

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.08.2018
PRONOUNCED ON : 01.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Criminal Original Petition No.21164 of 2018

Siva @ Sivakumar

... Petitioner

Vs.

State rep by
The Inspector of Police
CBCID Police, Namakkal
Pallipalayam P.S. Crime No.310 of 2010
and Namakkal CBCID Cr.No.1 of 2010

... Respondent

Prayer:- Petition filed under Section 482 Cr.P.C., to direct the trial Court to accept the sureties and bonds produced by this petitioner and release the petitioner/accused from judicial custody in connection with S.C.No.69 of 2012 and S.C.No.52 of 2013 on the file of the Fast Track Mahila Court, Namakkal.

For Petitioner : Mr.Murugendran
for Ms.R.Selvakkodi

For Respondent : Mr.C.Raghavan
Govt.Advocate (Crl.Side)

O R D E R

This petition has been filed to direct the trial Court to accept the sureties and bonds produced by this petitioner and release the petitioner/accused from judicial custody in connection with S.C.No.69 of 2012 and S.C.No.52 of 2013 on the file of the Fast Track Mahila Court, Namakkal.

2. The petitioner was remanded to custody on 12.03.2010 in Cr.No.310 of 2010 for the offences under Sections 147, 148, 302 and 506(i) IPC by the Judicial Magistrate, Tiruchengode. He was released on statutory bail on 29.06.2010 under Section 167(2) Cr.P.C. for the failure of the prosecution to file the final report. Investigation in Cr.No.310 of 2010 was completed and charge sheet was filed for the said offences before the jurisdictional Magistrate. The case was committed to the Court of Sessions in S.C.No.69 of 2012 and the same is now pending on the file of the Fast Track Mahila Court, Namakkal, for trial.

3. While so, the petitioner was arrested in Cr.No.1 of 2010 by the police for an offence under Section 306 IPC and was produced before the Judicial Magistrate, Tiruchengode on 08.06.2010. The petitioner was enlarged on bail by this Court in CrI.O.P.No.20028 of 2010 on 31.08.2010. Investigation was completed in Cr.No.1 of 2010 and final report was filed before the jurisdictional Magistrate. The case was committed to the Court of Sessions and the same is now pending in S.C.No.52 of 2013 before the Fast Track Mahila Court, Namakkal.

4. Thus, the petitioner was facing trial in S.C.No.69 of 2012 and S.C.No.52 of 2013 before the Fast Track Mahila Court, Namakkal. When things stood thus, the petitioner did not appear before the trial Court on 12.09.2013 and no petition under Section 317 Cr.P.C. was filed. Therefore, the trial Court issued non-bailable warrant to secure the presence of the petitioner.

5. The petitioner was in abscondence and ultimately, the non-bailable warrant was executed on 17.04.2017 and he is now in custody. Under such circumstances, the petitioner has filed the present petition with the above prayer.

6. Heard Mr.Murugendran, learned counsel representing Ms.R.Selvakkodi, learned counsel on record for the petitioner and the learned Additional Public Prosecutor appearing for the State.

7. Mr.Murugendran, learned counsel submitted that the bail that was granted to the petitioner was not cancelled and therefore, on production of fresh sureties, he should have to be released on bail. In support of this contention, he placed strong reliance on an unreported judgment of this Court in Appu @ Santhanakumar vs. State rep. by Inspector of Police, Palavanthangal Police Station [CrI.O.P.Nos.7226 of 2004 etc. batch dated 24.03.2004]; judgment of Andhra Pradesh High Court in Dasari Satyanarayana vs. The State of Andhra Pradesh, rep. by Public Prosecutor, High Court, Hyderabad [CrI.P.No.6158 of 2014] and the judgment of the Supreme Court in Raghubir Singh and Others vs. State of Bihar [(1986) 4 SCC 481].

8. Per contra, the learned Additional Public Prosecutor refuted the contentions.

9. This Court gave its anxious consideration to the rival submissions.

10. In Appu (supra), the accused therein was granted bail in one case and he was arrested in another case. While in custody in the second case, he was produced on P.T. warrant before the Court in the first case. He was continuously being remanded in the first case on the P.T. warrant. Only in those circumstances, this Court held that the bail should have been

cancelled under Sections 437(5) or 439(2) Cr.P.C.

