

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.O.P.No.16782 of 2018

A.Raajendhar

.. Petitioner

Vs

V.Purushothaman

.. Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to recall the warrant issued against the petitioner on 23.10.2017 on the date of surrender in connection with C.C.No.7116 of 2016 on the file of the Fast Track Court-II, Egmore, Allikulam.

For Petitioner : Mr.R.C.Paul Kanagaraj
for Mr.R.Arunkumar

O R D E R

This petition has been filed to recall the warrant issued against the petitioner in connection with C.C.No.7116 of 2016 on the file of the Fast Track Court-II, Egmore, Allikulam.

2.Heard the learned counsel for the petitioner and perused the materials placed on record.

3.On a perusal of the diary extract filed by the petitioner, it is seen that non bailable warrant was issued against the petitioner/accused on 08.11.2017 and not on 23.10.2017 as stated by the petitioner in this petition.

4.The petitioner is facing a prosecution in C.C.No.7116 of 2016 before the Fast Track Court-II, Egmore, Allikulam for offences under Section 138 of Negotiable Instruments Act, 1881. Non Bailable Warrant was issued on 08.11.2017, since the petitioner did not appear before the trial Court, only filed an application under Section 317 of Cr.P.C. While so, the petitioner was arrested by the CBI on 19.01.2018 and was produced before the Special Court for CBI Cases [XII Additional District and Sessions Court], Chennai and was remanded to custody. He was released on bail in that case on 21.05.2018. It is the apprehension of the petitioner that if he appears before the trial Court in C.C.No.7116 of 2016 for recalling the Non Bailable Warrant under Section 70[ii] of Cr.P.C., there is

every likelihood of the petitioner being remanded to custody. Therefore, the petitioner has filed the present petition under Section 482 of Cr.P.C. for recalling the warrant.

5.Mr.R.C.Paul Kanagaraj, learned counsel appearing for the petitioner places reliance on the order passed by this Court in CrI.O.P.No.13276 of 2017 dated 07.09.2017, in which, the learned Single Judge of this Court has held that for recalling Non Bailable Warrant, petition under Section 482 of Cr.P.C. is maintainable. However, from the earlier judgments of this Court, wherein, it has been held that petition under Section 482 of Cr.P.C. for recall of warrant is not maintainable.

6.In this case, the petitioner appears to have sufficient causes to satisfy the trial Court that his abscondence was on account of his arrest and detention by the CBI. The police should have executed the Non Bailable Warrant issued by the Fast Track Court-II, Egmore, Allikulam, while the petitioner was in custody, after his arrest by the CBI, by effecting notional arrest in the prison and producing him under P.T.Warrant before the Fast Track Court-II, Egmore, Allikulam.

7.In the recent Judgment, this Court has explained the contours of Section 446[A] of Cr.P.C. In view of the above, liberty is given to the petitioner to surrender before the Fast Track Court-II, Egmore, Allikulam within two weeks from the date of receipt of a copy of this order and file an affidavit explaining the cause for his abscondence along with a petition under Section 70[2] of Cr.P.C. and on such application being filed, the same may be considered in the light of the law laid down by this Court in Pillappan @ Ravikumar Vs State rep. by Inspector of Police, West Police Station, Kumbakonam, Thanjavur District reported in 2018[2] MLJ [CRL] 502.

With the above direction, this petition is closed.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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To

The Magistrate
Fast Track Court-II,
Egmore, Allikulam.

CrI.O.P.No.16782 of 2018

KAN (CO)
GSP (03/07/2018)



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