



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 17.05.2017

Coram:

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THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN
Crl.O.P.(MD).No.5311 of 2017 and
Crl.M.P.(MD)No.4077 of 2017 and
Crl.M.P.(MD)No.4043 of 2017

Ramesh

.. Petitioner

Vs.

State rep. by Inspector of Police,
K.Pudur Police Station,
Madurai City.
(Cr.No.573 of 2016)

.. Respondent

Prayer: This Criminal Original Petition filed under Section 438 of Cr.P.C. to enlarge the petitioner on bail in the event of his arrest pursuant to the non-bailable warrant issued against the petitioner in C.C.No.338 of 2016 on the file of the learned Judicial Magistrate No.VI, Madurai pending trial.

Petitioner : Mr.Niranjana.S.Kumar
for Mr.A.K.Manickam

Respondent : Mr.A.P.Balasubraman
Government Advocate

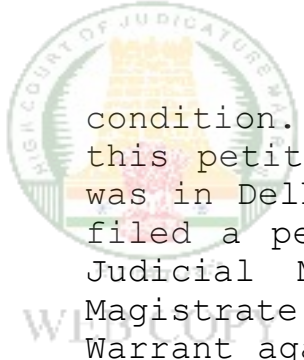
Mr.C.Subramanian, senior counsel
for intervener

ORDER

The A1 in C.C.No.338 of 2016 on the file of the learned Judicial Magistrate No.VI, Madurai, is the petitioner before this Court filed Crl.O.P.(MD)No.5311 of 2017 under Section 438 of Cr.P.C. for Anticipatory Bail.

2.The case of the petitioner is that he has been falsely implicated in this case in Crime No.573 of 2016 registered against him and thereafter final report was filed before the learned Judicial Magistrate No.VI, Madurai and the same was taken cognizance in C.C.No.338 of 2016. This petitioner is an innocent and not committed any offence as alleged by the prosecution.

3.The petitioner also come forward by saying that originally the petitioner was enlarged on pre-arrest bail by this Court in Crime No.573 of 2016 and subsequently the same was cancelled by this Court, since the petitioner had failed to comply the



condition. When the case was posted on 03.04.2017 for hearing this petitioner was unable to present before the Court, since he was in Delhi on the day to attend a condolence but his counsel has filed a petition under Section 317 of Cr.P.C before the learned Judicial Magistrate No.VI, Madurai, but the learned Judicial Magistrate dismissed the said petition and issued a Non-Bailable Warrant against the petitioner, which was pending execution at the hands of the respondent police. Therefore, the petitioner has filed the present petition before this Court for Anticipatory Bail and he is ready to abide by any stringent conditions imposed by this Court.

4.The petitioner also states that he undertook to appear before the trial Court in future and he will cooperate for early disposal of the case and this is the first Anticipatory Bail filed before this Court and no other petition is pending before any other Court. Therefore, he prayed Anticipatory Bail in C.C.No.338 of 2016, on the file of the Judicial Magistrate No.VI, Madurai pending trial.

5.Originally, the matter was taken up on 28.04.2017 and this Court passed orders directing respondent/Police not to arrest the petitioner till 04.06.2017 and post the matter on 04.06.2017.

6.The prosecution case is that the defacto complainant in this case is maintaining the vacant site belongs to him, who is the brother of the petitioner situated in Survey No.161/2A1 at Uthangudi Ring Road, Madurai. It is further stated that on 16.04.2016 at about 9.00 a.m. the petitioner along with A2 trespassed into the said land and cleaning the site with tractor and JCB. When the same was questioned by the defacto complainant, the petitioner showed crow bar and threatened him with dire consequences. Therefore, the defacto complainant has given a complaint to the respondent/police and the case in Crime No.573 of 2016 under Sections 447, 427 and 506(ii) read with Section 34 of I.P.C. was registered against this petitioner.

7.The defacto complainant by name Dr.S.Gurushankar has filed a petition in CrI.M.P.(MD)No.4043 of 2017 to permit him to intervene in the above application in CrI.O.P.(MD)No.5311 of 2017 filed by S.Ramesh and dismiss the CrI.O.P.No.5311 of 2017 and another petition filed by the defacto complainant in CrI.M.P.(MD)No.4077 of 2017 to vacate the not to arrest interim order made in CrI.O.P.(MD)No.5311 of 2017 dated 28.04.2017.

