



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

Wednesday, the Thirtieth day of March Two Thousand Sixteen

PRESENT

The Hon`ble Mr Justice P.N.PRAKASH

CRL OP(MD) No.3689 of 2016

BIJU @ VIJU

... PETITIONER / 3rd ACCUSED

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE
THIRUVATTAR POLICE STATION,
THIRUVATTAR, KANYAKUMARI DISTRICT,
CR NO.264/2011.

... RESPONDENT / COMPLAINANT

For Petitioner : M/S R.J.KARTHICK, Advocate

For Respondent : Mr.A.P.BALASUBRAMANI, Government Advocate (Crl. Side)

PETITION FOR BAIL Under Sec. 439 Cr.P.C.

ORDER : The Court Made the following order :-

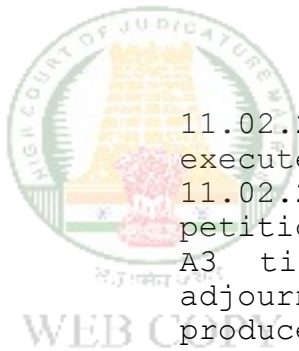
The petitioner, who was arrested and remanded to judicial custody on 13.01.2016 for the offences punishable under Sections 120(b) and 302 IPC in Crime No.264 of 2011 on the file of the respondent police, seeks bail.

2. Heard Mr.R.J.Karthick, learned counsel appearing for the petitioner and Mr.A.P.Balasubramani, learned Government Advocate (Criminal Side) appearing for the State.

3. This Court called for the report from the trial Court and a report has been received, wherein, the trial Judge has stated as follows:

"I humbly submit that SC.74/2012 on the file of this Court was taken on file on 30.07.2012 u/s 120(b) and 302 IPC. Totally three accused in this case. On 21.09.2012 memo of appearance filed on behalf of A1 to A3. The case was adjourned to 18.10.2012, 04.12.2012, 23.01.2013, 27.02.2013, 15.03.2013, 18.04.2013, 21.06.2013, 02.09.2013, 23.10.2013, 05.12.2013 for framing of charge.

On 05.12.2013 A2 present. A1, A3 absent. Petition u/s 317 Crpc., for A1 alone filed and allowed. NBW was ordered against A3 namely Viju and the case was adjourned to 21.01.2014, 14.03.2014, 20.06.2014, 28.07.2014, 30.07.2014, 25.09.2014, 25.01.2014, 27.01.2015, 01.04.2015, 25.06.2015, 17.08.2015, 06.10.2015. On 16.10.2015 A1, A2 absent. On 30.10.2015 A1, A2 surrendered before this Court and filed <https://hcservices.courts.gov.in/hcservices/> petition to advance the hearing and to cancel NBW issued against them. Accordingly, NBW recalled against A1, A2 and case adjourned to 08.12.2015. On 08.12.2015 case adjourned to



11.02.2016 as NBW pending against A3. On 13.01.2016 NBW was executed against the accused A3 namely Vijay and remanded till 11.02.2016. On 11.02.2016 both A1, A2 absent. 317 Cr.p.c., petition filed and allowed A3 produced. Remand extended for A3 till 07.03.2016. On 07.03.2016 local holiday case adjourned to 09.03.2016. On 09.03.2016 A1, A2 present A3 produced remand extended till 22.03.2016."

4. Mr.R.J.Karthick, learned counsel for the petitioner, submitted that the petitioner's father had died just prior to 03.11.2013 and thereafter, he suffered from physical impairment and he was being taken care of by his mother and later on, his mother also died. However, it is seen that the warrant was issued in the year 2013 and from then onwards, the petitioner had not taken any steps to surrender before the Court concerned.

5. The learned counsel for the petitioner submitted that the petitioner applied for anticipatory bail in CrI.O.P.(MD) No.20892 of 2015 and this Court had directed him to surrender before the trial Court and the trial Court was directed to consider the bail application on the same day. Unfortunately, when the petitioner surrendered, he had given the wrong crime number and sessions case number, on account of which, his surrender has not been accepted. Taking advantage of it, the police have arrested the petitioner. Therefore, the petitioner should be released on bail.

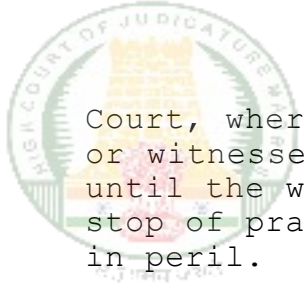
6. The petitioner filed a bail application in CrI.M.P.No.349 of 2016 before the trial Court, wherein, the learned Judge lamented as follows:

"This is a case of bail moved by the accused who was already granted bail. One of the conditions while granting bail is the accused who faces the criminal case as to cooperate the court for early disposal of the case. Not only that it is guaranteed by the constitution of India to the citizen of the country to face criminal rights for speedy disposal of the criminal cases. In this case, the accused himself has delayed the trial by his absence, by fleeing from justice.

It is observed in our judicial experience that in cases where there are more than two accused, one of the accused almost leave it for warrant and warrant is kept pending by the police officials for lack of man power in executing warrants. The Hon'ble High Court as well as the Hon'ble Supreme Court repeatedly seek the details of pending warrants and execution of warrants. It is found that the police officials are not giving much importance for execution of warrants as the courts had granted bail to the accused. In such circumstances, this is a case where the accused who is alleged to have committed in the year 2011 had succeeded in delaying the trial, by not cooperating with the court after coming out of bail. Therefore, it is not a fit case for grant of bail and the accused let him face the trial in incarceration. Accordingly, this petition is dismissed.

<https://hcservices.ecourts.gov.in/hcservices/> In the result, this petition is dismissed."

7. From the above, a very pathetic situation obtains in trial



Court, where the accused deliberately absconds, when charges are framed or witnesses are produced, so that the trial does not progress further until the witnesses are tired out. This Court should have put up a full stop of practice, otherwise, the entire criminal justice system will be in peril.

8. In view of the above, it is not a fit case to grant bail to the petitioner. Accordingly, this criminal original petition is dismissed.

sd/-
30/03/2016

/ TRUE COPY /

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

TO

1. THE INSPECTOR OF POLICE
THIRUVATTAR POLICE STATION,
THIRUVATTAR, KANYAKUMARI DISTRICT,
 2. THE OFFICER -IN-CHARGE,
SUB JAIL
NAGERCOIL, KANYAKUMARI DISTRICT
 3. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. CC to M/S R.J.KARTHICK, Advocate SR.No.17904

ORDER
IN
CRL OP(MD) No.3689 of 2016
Date :30/03/2016

RR
SH/SK-SKN/AR-I:01.04.2016:3P/5C