



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

Thursday, the Twenty Fourth day of August Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL OP(MD) No.10331 of 2017

JATIN NEM CHAND GADA

... PETITIONER / PETITIONER/
ACCUSED-1

Vs

STATE THROUGH

THE INSPECTOR OF POLICE

ALL WOMEN POLICE STATION, TALLAKULAM MADURAI,

IN CRIME NO.12/03

... RESPONDENT / COMPLAINANT

For Petitioner : M/S.V.S.KUMARAGURU Advocate

For Respondent : Mr.A.Ramar, Additional Public Prosecutor

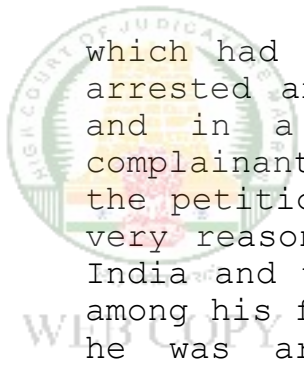
For Intervener : Mr.S.Ravi, Advocate

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

ORDER : The Court Made the following order :-

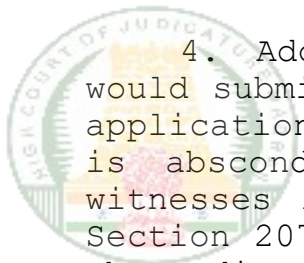
The petitioner, who was arrested and remanded to judicial custody on 14.07.2017, for the offences punishable under Section 498A of IPC., r/w. Sections 3, 4 and 6 of Dowry Prohibition Act, in Crime No.12 of 2003, on the file of the respondent police, pursuant to NBW issued in C.C.No. 22 of 2014, on the file of the learned Judicial Magistrate, Mahila Court, Madurai, seeks bail.

2. The learned counsel appearing for the Petitioner / A1 would contend that the petitioner has not served with proper summons from the learned Judicial Magistrate No.II, Madurai or the learned Judicial Magistrate, Mahila Court, Madurai in C.C.No.531 of 2004 or re-numbered C.C.No.22 of 2014 respectively. But to the shock and surprise of the petitioner, while he came to India in December 2015 with the impaired eyes, after suffering Branch Retinal Vein Occlusion (Stroke) and was undergoing treatment, he was arrested on 14.07.2017 at Baroda in Gujarat. He would further contend that warrant had been issued by the trial Court without service of proper summons to him, which is improper and illegal and the defacto complainant deliberately did not add the petitioner as a party in Crl.O.P.No.5415 of 2017 before this Court and if the petitioner / A1 had been made the party in the above proceedings, the petitioner would have had an opportunity to place the fact before the Court that he had not received any summons from trial Court in a matter



which had been pending for 13 long years. The petitioner had been arrested and remanded in violation of the Criminal Procedure Code and in a vindictive complaint foisted and fabricated by the complainant before the trial Court. He would further submit that the petitioner is suffering from serious health issues and that for very reason even though he is an American Citizen, he had come to India and was purely for the purpose of medical treatment and care among his family members and during the course of the treatment when he was arrested, his health problem further worsened into a myocardiac issue and during his arrest transit his Blood Pressure recorded was very high and was serious abnormality. The learned counsel, in support of his contentions, has relied on the decisions of the Hon'ble Supreme Court in Appeal (Crl.)No.1392 of 2017, dated 09.10.2007 (Inder Mohan Goswami & Another Vs. State of Uttaranchal & Others); and an unreported decision of this Court made in Crl.R.C (MD)No.186 of 2015, dated 18.06.2015 (M/s.Jeevan Emu Care Indian (P) Ltd Vs. State of Tamil Nadu, Represented by its Deputy Superintendent of Police, Economic Offence Wing II, Dindigul).

