



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2018

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

Crl.O.P. (MD) No. 4021 of 2018

WEB COPY

Yesudhasan @ Yesudhas

... Petitioner / Accused

-Vs-

1. Raj

... 1st Respondent/Complainant

2. State represented by,
The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.

... 2nd Respondent

Prayer: Petition - filed under Section 482 of Code of Criminal Procedure to issue a direction to the learned Judicial Magistrate Court No.I, Kuzhithurai, to consider the petition for recall the NBW issued in S.T.C.No.3198 of 2009 dated 06.10.2015.

For Petitioner

: Mr.M.R.Sreenivasan

For R-2

: Mr.K.K.Ramakrishnan

Additional Public Prosecutor

O R D E R

This petition has been filed direct the learned Judicial Magistrate No.I, Kuzhithurai, to consider the petition for recall the NBW issued in S.T.C.No.3198 of 2009 dated 06.10.2015.

2. It is submitted by the learned counsel for the petitioner that due to the absence of the petitioner on 06.10.2015 for hearing of the case in S.T.C.No.3198 of 2009, non bailable warrant was issued against the petitioner on the same day by the learned Judicial Magistrate No.I, Kuzhithurai. Hence, he filed this petition seeks to recall the non bailable warrant issued against him.

3. The learned Additional Public Prosecutor, on instructions, would submit that due to absence of the petitioner for one hearing, non bailable warrant was issued against the petitioner and the petitioner shall approach the Court for recalling the warrant instead of filing this petition before this Court. To support his contention, he relied on the judgment of the Hon'ble Supreme Court reported in **2018 (1) MLJ (Crl) SC 436** in the case of **Madan Mohan vs. State of Rajasthan and Others**, wherein in paragraph No.16, it has been held as follows:



Judge to "allow" the application for grant of bail. Indeed, once such direction had been issued by the High Court then what was left for the Sessions Judge to decide except to follow the directions of the High Court and grant bail to respondent Nos.2 and 3. In other words, in compliance to the mandatory directions issued by the High Court, the Sessions Judge had no jurisdiction to reject the bail application but to allow it."

4. In the light of the above decision of the Hon'ble Supreme Court and also considering the fact that non bailable warrant was issued against the petitioner for his absence, there shall be a direction, directing the petitioner to surrender before the learned Judicial Magistrate No.I, Kuzhithurai, within a period of two weeks from the date of receipt of a copy of this order and to file a petition for recalling the warrant and on such application, the learned Judicial Magistrate No.I, Kuzhithurai, is directed to consider the same on the same day and pass orders on merits and in accordance with law, after affording opportunity to the parties concerned.

5. Accordingly, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I, Kuzhithurai.

2. The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.R.Sreenivasan, Advocate Sr.No.59918

SM

VB/JC/SAR3/10.04.2018/2P/5C