8.It is the case of the defacto complainant that the defacto complainant is a Chairman of the Madurai Meenakshi Mission Hospital and Research Centre, which is run by a Public Trust by name S.R.Trust. The petitioner/accused S.Ramesh is the defacto complainant's elder brother and because of his



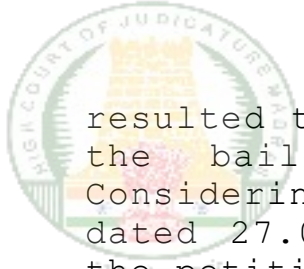
anti-Trust and unlawful activities, he was removed by a unanimous resolution passed by the Board of Trustees from the Trust Board. Thereafter, the Trust Board included the defacto complainant's father Dr.N.Sethuraman, his mother Smt.Rajam Sethuraman and others as the Members of the Trust Board.

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9.The defacto complainant further states that the petitioner/accused S.Ramesh is a habitual offender and he is involved in very many cases and he is facing charges before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.1725 of 2013 under Sections 420, 465, 467, 468 and 471 read with Section 34 of I.P.C. This petitioner/accused in this case was arrayed as accused No.2. Due to the continuous absence of the said petitioner/accused before the trial Court in the said case i.e., XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.1725 of 2013, the learned XVIII Metropolitan Magistrate, Saidapet, Chennai has issued Proclamation Order under Section 82 of Cr.P.C. against this petitioner/accused and declared him as a "proclaimed offender". The defacto complainant further stated that so far as three such proclamation orders were issued by the XVIII Metropolitan Magistrate, Saidapet, Chennai in C.C.No.1725 of 2013 against this petitioner/accused. When this petitioner/accused, who is A2 in the said C.C.No.1725 of 2013 has filed a Criminal Original Petition before the Principal Bench of this Court for quashing the charge sheet, which was dismissed with direction to the trial Court to complete the trial within a period of three months and the said order was passed on 05.09.2014. The trial Judge would not comply with the direction in view of the non-cooperation and continuous absence by this petitioner/accused Mr.S.Ramesh, who is A2 in the said case.

10.It is the case of the defacto complainant that on 16.04.2016, the petitioner/accused Mr.S.Ramesh along with three others trespassed into the defacto complainant's private property in Survey No.161/2A1, Ring Road, Uthangudi, Madurai and used JCB and Tractor and damaged the said lands whereupon the defacto complainant's caretaker by name Vinod John Prakash (who subsequently passed away on 19.10.2016) lodged a case before the 1st respondent/police and the case was registered in Crime No.573 of 2016 for the offences under Sections 447 and 506(ii) of I.P.C.

11.After registering the case, this petitioner/accused has approached this Court and filed an application for Anticipatory Bail under Section 438 of Cr.P.C. in CrI.O.P.(MD) No.6720 of 2016 before this Court and this Court by order dated 26.04.2016, granted Anticipatory Bail to the petitioner/accused by imposing condition that he should appear before the learned Judicial Magistrate No.VI, Madurai as per the orders passed by this Court in CrI.O.P.(MD)No.6720 of 2016 dated 26.04.2016, but he has not complied the condition, which



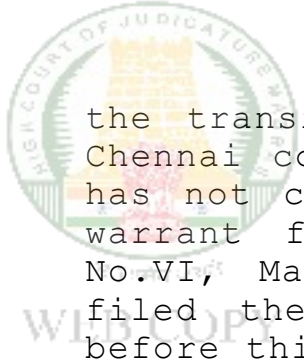
resulted the 1st respondent/police to file a petition to cancel the bail granted dated 26.04.2016 to the petitioner. Considering the case of the prosecution, this Court by order dated 27.07.2016, cancelled the anticipatory bail granted to the petitioner/accused on 26.04.2016.

12. Thereafter, after investigation, the 1st respondent/police has filed charge sheet on 05.08.2016 before the learned Judicial Magistrate No.VI, Madurai in which the petitioner/accused was arrayed as accused No.1 and the said final report was taken cognizance in C.C.No.338 of 2016 for the offences under Sections 447, 427, 506(ii) read with Section 34 of I.P.C.

