



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2018

CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CRL.O.P.(MD)No.6754 of 2018

Prithivirajan

... Petitioner/Sole Accused

-vs-

The State represented by
The Inspector of Police,
District Crime Branch,
Thanjavur District
Crime No.11 of 2007

... Respondent/Complainant

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to recall the Non Bailable Warrant on the same day of his arrest or surrender issued by the learned District Munsif Cum Judicial Magistrate, Orathanadu in C.C.No.61, 62, 63 of 2010 dated 17.04.2018 in Crime No.11 of 2007 on the file of the respondent police on the same day of his surrender.

For Petitioner : Mr.A.Kannan

For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

ORDER

This petition has been filed to recall the Non Bailable Warrant issued by the learned District Munsif Cum Judicial Magistrate, Orathanadu in C.C.No.61, 62, 63 of 2010.

2. It is submitted by the learned counsel for the petitioner that the petitioner has been regularly appearing before the trial court and he was unable to appear before the court on 09.04.2018 and on 17.04.2018 and due to the absence of the petitioner, non bailable warrant was issued against him on 17.04.2018 by the learned District Munsif Cum Judicial Magistrate, Orathanadu. Hence, this petition has been filed 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 (Cr1) SC436** in the case of **Madan Mohan vs. State of Rajasthan and Others**, wherein in paragraph No.16, it has been held as follows:

"16. In our considered opinion, the High Court had no jurisdiction to direct the Sessions 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 District Munsif Cum Judicial Magistrate, Orathanadu, and to file a petition for recalling the warrant and on receipt of such application, the learned District Munsif Cum Judicial Magistrate, Orathanadu, is directed to consider the same on the same day and pass orders on merits and in accordance with law.

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

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif Cum Judicial Magistrate,
Orathanadu.
2. The Inspector of Police,
District Crime Branch, Thanjavur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+ 1 cc TO Mr. A. Kannan, Advocate in SR No. 63582

CM

AE/JC/SAR3/22.05.2018/2P/5C