

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL PETITION No.1117 OF 2016

ORDER:

This criminal petition under section 438 of the Code of Criminal Procedure is filed by the petitioner-A.12 seeking anticipatory bail in connection with C.C.No.833 of 2011 on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam for the offences under Sections 420, r/w 511, 471 r/w 467 IPC.

Heard the learned counsel for the petitioner and learned Special Public Prosecutor. Perused the material on record.

The brief facts of the case are that the petitioner is facing trial in C.C.No.833 of 2011 on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam for the offence under Sections 420, r/w 511, 471 r/w 467 IPC. The petitioner was absent before the trial Court on 5.1.2016 and hence, the trial Court issued NBWs against him. Again on 21.1.2016 the petitioner was absent before the trial Court. Now, the petitioner apprehends arrest in the hands of respondent-police in view of issuance of NBWs.

The learned counsel for the petitioner submitted that the petitioner could not reach the Court in time on the date of hearing i.e. on 5.1.2016 as he is resident of Mumbai and in view of the issuance of the NBWs, he is unable to appear before the trial Court.

On the other hand, the learned standing counsel appearing for the CBI contended that the petitioner has not chosen to appear even during the investigation and after filing of charge sheet also, he has not appeared before the Court and with great efforts, the petitioner was secured by the respondent-police. He fairly submitted that the petitioner was already granted bail after his arrest. Now, he is opposing the application on the ground that the petitioner may again absent before the trial Court.

This Court is of the view that while dealing with the applications either bail or anticipatory, merits of the case to be considered at the first instance. Admittedly, merits of the case have already been adjudicated by the concerned court and the petitioner was granted bail. The issuance of NBWs by the trial Court is only to secure the attendance of the petitioner before it. The trial Court only issued NBWs, but not cancelled the bail issued against the petitioner. That being the position, this Court is of the view that merely because the petitioner was absent for two hearing dates, he cannot be prevented from appearing further before the trial Court.

Under the above circumstances, the petitioner is directed to appear before the trial Court and file an application to recall the NBWs issued against him and on filing such application, the trial Court is directed to recall the warrants on the same day on condition of petitioner executing a bond for a sum of Rs.50,000/- with one surety, who is a native of Telangana. The petitioner is directed to appear before the trial Court on all hearing dates without fail.

The Criminal Petition is allowed accordingly.

JUSTICE RAJA ELANGO

08.02.2016

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