



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

Wednesday, the Tenth day of May Two Thousand Seventeen

PRESENT

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

CRL OP(MD) No.23934 & 23936 of 2016

KALIYAPPAN(R.P.NO.1402)

... PETITIONER
IN BOTH THE PETITIONS

Vs

1 STATE REP.BY
THE SUB INSPECTOR OF POLICE,
OTHAKADAI POLICE STATION,
MADURAI
(IN CRIME NO.531/2012) AND
(IN CRIME NO.324/2013)

2 STATE REP.BY
THE SUB INSPECTOR OF POLICE,
MELUR POLICE STATION, MADURAI.
(IN CR.NO.828/2012)

... RESPONDENTS
IN CRL OP(MD) No.23934 of 2016

3.STATE REP.BY
THE INSPECTOR OF POLICE,
KADUPATTI POLICE STATION,
MADURAI.
(IN CRIME NO.85/2013).

...RESPONDENT
IN CRL OP(MD) No.23936 of 2016

Prayer in CRL OP(MD) . 23934/ 2016 :

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to modify the order in Cr.M.P.244 of 2015 dated 20.01.2015 on the file of Judicial Magistrate, Melur to modify the bail conditions to release on personal bond from the date of the order.

Prayer in CRL OP(MD) . 23936/ 2016 :

To modify the order in Cr.M.P.No.6380 of 2014 dated 05.09.2014 on the file of District Munsif Cum Judicial Magistrate, Vadipatti to modify the bail conditions to release on personal bond from the date of the order.

ORDER : These petitions coming on for orders upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of M/S.S.E.MONICA VINCENT, Advocate for the



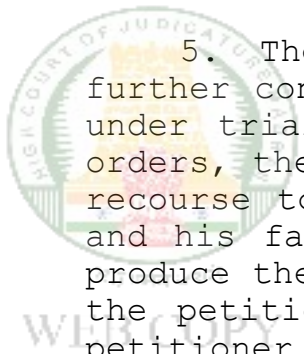
petitioner in both the petitions and of M/S.P.KANDASAMY, Government Advocate (Crl.Side) on behalf of the Respondents in both the petitions the court made the following order:-

The petitioner in both the Criminal Original Petitions are one and the same. The Petition in Crl.O.P(MD)No.23934 of 2016 has been filed praying to modify the order in Cr.M.P.No.244 of 2015, dated 20.01.2015, on the file of the learned Judicial Magistrate, Melur, to modify the bail conditions to release on personal bond from the date of the order. The Petition in Crl.O.P(MD)No.23936 of 2016 has been filed praying to modify the order in Cr.M.P.No.6380 of 2014, dated 05.09.2014 on the file of the learned District Munsif-cum-Judicial Magistrate, Vadipatti, to modify the bail conditions to release on personal bond from the date of the order.

2. The Petitioner in Crl.O.P(MD)No.23934 of 2016 is an accused in Crime No.531 of 2012 for the offence punishable under Sections 457 and 392 of IPC., and in Crime No.324 of 2013, for the offences punishable under Section 394 of IPC., of Othakadai Police Station and in Crime No.828 of 2012, for the offences punishable under Section 394 and 397 of IPC., of Melur Police Station, Madurai District. The same petitioner in Crl.O.P(MD)No.23936 of 2016 is an accused in Crime No.85 of 2013 of Kadupatti Police Station of Madurai District and he is also an accused in Crime No.4 of 2013, for the offence punishable under Section 392 r/w 511 of IPC., on the file of Karupayurani Police, Madurai District.

3. The learned counsel appearing for the petitioner would contend that the petitioner was granted bail on 20.01.2015 in Cr.M.P.No.244 of 2015 by the learned Judicial Magistrate, Melur, in Crime No.531 of 2012; Crime No.324 of 2013 of Othakadai Police Station and in Crime No.828 of 2012 of Melur Police Station, considering the custody of the petitioner beyond the petitioner prescribed in the Code, on executing a bond for a sum of Rs.5000/- with one surety each like a sum and a condition that he should appear before that Court daily at 10 a.m., for 15 days.