13. It is the further case of the defacto complainant that over nearly eight months between 06.08.2016 and 03.04.2017, the petitioner/accused absented himself before the trial Court and finally on 03.04.2017, the learned Judicial Magistrate No.VI, Madurai had issued a non-bailable warrant against this petitioner/accused for the offences under Section 70 of the Code of Criminal Procedure 1973.

14. In the meantime, on 13.04.2017, the petitioner/accused Mr.S.Ramesh surrendered before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, pursuant to the proclamation order issued by the said Court against the petitioner/accused under Section 82 of Cr.P.C. in C.C.No.1725 of 2013. Upon his surrender, the learned XVIII Metropolitan Magistrate, Saidapet, Chennai remanded the petitioner/accused into judicial custody and thereupon he was lodged in Central Prison, Puzhal, Chennai.

15. The defacto complainant also further states that on 17.04.2016, the 1st respondent/police has filed a memo before the learned Judicial Magistrate No.VI, Madurai in C.C.No.338 of 2016, praying to issue transit warrant for executing the Non-bailable warrant issued by the said Court on 03.04.2017 and accordingly, the learned Judicial Magistrate No.VI, Madurai has issued a transit warrant under Section 267(i) of Cr.P.C. against the petitioner/accused so as to produce him before the Court on 20.04.2017. Since, the said transit warrant was issued in Form No.36 of the Code of Criminal Procedure which made it clear that the Superintendent of Prison, Puzhal, Chennai was obliged to furnish a copy of the transit warrant to the petitioner/accused. Thereafter, the transit warrant was served on the Superintendent of Prison, Puzhal, Chennai, but the petitioner/accused was not sent in transit warrant to the Judicial Magistrate No.VI, Madurai on 20.04.2017. On the other hand, the petitioner/accused obtained a bail order from the Principal Sessions Judge, Madurai, and the Prison authorities, Puzhal, Chennai allowed him to move out of the prison on 22.04.2017 without executing



the transit warrant. Since the prison authorities, Puzhal, Chennai colluded with the petitioner/ accused, the petitioner has not complied the order of the directions in the transit warrant for his production before the Judicial Magistrate No.VI, Madurai on 20.04.2017. This petitioner/accused has filed the present petition in CrI.O.P.(MD)No.5311 of 2017 before this Court for granting anticipatory bail under Section 438 of Cr.P.C., pursuant to that Non-bailable warrant issued in C.C.No.338 of 2016, on the file of the Judicial Magistrate No.VI, Madurai.

16.It is further case of the defacto complainant that this petitioner/accused has conveniently and deliberately omitted to mention about the transit warrant issued by the Judicial Magistrate No.VI, Madurai, dated 17.04.2017, which was served on the petitioner by the prison authorities viz., Central Prison, Puzhal, Chennai. Suppressing this material fact about the issuance of transit warrant against the petitioner and other material facts, this petitioner/accused has filed the above application for anticipatory bail in CrI.O.P.(MD)No.5311 of 2017. He also come forward by saying that when on 27.04.2017, the petition filed by the petitioner/accused for anticipatory bail in CrI.O.P.(MD)No.5311 of 2017 was listed as item No.3 in the Court Hall No.7 of this Court. On behalf of the defacto complainant, one Mr.B.Thanga Aravind, Advocate appeared before this Court in the above matter and brought to the notice of this Court that the petitioner/accused in his petition for anticipatory bail suppressed the material facts and prayed leave to file intervention application on behalf of the defacto complainant Dr.S.Gurushankar. The learned Public Prosecutor, who appeared for the 1st respondent/police prayed for time to take instructions and whereupon this Court adjourned the above application for anticipatory bail in CrI.O.P.(MD)No.5311 of 2017 after summer vacation i.e. 01.06.2017.

17.But, all in sudden, the very next day, on 28.04.2017, the above said petition in CrI.O.P.(MD)No.5311 of 2017 was not listed in the regular list, but it was suddenly listed in a special list at 2.15 p.m. after the matter was mentioned before this Court by a Senior Counsel at 10.30 a.m.