11. In Dasari (supra), a learned single Judge of the Andhra Pradesh High Court has held that mere issuance of non-bailable warrant or its execution per se will not amount to cancellation of bail.

12. Before advertizing upon a discussion with regard to the above two rulings, it may be necessary to refer to the third ruling. The facts in Raghubir Singh (supra) are that the accused were released on statutory bail under Section 167(2) Cr.P.C. and they were kept in detention by the State of Bihar on some pretext or the other and ultimately, the State contended that the bail under Section 167(2) Cr.P.C. stood extinguished in view of the remand of the accused under Section 309(2) Cr.P.C. Only in that context, the Supreme Court held that the orders for release on bail are effective until the bail is cancelled under Section 437(5) or 439(2) Cr.P.C. Judicial precedents should not be read as Euclid's theorem. The law laid down therein should be viewed through the prism of the facts obtaining in that case. The facts obtaining in this case are that the petitioner absconded from 12.09.2013 and was arrested only after 4 years, i.e. on 17.04.2017. To say that he should have to be released automatically on he furnishing fresh surety tantamounts to giving premium for abscondence, which can never be the object of the law. The Madurai Bench of this Court, in Pillappan @ Ravikumar vs. State represented by the Inspector of Police, West Police Station, Kumbakonam [Crl.R.C.(MD) No.148 of 2018 dated 18.04.2018], has discussed all these aspects and has held that an accused who had absconded, cannot, as a matter of right, seek release from custody on furnishing fresh sureties.

In the result, this petition is dismissed as being devoid of merits.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

gms

To

1.The Inspector of Police
CBCID Police, Namakkal.

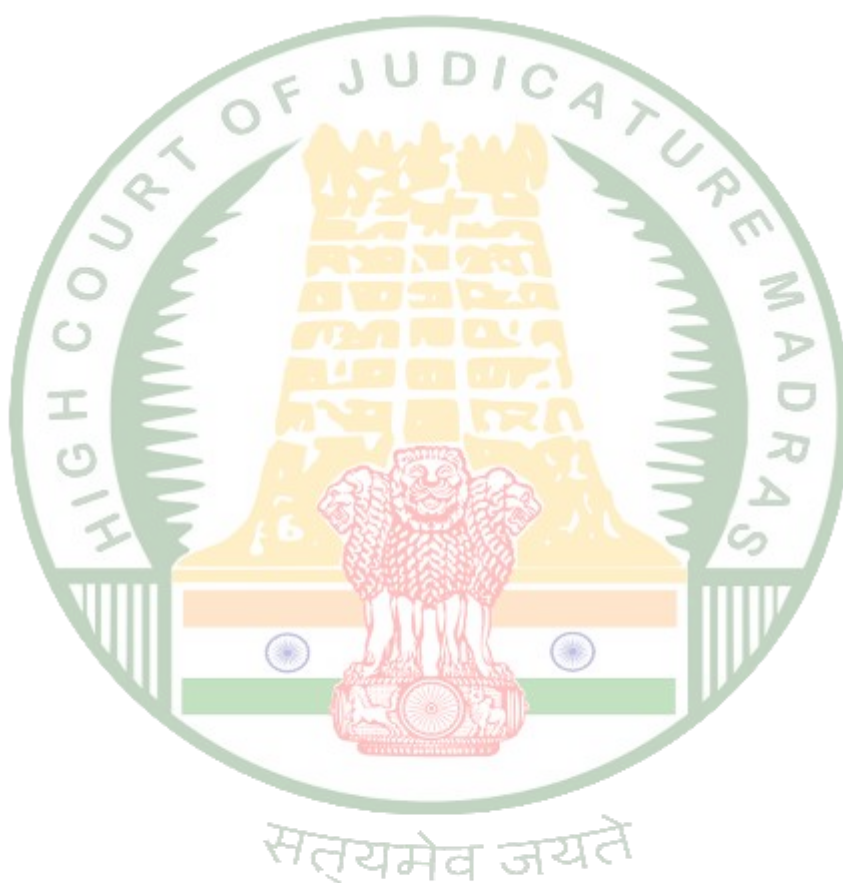
<https://hcservices.ecourts.gov.in/hcservices/>

2.Fast Track Mahila Court,
Namakkal.

3.The Public Prosecutor
High Court, Madras.

sm:10.10.2018

Cr1.O.P.No.21164 of 2018



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