

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2018

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

Crl.A.No.154 of 2018

Selvaraj .. Petitioner/11th Accused/Appellant

Vs.

State rep.by
The Additional Superintendent of Police,
CBCID Namakkal,
Namakkal. .. Respondent/Complainant/Respondent

Prayer: Criminal Appeal is filed under Section 14 A(ii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to set aside the order dated 10.01.2018 made in Crl.M.P.No.43 of 2018 in S.C.No.78 of 2016 on the file of the learned Principal Sessions Judge (Special Court constituted under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Namakkal, by allowing this appeal and granting bail to the appellant.

For Appellant : Mr.A.V.Arun
For Respondent : Ms.S.Thankira,
Government Advocate
(Criminal Side)

JUDGMENT

This appeal has been filed against the order passed in Crl.M.P.No.43 of 2018 by the learned Principal Sessions Judge, Namakkal, in S.C.No.78 of 2016 by order dated 10.01.2018.

2.The case of the appellant is that, he is A15 in the said case, pending trial before the trial Court, where the case was posted on 19.12.2017 for hearing for the purpose of framing of charges. On that date, the appellant was not present and on his behalf, a petition to dispense with his presence under Section 317 of CrPC was filed by his counsel. However, the learned Judge, having rejected the said petition, had issued Non-Bailable Warrant against the appellant. Subsequently, the appellant surrendered before the trial Court on 10.01.2018. However, the learned Judge, while accepting the surrender, has

rejected the petition filed by the appellant to recall the Non Bailable Warrant. Challenging the said order dated 10.01.2018 in rejecting the application for recalling the Non-Bailable Warrant, the present appeal is preferred.

3.On notice, Ms.S.Thankira, learned Government Advocate (Criminal Side) appeared for the respondent/State.

4.Mr.A.V.Arun, learned counsel appearing for the appellant submits that, the appellant (A15 in this case) had never been absent in previous occasions, whereas the other accused persons had been absent for some hearings and with the result, they had filed petitions to dispense with the presence at various points of time. On 19.12.2017, the appellant could not be present because of his ill-health and that is the reason why on his behalf, petition under Section 317 of CrPC was filed and the same was dismissed by the learned Judge and Non-Bailable Warrant was issued.

5.The learned counsel appearing for the appellant would further submit that, to show his bonafide, after recovering from his illness, the appellant had surrendered before the learned Judge on 10.01.2018, by filing a surrender petition, which has been accepted by the learned Judge. However, the petition to recall the Non-Bailable Warrant before the trial Court, had been rejected and therefore, the appellant had been in jail from 10.01.2018.

6.The learned counsel appearing for the appellant would further submit that, insofar as the other accused i.e., A11 is concerned, who had also been absent on 19.12.2017, on his behalf also, petition was filed and the same was rejected. However, the said accused/A11 did not surrender before the trial Court, instead, he had moved a Criminal Original Petition before this Court in CrI.O.P.No.4400 of 2018 to recall the said Non-Bailable Warrant issued against A11 on 19.12.2017.

7.The learned counsel appearing for the appellant would further submit that, the learned Judge of this Court by order dated 27.02.2018, after having considered the facts and circumstances of the case in the said Criminal Original Petition, was pleased to recall the Non-Bailable Warrant issued against the said A11 and the relevant portion of the order of the learned Judge is extracted hereunder:

"4.In the present case though the Non-Bailable Warrant was issued on 19.12.2017, 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 warrant issued by the trial Court.

5.Hence, this Criminal Original petition stands allowed. The Non-Bailable Warrant issued on 19.12.2017 is recalled. Consequently, the accused is directed to appear before the learned Principal Sessions Judge, Namakkal, in connection with C.C.No.78 of 2016 within one week from the date of receipt of this order and on subsequent hearing dates without fail. The trial Court shall record the factum of the warrant against the petitioner being recalled and direct the petitioner to appear for all the future hearings, without fail, to the best of his ability."

8.By relying upon the said order, the learned counsel appearing for the appellant would submit that, though the Non-Bailable Warrant was issued against A11 and A15, since A15 had surrendered on 10.01.2018, the petition filed before the trial Court was dismissed and he has been sent to jail, whereas in respect of A11, he had not surrendered before the trial Court and approached this Court by filing Original Petition and Non-Bailable Warrant was recalled by this Court order as referred to above. Therefore, the learned counsel would submit that, the appellant herein has never been absent in earlier hearings and he will not be absent in the future hearing also. He would further submit whatever be the conditions imposed by this Court, the appellant would abide to the conditions and co-operate to proceed with the trial without any hindrance on his part.

