



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P. (MD) No.17748 of 2017

S.Kadhiresan @ Azhagesan ... Petitioner / Accused No.4

-Vs-

State represented by
The Inspector of Police,
Aundipatty Police Station,
Theni District.
(In Crime No.754 of 2015)

... Respondent /Complainant

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to direct learned District Sessions Judge, Mahila Court, Theni, to consider the recall warrant petition filed under section 70(2) Cr.P.C. to recall the Non-Bailable Warrant issued by the learned District Sessions Judge, Mahila Court, Theni, by order dated 14.11.2017 against the petitioner in Spl.S.C.No.33 of 2016 on the same day.

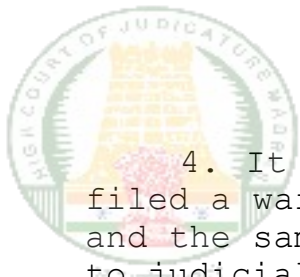
For Petitioner : Mr. K.Anandan
For Respondent : Mr.K.S.Duraipandian,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition is filed for issuing a direction to the respondent to direct the learned District Sessions Judge, Mahila Court, Theni, to consider the recall warrant petition filed under Section 70(2) Cr.P.C. to recall the Non-Bailable Warrant issued by the learned District Sessions Judge, Mahila Court, Theni, by an order dated 14.11.2017, against the petitioner in Spl.S.C.No.33 of 2016 on the same day.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. It is submitted that the proceedings before the lower court was adjourned to 14.11.2017, when the proceedings before the lower court was posted on 09.11.2017. It is submitted that the petitioner and other accused have mistakenly noted the date as 16.11.2017 instead of 14.11.2017. Due to such mistake, it is stated that the petitioner did not appear on 14.11.2017. However, due to the non-appearance of the petitioner, a non bailable warrant was issued on the date itself.



4. It is further submitted that the other accused appeared and filed a warrant recall petition before the Lower Court on 16.11.2017 and the same was dismissed and a direction was issued to remand them to judicial custody. Later, they were released on bail.

5. Having regard to the circumstances of the case, the learned counsel for the petitioner submitted that the petitioner undertakes to cooperate for the final disposal of the case and that they will also surrender before the Lower Court.

6. It is in the above circumstances, the counsel for the petitioner prayed for a direction to the lower court to recall the non bailable warrant upon the petitioner's surrender. Accepting the case of the petitioner, this court is prima facie, of the view that a direction can be issued to the lower court in favour of the petitioner in this case.

7. The Learned counsel for the petitioner relied upon the judgment of this court, in the case of *A.Vijaylaxmi and another Vs State* in Crl.O.P.(MD)No.27022 of 2017 dated 06.12.2017, for the proposition that issuance of 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 long pendency cases before the trial court. It was stated further in the said judgment that the guidelines imposed in *Inder Mohan Gowsami's* case as well as the observations made in the present case while issuing Non Bailable Warrants or Recalling the Non Bailable Warrants shall be scrupulously followed by the Trial Court.

8. Accordingly, the petitioner is directed to surrender before the lower court within a period of two weeks. Upon such surrender, the learned District and Sessions Judge, Mahila Court, Theni, is directed to recall the Non Bailable warrant issued on 14.11.2017, subject to any reasonable terms which may be required for prompt appearance of the petitioner in future.

9. Accordingly, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub-Assistant Registrar

To

1. The District and Sessions Judge, Mahila Court, Theni
2. The Inspector of Police, Aundipatty Police Station, Theni District.
3. The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.K.Anandan, Advocate, SR.No.94471

pnn/am

<https://hcservices.ecourts.gov.in/hcservices/>

RL/5C/2P/MR/SAR1/30/1/2018

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