18.The defacto complainant further states that at 2.15 p.m., on 28.04.2017, when the matter was called on behalf of this defacto complainant, his Advocate Mr.B.Thanga Aravind appeared and sought time to file intervention application for incorporating the material suppression of facts by the petitioner/accused S.Ramesh in his petition for anticipatory bail. However, overlooking the objection raised on behalf of the defacto complainant and also on behalf of the police, this Court has passed orders that "Heard both sides. Considering the facts and circumstances of the case,



the Respondent/Police shall not arrest the Petitioner till 04.06.2017."

19. It is the case of the defacto complainant that the petitioner/accused has suppressed the transit warrant issued by the Judicial Magistrate No.VI, Madurai in his petition for anticipatory bail and the petition for anticipatory bail is not a bonafide one and on this short ground, his application is liable to be rejected. The defacto complainant also states in his affidavit several rulings of this Court and the Hon'ble Supreme Court of India and prayed this Court for impleading and vacate the interim anticipatory bail.

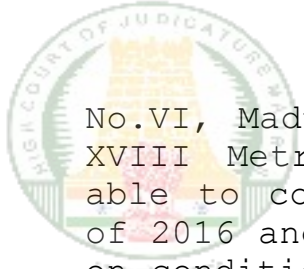
20. As per the rulings of the Hon'ble Supreme Court of India, in the case of **HDFC Bank Ltd. Vs. J.J.Mannan** reported in **(2010) 1 SCC 679** in paragraph No.19 of the said Judgment, this petitioner has filed a Special Leave Petition under Article 136 of the Constitution of India, before the Hon'ble Supreme Court of India, with a petition in Crl.M.P.No.8933 of 2017 for leave to file Special Leave Petition against the order passed by this Court in Crl.O.P.(MD)No.5311 of 2017 dated 28.04.2017.

21. The defacto complainant also come forward by saying that when the non-bailable warrant was issued he has to invoke the remedy available under Section 70(ii) of Cr.P.C. and surrender before the same Court for cancellation of the Non-bailable warrant. Therefore, the Special Leave Petition filed by the petitioner in S.L.P.(Crl.)...../2017 with Crl.M.P.No.8933 of 2017 praying to grant leave to file S.L.P. was listed before the Hon'ble Supreme Court of India in Court Hall No.4 as item No.19 on 09.05.2017 and after hearing the arguments of the learned counsel for the defacto complainant, the Hon'ble Supreme Court of India has granted permission to the defacto complainant to move the vacation Bench of this Court for appropriate relief. Therefore, he moved this petition in the vacation Court and prayed for dismissal of the petition in Crl.O.P.(MD)No.5311 of 2017.

22. As per the direction of the Hon'ble Supreme Court, this Crl.O.P.(MD)No.5311 of 2017 was listed today before this Court.

23. I have heard Mr.Niranjan.S.kumar, learned counsel represented for Mr.A.K.Manickam, learned counsel appearing for the petitioner and Mr.A.P.Balasubramani, learned Government Advocate appearing for the respondent police and Mr.C.Subramanian, learned senior counsel for intervener/ defacto complainant Dr.S.Gurushankar.

<https://hcservices.courts.gov.in/hcservices/> 24. The learned counsel Mr.S.Niranjankumar, appearing for the petitioner stated that though he is facing two criminal cases in C.C.No.338 of 2016 pending before the learned Judicial Magistrate



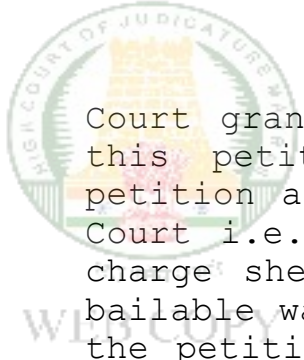
No.VI, Madurai and C.C.No.1725 of 2013 pending before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, he could not able to comply with the order in the earlier CrI.O.P.(MD)No.6730 of 2016 and this Court granted anticipatory bail to the petitioner on condition that the petitioner shall appear before the concerned Court viz. the learned Judicial Magistrate No.VI, Madurai on every working day at 10.30 a.m. and 4.45 p.m. and the petitioner shall comply with the condition stipulated under Section 438 of Cr.P.C. scrupulously, since the petition was filed on behalf of the petitioner S.Ramesh/A1 and one Mr.Arun/accused No.2. The learned counsel Mr.S.Niranjankumkar, appearing for the petitioner also states that in the meantime, the petitioner was facing the trial in C.C.No.1725 of 2013 pending before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai and proclamation order was issued against him. Therefore, he has surrendered before the said Court and accordingly, he was remanded in judicial custody. At that time only, he has filed the present petition in CrI.O.P.(MD)No.5311 of 2017 before this Court for anticipatory bail and prayed this Court for Anticipatory bail and he is ready to abide by any stringent conditions if any imposed by this Court.

