

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2018

C O R A M

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Cr1.R.C.No.652 of 2018

1.Vino @ Vinothkumar
2.Navin @ Navinkumar

..Petitioner

Vs.

The State by
Rep. By Inspector of Police,
Kandamangalam Police Station,
Villupuram District.

...Respondents

PRAYER: Criminal Original Petition is filed under Section 397 and 401 of the Code of Criminal Procedure to set aside the order passed in C.M.P.No.464 of 2016 in Crime No.249 of 2015 by the Judicial Magistrate No.II, Villupuram dated 03.02.2016 and thus render justice.

For Petitioner : Mr.S.Anburaja
For Respondent : Mrs.S.Thankira
Government Advocate

O R D E R

This criminal original petition has been filed to set aside the order passed in Cr1.M.P.No.464 of 2016 in Crime No.249 of 2015 by the Judicial Magistrate No.II, Villupuram dated 03.02.2016 and thus render justice.

2. The case of the petitioners that the petitioners were implicated in for the offences under Sections 147, 148, 341, 342, 120(b) and 302 IPC r/w.109, 149, 201 and 212 IPC in Crime No.249 of 2015 and subsequently, they were arrested and released on default bail on the ground that the Law Enforcing Agency, has not filed a charge sheet or final report, for which, on 12.01.2016, the Court below taking into consideration the petitioners languishing more than 90 days in prison, has granted default bail in C.M.P.No.163 of 2016 with the following conditions.

(1) The petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties, of whom, one should be a family member surety, each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Villupuram and

(2) on further condition that the petitioners shall report before the respondent police daily at 5.00 p.m. for a period of fifteen days."

3. Since one of the conditions was not complied with by the petitioners, the Police Authorities moved a petition in C.M.P.No.464 of 2016, for cancelling the bail granted by the Court below. On 03.02.2016, the Court below cancelled the bail and issued Non Bailable Warrant against the petitioners. As against the cancellation of bail order, the petitioners are before this Court.

4. Admittedly, the Court below cancelled the bail application and issued a Non Bailable Warrant against the petitioners for their non-compliance of the conditions imposed on them. The learned counsel for the petitioners would submit that without issuing notice to the petitioners, the order was passed behind their back. Therefore, the learned counsel for the petitioners prays to set aside the order of the Court below.

5. The learned Government Advocate appearing for the State would submit that a specific condition imposed in the order that the petitioners shall appear before the respondent Police daily at 5.00 p.m. for period of 15 days, however, the petitioners shall not comply with the said condition. Therefore, the respondent Police moved a petition for cancellation of bail.

6. I have gone through the submissions made on either side.

7. Initially the lower Court granted default bail on condition to appear before the respondent Police at 05.00 p.m. However, the petitioner did not comply the condition imposed by the lower Court on the ground that the law enforcing agency filed cancellation of bail petition before the lower Court. After satisfaction, the lower Court cancelled the bail as well as bail bond and issued Non Bailable Warrant against the petitioner. Once Non Bailable Warrant was issued, the petitioners have a remedy before the lower Court for recalling Non Bailable Warrant if it is in violation of the condition imposed by the lower Court. The petitioner has to surrender before the lower Court and thereafter, file an appropriate petition before the lower Court. Without filing an appropriate

petition before the lower Court and filing petition before this Court is not sustainable.

8. Hence, this Court is of the considered view that there is no any illegality or infirmity in the order passed by the Court below and accordingly, this revision is dismissed with liberty to the petitioner to surrender before the Court below and file appropriate petition.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1.The Judicial Magistrate No.II,
Villupuram

2.The Inspector of Police,
Kandamangalam Police Station,
Villupuram District.

3. The Public Prosecutor,
High Court, Chennai.

+1 CC to Mr.S. Anburaja, Advocate sr 61697.

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NM(CO)
SP(03/10/2018)

सत्यमेव जयते

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