

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Dated : 04.09.2018

Coram:

The Honourable Mr.Justice M. DHANDAPANI

Criminal Original Petition No.11759 of 2018

The Senior Intelligence Officer
Directorate of Revenue Intelligence
T.Nagar, Chennai-17. ... Petitioner

/versus/

M.Megavannan ... Respondent

Criminal Original Petition is filed under Section 439(2) of the Criminal Procedure Code praying to cancel the bail granted to the respondent in Crl.M.P.No.604 of 2018 dated 14.03.2018 by the learned Additional Chief Metropolitan Magistrate, EO-I, Chennai incharge of learned Additional Chief Metropolitan Magistrate, EO-II, Chennai in R.R.No.7 of 2018 on the file of the petitioner and arrest the respondent and commit him to custody.

For Petitioner :Mr.M.Venkateswaran

For Respondent :Mr.S.Sairaman

O R D E R

The prosecuting Agency filed this cancellation petition challenging the order dated 14.03.2018 made in Crl.M.P.No.604 of 2018 in R.R.No.7 of 2018 by the learned Additional Chief Metropolitan Magistrate, EO-I, Egmore, Chennai in-charge of learned Additional Chief Metropolitan Magistrate, EO-II, Chennai.

2.The case of the prosecution is that the petitioner is a habitual offender in smuggling red sanders, a prohibited item for illegal exports out of India. Hence, the petitioner has registered the case against the respondent/accused. However, the learned Chief Metropolitan Magistrate, without ordering notice to the petitioner and without hearing the petitioner and believing the words of the respondent/accused, granted bail in Crl.M.P.No.604 of 2018 to the respondent herein by exercising his power under Section 436 of Cr.P.C., as if the offence committed by the respondent accused is bailable offence. Against which, the present petition is filed for cancellation of the bail granted by the trial

3. The learned Special Public Prosecutor (for GST & Service Tax Cases) appearing for the petitioner would submit that without going through the remand report and without taking into consideration that the respondent is a habitual offender, the learned Chief Metropolitan Magistrate has inadvertently granted bail to the respondent/accused. The respondent filed a petition under Section 436 of Cr.P.C., under the impression that he has committed bailable offence. But, the petitioner/police have booked the petitioner under Section 135A of the Customs Act. However, the fact remains that the petitioner has implicated the respondent under Section 135(1)(C) of the Customs Act, which is non-bailable offence and the goods smuggled by the respondent which are prohibited items and without considering the said fact the trial Court has granted bail to the respondent/accused. The learned Magistrate has perused the arrest report but he did not peruse the remand report. Without perusing the remand report, the trial Judge has granted bail under Section 436 of Cr.P.C., which is unsustainable in law.

4. The learned counsel appearing for the respondent/accused would submit that the case was registered by the petitioner police against the accused under Section 135A of the Customs Act, which is bailable offence. Accordingly, the respondent filed a petition under Section 436 of Cr.P.C., for grant of bail. Believing the words of the respondent that no notice was served by the petitioner police and without hearing the learned Special Public Prosecutor appearing for the petitioner, the trial Court granted bail to the respondent under the impression that the offence committed by the respondent/accused is bailable offence. However, liberty may be granted to the respondent accused to file an appropriate petition before the trial Court and the same may be considered by the trial Court since the undisputed fact is that the respondent and other accused were implicated for the offence under Section 135(1)(C) of the Customs Act, which is non bailable offence.

5. Heard the learned Special Public Prosecutor (for GST & Service Tax Cases) petitioner as well as the learned counsel appearing for the respondent and perused the materials available on record.

6. Considering the facts and circumstances of the case and since the fact remains that the learned Magistrate under the impression that the respondent committed the offence, which is bailable one and accordingly, granted bail to him, without ordering notice to the prosecution, however, the learned Magistrate has

not perused the remand report and the remand report reveals that the respondent/accused was booked under Section 135(1)(C) of the Customs Act, which is non-bailable one, therefore, issuing notice to the petitioner is mandatory. Therefore, I am inclined to allow the petition and to set aside the order passed by the trial court.

7. Accordingly, the Criminal Original Petition is allowed and the order passed by the trial Court in Crl.M.P.No.604 of 2018 dated 14.03.2018 is hereby set aside. It is made clear that the petitioner police is directed to proceed further in accordance with law.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To,
The Additional chief Metropolitan Magistrate,
Eo-I i/c Additional Chief Metropolitan Magistrate Eo-II,
Egmore, chennai.

+1cc to Mr.S.Sairaman , Advocate SR.No. 64053

Crl.O.P.No.11759 of 2018

ASK(26/09/2018)

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