4. The counsel for the petitioner would further submit that the petitioner was released on bail by the learned District Munsif-cum-Judicial Magistrate, Vadipatti in Crime No.85 of 2013 of Kadupatti Police Station, as per order, dated 05.09.2014 in Cr.M.P.No.6380 of 2014, considering his custody from 04.01.2014 onwards for 8 months, on executing a bond for Rs.10,000/- with two sureties each for a like sum and also a condition that he should appear and sign before the concerned Police Station at 10.00 a.m., daily for 15 days and the petitioner was granted bail on 01.03.2016 by the learned Judicial Magistrate No.2, Madurai, in Crime No.4 of 2013 of Karupayurani Police Station, on execution of a bond for a sum of Rs.10,000/- with one surety like a sum and on condition that he should appear before the concerned Police Station daily at 10.00



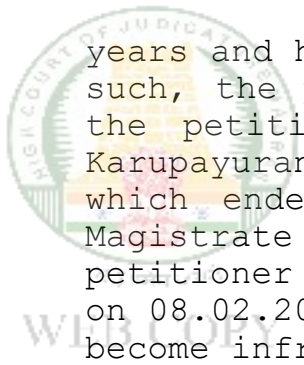
5. The learned counsel appearing for the petitioner would further contend that the petitioner is in Central Jail, Madurai, as under trial prisoner from 11.12.2013 onwards and despite the bail orders, the petitioner has been languished in Madurai Prison without recourse to be set at liberty and since the petitioner is a coolie and his family is poor household, the petitioner has not able to produce the necessary sureties and get released on bail and as such, the petitioner has no one to come to aid for the release of the petitioner on bail and the petitioner, as a sole bread winner of the family, has been incarcerated for over three years now, his wife and two young children have been out of touch.

6. The learned Government Advocate (Crl.side) appearing for the respondents, on instructions, would submit that final report was filed on 19.12.2013 in Crime No.324 of 2013; on 21.12.2013 in Crime No.531 of 2012 and on 05.06.2012 in Crime No.828 of 2012, before the learned Judicial Magistrate, Melur, but those final reports are not yet taken on file by the concerned Court so far. But the certified copies of the bail orders in Crime No.531 of 2012; Crime No.828 of 2012 and Crime No.85 of 2013 are produced by the petitioner would reveal the fact that the petitioner was released on bail, since he is in custody beyond the prescribed in the Code, and there is no mentioning about the pending Calender Case. Further, there is no mentioning about the filing of the final report, as contended by the learned Government Advocate (crl.side) for the respondents. In those cases in Status Reports have been filed by the respondent herein.

7. It is further stated that final report was filed in Crime No.4 of 2013 of Karupayurani Police Station and was taken on file as C.C.No.35 of 2015, which ended in acquittal on 09.01.2017 by the learned Judicial Magistrate No.2, Madurai. It is further stated in the Status Report filed in respect of Crime No.85 of 2013, the petitioner was released on bail on 08.02.2017, since he complied with the bail condition only on 08.02.2017.

8. The present petitions are filed on behalf of the petitioner, who is in jail in Crime No.531 of 2012, 828 of 2012, 85 of 2013 and 324 of 2013, seeking modification of the bail orders in respect of furnishing one surety for Rs.5000/- or Rs.10,000/- as the case may be, as per the order of the concerned Court for releasing him on personal bond in the above cases. The learned counsel, in support of his contention, has relied on the decisions of the Hon'ble Supreme Court in (1) Moti Ram and Others Vs. State of Madhya Pradesh reported in (1978 (4) SCC 47) ; (2) in Abadhraj Dukharam Pande and Others Vs. State of Maharashtra reported in (1980 (1) SCC 80) and (3) in Hussainara Khatoon and Others (I) Vs. Home Secretary, State of Bihar reported in (1980 (1) SCC 81).