25.On behalf of the intervener/defacto complainant, the learned senior counsel Mr.K.Subramanian, represented that the petitioner/accused has suppressed many things in his petition and he mentioned that as per the petition filed by the petitioner/accused No.1 S.Ramesh, though he originally filed anticipatory bail petition in CrI.O.P.(MD)No.6730 of 2016 and this Court granted anticipatory bail on 26.04.2016. But, suppressing the material facts, though he mentioned only about the filing of the bail petition and enlargement of the bail, but he has not given the case number in CrI.O.P.(MD)No.6730 of 2016 and the date of the order of this Court, for the reasons best known.

26.Apart from this, in the petition in CrI.O.P.(MD)No.5311 of 2017, the petitioner/accused A1 S.Ramesh has stated in paragraph-7 as follows:

"7.The petitioner submits that this is the first anticipatory bail application filed before this Hon'ble Court and no other petition is pending before any other Court."

27.Apart from this, the learned senior counsel Mr.K.Subramanian, also argued that when the proclamation order was issued by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai and thereafter, the arrest of the petitioner in the said case in C.C.No.1725 of 2013 and transit warrant issued by the learned Judicial Magistrate No.VI, Madurai, this petitioner/A1 has not at all mentioned in the petition. The learned senior counsel also argued that when the proclamation order was issued by the competent Court in another case in C.C.No.1725 of 2013, this petitioner is not entitled for anticipatory bail in this case. Thereafter, the learned senior counsel also states that once this



Court granted anticipatory bail to the petitioner on 26.04.2016, this petitioner/accused/A1 has no legs to stand for another petition against the non-bailable warrant issued by the competent Court i.e. learned Judicial Magistrate No.VI, Madurai, where the charge sheet has been filed in C.C.No.338 of 2016 and the non-bailable warrant issued under Section 70 of Cr.P.C. he should file the petition under Section 70(ii) of Cr.P.C. for recall the non-bailable warrant. But, without taking action, he has suppressed everything mentioned as above and filed this application and obtained fraudulent order on 28.04.2017 that the respondent/police shall not arrest the petitioner till 04.06.2017 by cheating this Court. Therefore, in each and every case, the petitioner/accused No.1 has committed fraudulent on the Court and filed the present petition. Therefore, he prayed this Court for dismissal of the said petition.

28.On behalf of the 1st respondent/police Mr.A.P.Balasubramani, learned Government Advocate represented that when this Court already granted anticipatory bail to this petitioner in CrI.O.P.(MD)No.6730 of 2016 on 26.04.2016, he has no right to file a fresh anticipatory bail in CrI.O.P.(MD) No.5311 of 2017 before this Court and when the proclamation order and transit order is pending before the learned XVIII Metropolitan Magistrate, Saidapet, Chennai and before the learned Judicial Magistrate No.VI, Madurai, this petitioner have no legal right to file this application for Anticipatory bail and prayed this Court to dismiss the application.

29.After elaborate arguments made by either parties, while I am inclined to pass order, at that time, the petitioner/accused No.1 has sought permission of this Court for withdrawal of this criminal original petition.

30.It is the case filed under Section 438 of Cr.P.C. against the 1st respondent/police in Crime No.573 of 2016, on the file of the 1st respondent/police, the petitioner/A1 has already approached this Court and filed CrI.O.P.(MD)No.6730 of 2016 for anticipatory bail and the same was considered by this Court on 26.04.2016 with the following order:

"6.Accordingly, the petitioners are ordered to be released on bail in the event of arrest or on their appearance before the learned Judicial Magistrate No.VI, Madurai, and on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Magistrate concerned and on further condition that the petitioners shall appear before the concerned court on every working day at 10.30 a.m. and 4.45 p.m., until further orders. The petitioners shall comply with the condition stipulated under Section 438 Cr.P.C. accordingly.