3. The learned Additional Public Prosecutor appearing for the respondent, on instructions, would submit that there are totally four accused in C.C.No.531 of 2004, which was taken on file by the learned Judicial Magistrate No.II, Madurai, in which an absconding charge sheet was filed in respect of the petitioner herein, who is arrayed as A1, since he was in abroad and NBW was issued against him by that Court and was pending; that all the accused filed Crl.O.P (MD)No.22206 of 2003 and Crl.O.P(MD)No.2337 of 2005 under Section 482 of Cr.P.C., before this Court for quashing the FIR No.12 of 2003, dated 29.05.2013 registered in this case and also for quashing the proceedings in C.C.No.531 of 2004, pending on the file of the learned Judicial Magistrate No.II, Madurai respectively and were dismissed by this Court, vide its order dated 26.10.2007; that the defacto complainant in this case, who is the wife of the petitioner filed Crl.O.P(MD)No.12705 of 2013 under Section 482 Cr.P.C., before this Court for directing the Police officials of the respondent and also CBI Officials at New Delhi and Chennai to initiate appropriate proceedings for extradition of the petitioner / A1 from United States of America to India to be produced in C.C.No.531 of 2004, pending on the file of the learned Judicial Magistrate No.II, Madurai and for issuance of provincial arrest warrant pending such extradition proceedings and was ordered directing the defaco complainant to approach as per Article 12 of the Treaty and approach the Forum as per the procedures known to law, as per the order dated 04.06.2013 and after that the defacto complainant filed Crl.O.P(MD)No.5415 of 2017 under Section 482 of Cr.P.C., before this Court for directing the respondent Police to execute the NBW in C.C.No.531 of 2004 by the learned Judicial Magistrate No.II, Madurai and now pending as C.C.No.22 of 2014 before the learned Additional Mahila Court, Magistrate level, Madurai and was ordered by this Court in its order dated 28.04.2017. He would further submit that NBW was executed by arresting the Petitioner / A1 on 14.07.2017 at Baroda in Gujarat and was produced before the trial Court on 18.07.2017 and remanded to Judicial custody and now the petitioner / A1 is now in such custody.

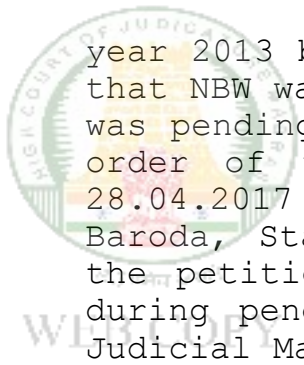


4. Adding further, the learned Additional Public Prosecutor would submit that appearance of A2 to A4 was also dispensed with on application filed by A2 to A4 under Section 205 Cr.P.C., since A1 is absconding for more than 10 years. There are totally 15 witnesses in this case and furnishing copies to the accused under Section 207 Cr.P.C., is not also so far complied with because of the absconding of the petitioner / A1 and if the petitioner / A1 is released on bail at this stage, the petitioner / A1 would certainly again abscond and the trial proceedings would be affected and hence, strongly objected to grant bail, since the case was taken cognizance in the year 2004 and is pending without any progress, as C.C.No.22 of 2014, before the Additional Mahila Court, Magistrate level, Madurai.

5. The counsel for appearing for the intervenor would submit that the intervenor is the defacto complainant, who is the wife of A1 and other accused are in-laws of the intervenor. After registration of this case A2 to A4 applied for anticipatory bail before the Principal Bench of this Court in CrI.O.P.No.19480 of 2003 and anticipatory bail was granted to them, as per order dated 01.07.2003. The petitioner / A1 is well aware that NBW is pending against him from the year 2004 onwards and quash proceedings initiated by the accused including the petitioner herein / A1 and its dismissal are suppressed in the bail application and after dismissal of the quash proceedings, A2 to A4 filed an application under Section 205 Cr.P.C., to dispense with their personal appearance before the trial Court and the same was allowed and the Petitioner / A1 married another lady and having a child about 10 years. He would further submit that the Petitioner / A1 acquired citizenship of United States in the year 2013 and obtained American Passport suppressing the criminal case pending against him in India in C.C.No.531 of 2004 before the learned Judicial Magistrate No.II, Madurai and the entries made in the Passport shows that he is residing in India and visiting Foreign Countries now and then from the year 2004 onwards and the medical records produced before the Sessions Court, Madurai during the hearing of his bail application in CrI.M.P.No.3948 of 2017 reveals that eyes of the petitioner were normal and further those of medical records of the year 2015 and medical report and the ECG taken in Mumbai, after his arrest reveals that he is normal and the petitioner / A1 did not take any steps to appear before the Court for the past 13 years and only on the ground of non-appearance of the petitioner, trial did not proceed with and there was no progress in this case from the year 2004 onwards because of the absence of the petitioner / A1 and if he is released on bail, he will abscond and it will be further delayed the conclusion of the trial.

