Nos.524 of 2008 and 523 of 2008 giving an undertaking to the satisfaction of the court that he will not dispute the identity of the accused and that the learned counsel appearing on his behalf would be present in court during the hearing of the cases and the learned counsel is authorised to plead guilty on his behalf. On filing of such affidavit containing the said undertakings, the learned Chief Judicial Magistrate, Coimbatore is directed to permit the petitioner to appear through his counsel. Consequently, connected miscellaneous petitions are closed.

In the circumstances, this Court would direct the petitioner to file a petition under Section 205 Cr.P.C before the Court below. Court below shall dispense with the personal appearance of petitioner before it, upon his swearing to an affidavit informing his address for service, that he would be duly represented by counsel on all hearing dates, that he would, at no instance, dispute his identity and that, he would appear before the trial court as and when required. Upon the petitioner doing so, the trial court may seek the presence of the petitioner before it, solely on the important hearing dates.

sd/-
23/09/2016

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TO

1. THE JUDICIAL MAGISTRATE NO. I,
MADURAI

2. THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT

3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

4. THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
MADURAI DISTRICT

+ 1 CC TO M/S.R.PRABU RAMACHANDRAN ADVOCATE SR.NO.55395
+ 1 CC TO Mr.R.PANDI MAHARAJA, ADVOCATE IN SR No. 56294

ORDER

IN

CRL OP(MD) No.16316 of 2016

Date :23/09/2016

CM

TE/PV/SAR-III : 14/10/2016 : 4P/7C