9.Per contra, Ms.S.Thankira, learned Government Advocate (Criminal Side) appearing for the respondent supporting the order impugned would submit that, the learned Judge has recorded that the Hon'ble Apex Court in CrI.A.No.1757 of 2017 dated 10.10.2017, had issued a time bound direction, pursuant to which, the trial Court shall take up the trial and complete the same within eighteen months. Therefore, it is the paramount duty on the part of the learned Judge to proceed with the trial without any further delay.

10.The learned Government Advocate (Criminal Side) would further submit that, pursuant to the time bound direction given by the trial Court, when the trial Court proceeded with the trial, in order to hinder such progress, petitions after petitions have been filed by one after another accused and at least more than ten petitions have already been filed before the trial Court and by thus, the trial was unnecessarily dragged on for more than eighteen months and this factor has been recorded in the impugned order itself. When that being the position, since the appellant also on his part, was being absent on 19.12.2017 for which no reason had been given except the reason on medical ground, for which, no proof had been filed by the

appellant, the trial Court has taken a decision rightly by rejecting the petition to recall the Non-Bailable Warrant. Therefore, the learned Government Advocate would submit that, once a Non-Bailable Warrant is recalled and the order of the trial Court, which is impugned, is set aside, the appellant may once again show his attitude of being himself absent and thereby, the progress of the trial would be hindered and ultimately, it would have the bearing on the execution of the time bound direction issued by the Hon'ble Apex Court as referred to above. Therefore, the learned Government Advocate would submit that the impugned order does not require any interference from this Court.

11.I have considered the submissions made by both sides.

12.As has been submitted by the learned counsel appearing for the appellant, though petitions have been filed by the accused persons on various grounds, numbering about ten or more, insofar as the appellant is concerned, it is asserted by the learned counsel appearing for the appellant that, he did not file so far any petition. Further, as submitted by the learned counsel appearing for the appellant, on 19.12.2017, the appellant had been absent on health ground and in order to show his bonafide, after issuance of Non-Bailable Warrant, subsequently, he had been surrendered before the trial Court on 10.01.2018, where he filed a petition to recall the Non-Bailable Warrant.

13.Whereas the other accused had also similarly absent on 19.12.2017, who also suffered with an order of Non-Bailable Warrant, has not chosen to surrender before the trial Court, but, he filed Criminal Original Petition before this Court and his case was accepted by this Court and the Non-Bailable Warrant was recalled by the orders of this Court as referred above. Therefore, there is substance in the submissions made by the learned counsel appearing for the appellant, that the present appellant, who surrendered before the trial Court, has been in jail from 10.01.2018 but, the other accused, who had not been surrendered before the trial Court, has been considered by this Court in the said Criminal Original Petition.

14.Further, the learned counsel appearing for the appellant would submit that, whatever conditions be imposed by this Court to ensure the future presence in each of the hearing before the trial Court till the completion of trial, the appellant would abide the conditions imposed by this Court.

15.Considering the aforesaid submissions made by both sides and considering the circumstances of the case and also taking into account the appellant had been in jail from 10.01.2018,

this Court is inclined to pass the following orders:

"1.The Non-Bailable Warrant issued against the appellant by the trial Court by order dated 19.12.2017 is hereby recalled. Consequently, the appellant is enlarged on bail on his furnishing security to the tune of Rs.25,000/- with two sureties each for a likesum to the satisfaction of the learned Principal Sessions Judge (Special Court constituted under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Namakkal.

2.The appellant shall appear before the trial Court on all future hearings and the appellant shall not be absent even for a single hearing. If the appellant shows any absence for future hearings, the same shall be verified by the trial Court as to whether he is really unable to appear before the Court strictly on medical ground and if any satisfactory documents are not produced by the appellant, that absence on the part of the appellant will be viewed very seriously and the trial Court can pass orders in accordance with law. The aforesaid direction on medical ground is not given by this Court as a concession to be misused by the appellant, the general condition is that, the appellant shall appear before the trial Court on every hearings till the completion of the trial without filing any unreasonable petition to dispense with his absence.

With these conditions, this Criminal Appeal is allowed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

mps

To

1.The Principal Sessions Judge,
{Special Court constituted under
the Scheduled Castes and the
Scheduled Tribes (Prevention
of Atrocities) Act, 1989},
Namakkal

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2.The Additional Superintendent of Police,
CBCID,
Namakkal.

3.The Public Prosecutor
High Court Madras.

4.The Section Officer,
Criminal Section,
High Court Madras.

+lcc to Mr.A.V.Arun, Advocate, S.R.No.18167

Cr1.A.No.154 of 2018

SSV(CO)
RRK(13/03/2018)



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