



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

Tuesday, the Twenty Seventh day of September Two Thousand Sixteen

PRESENT

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

CRL OP(MD) No.18545 of 2016

SAKTHIVEL

... PETITIONER/SOLE ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
MUDUKULATHUR POLICE STATION,
RAMANATHAPURAM DISTRICT.

... RESPONDENT / COMPLAINANT

For Petitioner : M/S.V.MANIKANDAN Advocate

For Respondent : M/S.K.V.RAJARAJAN, Govt. Advocate (Crl. Side)

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

ORDER : The Court Made the following order :-

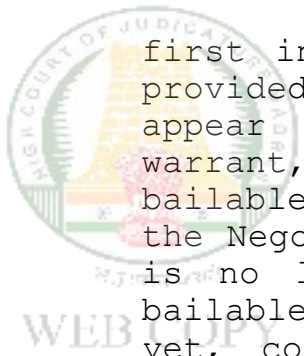
Petitioner apprehends arrest at the hands of the respondent police for the alleged offence under Section 138 of Negotiable Instruments Act in S.T.C.No.39 of 2016 on the file of the learned Judicial Magistrate Court, Mudukulathur.

2.Learned Counsel for petitioner submits that the learned Magistrate issued non-bailable warrant against the petitioner for his non-appearance before the Court on one occasion. It is further submitted that he was not able to appear on the date of hearing and his absence is neither wilful nor wanton but only due to genuine reasons. Learned counsel for petitioner also submitted that the petitioner is having reasonable apprehension that he may be arrested by the respondent police.

3. Heard learned Government Advocate (Crl. Side) on the submissions made by learned counsel for petitioner.

4. In Sarathkumar Vs. The Inspector of Police, Neelankarai, Chennai (2004 MLJ (Crl.) 421), this Court has held as follows:

"Non-bailable warrant issued without a preceding bailable warrant where the offence is bailable, is not in accordance with the scheme of the criminal procedure code and hence illegal. Therefore, while exercising the power conferred under Sec.87, Crl.P.C. and issuing a warrant, in a case of bailable offence, the Magistrate shall always issue at the



first instance a bailable warrant (including the endorsement provided under Sec.71, CrI.P.C.). If the person does not appear before the Court even after execution of bailable warrant, then, and only then the Magistrate may issue a non-bailable warrant. Therefore, in all cases under Sec.138 of the Negotiable Instruments Act, though it is possible or there is no legal infirmity for the magistrate to issue a non-bailable warrant for the reasons to be recorded in writing, yet, considering the bailable nature of the offence under Sec.138 of the Negotiable Instruments Act the Magistrate shall always issue "bailable warrant" at the first instance. For the above reasons there appears no reason or no circumstances warranting the issue of non-bailable warrant in this case".

In the above decision, this Court has also held as follows:

"Therefore this Court, exercising the power under Sec.482 read with 438 Cr.P.C. has the power to grant anticipatory bail, since non-bailable warrant has been issued by the Magistrate for a bailable offence."

5. In view of the decisions of this Court referred to above and also considering the facts and circumstances of the case, this Court is inclined to grant anticipatory bail to the petitioner. Accordingly, the petitioner is directed to be released on bail in event of arrest or on his appearance before the learned Judicial Magistrate concerned on his executing a bond in a sum of Rs.10,000/- (Rupees Ten Thousand only) to the satisfaction of the learned Judicial Magistrate Court, Mudukulathur, Ramanathapuram District, or to the satisfaction of the respondent police or the police officer who intends to arrest and on further condition that the petitioner shall appear before the trial Court on all the dates of hearings except on those days his appearance is exempted by filing a petition under Sections 317 Cr.P.C. by assigning valid reasons.

sd/-

27/09/2016

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE JUDICIAL MAGISTRATE, MUDUKULATHUR.
 - 2 DO THRO THE CHIEF JUDICIAL MAGISTRATE, RAMANATHAPURAM.
 - 3 THE ADDL. PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
 - 4 THE INSPECTOR OF POLICE, MUDUKULATHUR POLICE STATION,
RAMANATHAPURAM DISTRICT.
- +1. CC to M/S.V.MANIKANDAN Advocate SR.No.56250.

ORDER

IN

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Date : 27/09/2016