

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Cr1.O.P.Nos.20491 of 2017

Dhanasurya

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Central Crime Branch,
Vepery, Chennai.
(Crime No.262of 2007.)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to direct the learned Metropolitan Magistrate Special Court for CCB, Allikulam to consider the Recall-warrant petition filed by the petitioner on the same day in the event of surrender by the petitioner and seeks to recall the Non-bailable warrant issued in C.C.No.65 of 2008 pending on the file of the learned Metropolitan Magistrate Special Court for CCB, Allikulam.

For Petitioner : Mr.H.Rajasekar

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking a direction to the respondent police to execute the Non-Bailable Warrants issued as against the Petitioner/Accused.

2.This Court in an earlier occasion had elaborately dealt with the issue as to whether the High Court, exercising its inhereint powers under Section 482 of the Code of Criminal Procedure, is empowered to quash or recall a Non-bailable Warrant when an alternate remedy under Section 70 (2) of the Code of Criminal Procedure empowers cancellation of the warrant by the court that had issued the warrant.

3. After analysing the principles laid down in the various decisions of the Honourable Supreme Court and our High Court in detail, this Court in the order dated 07.09.2017 in Cr1.O.P.No.13276 of 2017 etc., batch, has held as follows:

18.It is also brought to my notice that apart from various other reasons for the long pendency of cases before the trial Courts, the non execution of Non Bailable Warrant is one among the reasons. This fact is reiterated through the last data collected by the NCRB. In most of these pending cases, it is seen that whenever a Non Bailable warrant is kept pending execution, the usual practice among many of the Court is to adjourn the case on the ground that "Non Bailable Warrant is pending".

19.In heinous crimes, where there is deliberate and continuous non appearance of the accused, the trial Court may proclaim him as person absconding under Section 82 of the Code of Criminal Procedure.

20.Thus, under Section 82 of Cr.P.C., there can be no impediment on the part of the trial Court to pronounce him as a proclaimed offender, instead of keeping the matter pending indefinitely for the purpose of having the warrant executed. Hence, the existence of the fourth category of cases cannot be a ground to preclude the High Court to do justice in the first three categories particularly, when they constitute a major portion of the pending cases in the State of Tamil Nadu, in which, Non Bailable Warrants are pending execution.

21.To sum up the findings rendered by me, it is reiterated that the issuance of Bailable Warrant or Non Bailable Warrant should be exercised with extreme caution and in the rarest of cases, bearing in mind that the pendency of Non Bailable Warrant is one of the major factors for the long pendency of cases before the trial Court. The trial Court shall also scrupulously follow the guidelines imposed in Inder Mohan Gowsami's case (supra) as well as the observations made in the present case while issuing Non Bailable Warrants or recalling the Non Bailable Warrants.

4. In the present case though the Non-bailable warrant was issued as early as on 02.09.2016, it has been kept pending without execution till date. In view of the observations made in the earlier order extracted above, it would be appropriate to re-call the warrants issued by the Trial Court.

5. Hence, this Criminal Original Petition stand allowed. The Non-Bailable warrant issued on 02.09.2016 is recalled.

Consequently, the petitioner/accused is directed to appear before the learned Metropolitan Magistrate, Special Court for CCB, Allikulam in connection with C.C.No. 65 of 2008, within one week from the date of receipt of this order and on subsequent hearing dates without fail.

Sd/-
Assistant Registrar(CCC)

//True Copy//

ak/rm Sub Assistant Registrar

To

1. The Metropolitan Magistrate Special Court for CCB, Allikulam
2. The Inspector of Police, Central Crime Branch, Vepery, Chennai.
3. The Public Prosecutor, High Court, Madras.

+1cc to Mr.H.Rajasekar, Advocate, S.R.No.70501

Cr1.O.P.No.20491 of 2017

GMR(CO)
CA(12/10/2017)

सत्यमेव जयते
WEB COPY