6. I have perused the materials on record produced by the petitioner / A1 and also by the intervenor / defacto complainant and heard and considered the rival submissions advanced on either side.

7. Admittedly, the petitioner / A1 acquired citizenship of United States of America during the criminal case proceedings pending before the learned Judicial Magistrate No.II, Madurai in the



year 2013 by cancelling his Indian Passport. It is also not denied that NBW was issued against the petitioner / A1 in the year 2004 and was pending till the date of execution in the year 2017, as per the order of this Court made in Crl.O.P.(MD)No.5415 of 2015, dated 28.04.2017 and the petitioner / A1 was arrested on 14.07.2017 at Baroda, State of Gujarat. During the registration of FIR against the petitioner / A1 and others by the respondent Police and also during pendency of C.C.No.531 of 2004 on the file of the learned Judicial Magistrate No.II, Madurai, quashing the FIR and proceedings in C.C.No.531 of 2014 were initiated before this Court by all the accused and the same were dismissed. Hence, the petitioner / A1 is well aware about the issuance of NBW against him and is pending in C.C.No.531 of 2004 on the file of the learned Judicial Magistrate No.II, Madurai. The petitioner / A1 has not taken any steps to recall the NBW by stating the facts about improper service of summons before the said Court, as contended by the petitioner / A1 in this bail application. Hence, the decisions referred by the counsel for the petitioner are not applicable to the facts of the case on hand.

8. The trial Court dismissed the bail application in Cr.M.P.No.3014 of 2017 on 21.07.2017, considering the fact that there is no progress in this case due to warrant pending against A1, though the petitioner has produced his Passport before the Court, as per the Memo dated 21.07.2017. The learned Principal District and Sessions Judge, Madurai, has also dismissed his bail petition in Cr.M.P.No.3948 of 2017, dated 01.08.2017 considering the pendency of the criminal case against the petitioner / A1 for very long period that is more than 15 years and also the medical records produced by the petitioner in surrendering the Passport. Considering the above facts and circumstances of the case and also the conduct of the petitioner by absconding for very long period of 13 years and the criminal case is pending against the petitioner from the year 2004 onwards without any progress because of the absence of the petitioner herein, this Court is not inclined to grant bail.

9. Hence, the Criminal Original Petition stands dismissed. The Additional Mahila Court, Magistrate level, Madurai, is directed to dispose C.C.No.22 of 2014, within a period of three months from the date of receipt of a copy of this order, since the case against the petitioner is pending from 2004 onwards and report the disposal to the Registry of this Court.

sd/-
24/08/2017

/ TRUE COPY /

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



TO

1 THE JUDGE, JUDICIAL MAGISTRATE, MAHILA COURT, MADURAI

2 THE JUDICIAL MAGISTRATE NO.II, MADURAI

3 -DO-THRO THE CHIEF JUDICIAL MAGISTRATE
MADURAI

4 THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

5 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, TALLAKULAM MADURAI

6 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI

+2. CC to M/S.V.S.KUMARAGURU Advocate SR.No.29234

+1cc to Mr.S.Ravi, Advocate Sr.No.29268

ORDER

IN

CRL OP(MD) No.10331 of 2017

Date :24/08/2017

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