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

7.The petitioners shall appear before the concerned Magistrate within a period of 15 days from the date on which the order copy



made ready, failing which, the petition for anticipatory bail stands dismissed.

8. It is made clear that if the petitioners fail to comply with the condition as stipulated above by this Court, the respondent police is directed to move an application for cancellation of anticipatory bail before this Court immediately."

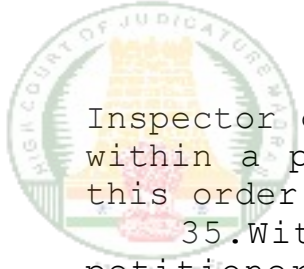
31. Thereafter, more than three occasions, the learned XVIII Metropolitan Magistrate, Saidapet, Chennai was pleased to issue proclamation order for the continuous absent of this petitioner/accused, who is A1 in the said C.C.No.1725 of 2013, this petitioner/A1 S.Ramesh has absolutely no right to file anticipatory bail in another case where the non-bailable warrant was issued under Section 70 of Cr.P.C. without resorting the remedy under Section 70(ii) of Cr.P.C., the learned senior counsel rightly pointed out when other competent Court was ordered proclamation against this petitioner, he has no right to seek fresh Anticipatory bail by way of filing this petition.

30. The conduct of the petitioner is totally not acceptable one, since in this Anticipatory bail petition filed by the petitioner in paragraph-7 in Crl.O.P.(MD)No.5311 of 2017 is stated as follows:

"7. The petitioner submits that this is the first anticipatory bail application filed before this Hon'ble Court and no other petition is pending before any other Court."

33. When he filed Crl.O.P.(MD)No.6730 of 2016 for anticipatory bail for the very same case in Crime No.573 of 2016 which was clearly considered and granted on 26.04.2016 itself, then how he filed another Anticipatory bail petition in this Crl.O.P.(MD)No.5311 of 2017. Apart from this, the proclamation order issued by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai was not mentioned and non-bailable warrant issued by the learned Judicial Magistrate No.VI, Madurai, in the present case in C.C.No.338 of 2016 is pending before the Court concerned.

34. Only with an aim to get the Anticipatory bail from this Court, he has suppressed the above fact and filed this petition. Therefore, it is made clear that this petitioner has played fraud on the Court. Therefore, the petition filed by the petitioner has to be dismissed with heavy cost, but the learned counsel for the petitioner/A1 S.Ramesh was seeking permission of this Court for withdrawal of the said petition. Therefore, when the permission sought for by the learned counsel for the petitioner, but, this Court is not in a position to permit him simply to withdraw the petition since the petitioner has suppressed very many material facts in Crl.O.P.(MD)No.5311 of 2017 and without resorting the provision under Section 70(ii) of Cr.P.C., this petitioner, who faced the trial in another case in C.C.No.1725 of 2013, pending on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai and continuing his criminal activities, this Court permits the petitioner to withdraw the petition, but on condition that the petitioner should surrender before the respondent/police viz.



Inspector of Police, K.Pudur Police Station, Madurai City, Madurai within a period of one week from the date of receipt of copy of this order.

35. With the above direction, I am inclined to permit the petitioner to withdraw the CrI.O.P.(MD)No.5311 of 2017 and directing him to surrender before the 1st respondent/the Inspector of Police, K.Pudur Police Station, Madurai City, within a period of one week from the date of receipt of a copy of this order, failing which the 1st respondent/police is hereby directed to take effective steps immediately to secure the petitioner and produce him before the learned Judicial Magistrate No.VI, Madurai, within a period of one week thereafter.

36. With the above observations, this criminal original petition is dismissed as withdrawn. Consequently, connected miscellaneous petitions are closed.

Sd/-

ASSISTANT REGISTRAR(RTI)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

1. The Judicial Magistrate No.VI,
Madurai.
2. The XVIII Metropolitan Magistrate, Saidapet, Chennai.
3. The Inspector of Police, K.Pudhur Police Station, Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court , Madurai.

+1 CC TO MR.S.RAMESH, ADVOCATE, SR NO.22276

vsa/skn

MAS/SV-MMS/SAR1:25.05.2017:10P-6C

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