



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2018

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THE HONOURABLE MR.JUSTICE A.D. JAGADISH CHANDIRA

CRL OP(MD).No. 20954 of 2018

Reeta Mary

... Petitioner

Vs.

Johnson

... Respondent

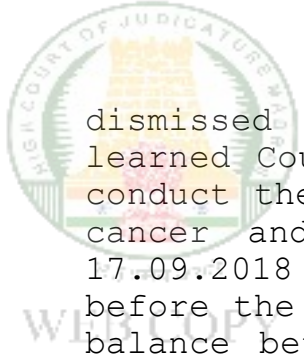
PRAYER: This Petition filed under Section 482 of Criminal Procedure Code, to direct the learned Judicial Magistrate, Cheranmahadevi, to consider the petition filed under Section 70(2) to recall the Non-bailable warrant in STC No.940 of 2010 on 12.10.2018 on the same day of presentation without insisting the presence of the petitioner.

For Petitioner :Mr.S.Kumaresan

ORDER

This Criminal Original Petition has been filed seeking, direction to the learned Judicial Magistrate, Cheranmahadevi, to consider the petition filed under Section 70(2) to recall the Non-bailable warrant in STC No.940 of 2010 on 12.10.2018 on the same day of presentation without insisting the presence of the petitioner.

2. The learned Counsel for the petitioner would submit that the petitioner is aged about 52 years and she has been detected with IV-th stage cancer and she has also developed bone cancer and she is in the critical stage of carcinoma breast with bone metastasis. He would further submit that the doctor had issued a medical certificate on 25.10.2018 to that effect stating that she needs rest till completion of palliative chemotherapy. He would also submit that the case came up for hearing, before the learned Magistrate on 12.10.2018, the petitioner was represented by her Counsel and had also filed a 317 Cr.P.C., petition along with medical records and that the learned Magistrate had dismissed the petition and issued a Non-Bailable warrant stating that the case has been pending from the year 2010 and that on 10.09.2018, the petitioner had appeared along with her counsel and had stated that she would settle the matter with the complainant and she had also given an undertaking to appear in all the future hearing dates and thereby an earlier bailable warrant was recalled and thereafter, on 11.09.2018, the petitioner had appeared and informed to contest the case and the Court had directed her to appear on all hearing dates without fail, whereas, on 12.10.2018, the petitioner had not appeared only with the intention of delaying the trial. Thereby the learned Judge had



dismissed the petition and issued a Non-bailable warrant. The learned Counsel would also submit that the petitioner was ready to conduct the trial and that the petitioner is at the fourth stage of cancer and questioning U/s 313 Cr.P.C., has been completed on 17.09.2018 and there is no requirement of the petitioner to appear before the Trial Court. He would also submit that the Court has to balance between the medical condition of the petitioner, stage of the case and also necessity and need for her to appear before the Trial Court whereas the Trial Judge without taking into consideration the medical condition of the petitioner had dismissed the petition U/s 317 Cr.P.C., for condoning the absence. He would also submit that though an undertaking was given by the petitioner agreeing to appear on all hearing dates the condition of the petitioner is very bad and that the petitioner has been advised to take continuous treatment and to attend for chemotherapy on alternative days or else it would be a risk to her life. He would further submit that the petitioner is suffering from fourth stage of cancer whereas the learned Magistrate had not taken into consideration that the petitioner is being represented through her Counsel on all hearing dates and it is not a case where the identity of the petitioner is also disputed.

3. This Court had on several occasions held that Non-bailable warrant should be issued in extreme and rare cases if the pendency of the case is only due to the non appearance of the petitioner. Taking into consideration, the medical condition of the petitioner and also the undertaking given by the counsel for the petitioner that the complement is prepared to get along with the trial and will complete the argument on the next hearing date i.e., on 10.12.2018, without taking any further adjournment, the non-bailable warrant issued by the learned Magistrate against the accused in STC No.940 of 2010 is directed to be recalled.

4. With the above observation, this Criminal Original Petition stands closed.

Sd/-
Assistant Registrar()

/True Copy/

Sub Assistant Registrar(CS-II)

To

1.The Judicial Magistrate Court,
Cheranmahadevi

2.Do through Chief Judicial Magistrate,Tirunelvelai.

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

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



Madurai.

+1cc to Mr..S.Kumaresan

Advocate in SR.No.97405

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PSRSK SAR2 04.12.2018 3P 5C

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