9. The present modification petitions in Crl.O.P(MD) No.23936 and 22934 of 2016 were filed on 21.12.2016 before this Court, seeking to release the petitioner on personal bond instead of executing one surety bond, since the petitioner is the sole bread winner of the family and he has been incarcerated for over three



years and his wife and two young children have been out of touch, as such, the petitioner has no one to come to aid for the release of the petitioner on bail. The fact that Crime No.4 of 2013 of Karupayurani Police Station was taken on file as C.C.No.35 of 2015, which ended in acquittal on 09.01.2017, by the learned Judicial Magistrate No.2, Madurai, is not denied by the counsel for the petitioner herein. Similarly, the petitioner was released on bail on 08.02.2017 in Crime No.85 of 2013 of Kadupatti Police Station has become infructuous.

10. As per the written representation, dated 11.08.2015, addressed to the Registry of this Court, by the petitioner, which is enclosed with this application, in which it is stated that the petitioner is in judicial custody in Central Prison, Madurai from 11.12.2013 onwards without having to furnish surety though the bail was ordered by the concerned Court, the present petitions are filed on the basis of the said written representation by the counsel for the petitioner herein. There is no mentioning about the filing of final report and also the present status of the case of Crime Nos.531 of 2012, 324 of 2012 of Othakadai Police Station, Crime No.828 of 2012 of Melur Police Station and also of Crime No.85 of 2013 of Kadupatti Police Station in the Status Report filed by the respondents. It is not denied by the respondents that the petitioner is the remanded prisoners confined in the Central Prison at Madurai from 11.12.2013 and he is still in prison for want of furnishing sureties, though bail was granted by the concerned Court. According to the counsel for the petitioner, due to poverty of the petitioner and also no one to come to aid for the release of the petitioner and he is unable to furnish the sureties, as ordered by the concerned Courts.

11. Considering the above facts and circumstances of the case and also the alleged period of incarceration of the petitioner in jail, though he was released on statutory bail by the concerned Courts and also the inability of the petitioner to produce the surety, as ordered by the concerned Courts and also the dictums laid down in the aforesaid decisions, this Court is inclined to allow the petition in CrI.O.P.(MD)No.23934 of 2016 and accordingly, the same is allowed and modify the condition as follows:-

i. The petitioner is ordered to be released on bail on executing a personal bond for a sum of Rs.3000/- (Rupee Three Thousand Only) and also with an undertaking affidavit executed by the wife of the petitioner for his appearance before the concerned Court in which Crime Nos.531 of 2012, 828 of 2012, and 324 of 2013, without insisting any solvency certificate / Records

ii. The petitioner is directed to appear before the learned Judicial Magistrate, Melur, on every Monday at 10.30 a.m., after his release, until further orders.



iii. The learned Judicial Magistrate, Melur, is directed to take steps for filing final report by the respondents expeditiously and also to dispose of the cases, preferably within a period of three months from the date of receipt of a copy of this order and to report the same to this Registry of this Court.

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12. The relief sought for in Crime No.85 of 2013 of Kadupatti Police has Station become infructuous, since it is stated that the petitioner came out of bail after furnishing sureties and hence, Crl.O.P(MD)No.23936 of 2016 stands dismissed, as infructuous.

sd/-

10/05/2017

/ TRUE COPY /

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

TO

1. THE JUDICIAL MAGISTRATE, MELUR.
 2. THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE, VADIPATTI.
 3. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE, MADURAI.
 4. THE SUB INSPECTOR OF POLICE,
OTHAKADAI POLICE STATION,
MADURAI
 5. THE SUB INSPECTOR OF POLICE,
MELUR POLICE STATION, MADURAI.
 6. THE INSPECTOR OF POLICE,
KADUPATTI POLICE STATION, MADURAI.
 7. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
 8. THE SUPERINDENT, CENTRAL PRISON, MADURAI.
- +2. CC to M/S.S.E.MONICA VINCENT Advocate SR.Nos.21907,21908

ORDER IN

CRL OP(MD) No.23934 & 23936 of 2016

Date :10/05/2017

MS/MSA/SAR-4/10.05.2017/5P.11C