



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Eighth day of February Two Thousand Nineteen
PRESENT

The Hon`ble Mr.Justice M.DHANDAPANI

CRL OP(MD) No.2029 of 2019

ABDUL KADAR

... PETITIONERS / ACCUSED NO.4

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
PAZHUGAL POLICE STATION,
KANYAKUMARI DISTRICT.
CRIME NO.74/2008

... RESPONDENT / COMPLAINANT

For Petitioner : MR.H.VELAVADHAS Advocate

For Respondent : MR.K.SUYAMBULINGA BHARATHI,
Government Advocate (Crl.Side)

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

The petitioner, who apprehends arrest for the alleged offences under Section 395 IPC in Crime No.74 of 2008, on the file of the respondent police, seeks anticipatory bail.

2. Heard both sides.

3.After completion of the investigation charge sheet has been filed before the learned Judicial Magistrate No.1, Kuzhithurai in PCR No.19 of 2008 and the same is pending. As against the Non Bailable Warrant issued against the petitioner due to his non appearance on 21.11.2016, the present anticipatory bail petition is filed.

4. The learned counsel for the petitioner would submit that originally the case was registered under Section 395 of IPC against the petitioner and other accused. Further they have faced the trial in P.C.R.No.19 of 2008 on the file of the learned Judicial Magistrate No.1, Kuzhithurai. However, due to the non appearance of the petitioner Non Bailable Warrant was issued against him on 21.11.2016 and the same was pending for the past 3 years. He would further submit that the petitioner did not know about the warrant issued against him, since he is working in Kerala and the act of the petitioner is neither wilful nor wanton and prays to grant of anticipatory bail to the petitioner.



5. The learned Government Advocate (Crl.Side) appearing for the State would submit that the petition before this Court is not maintainable, unless he exhaust the remedy available under the Criminal Procedure Code.

6. In view of the above position, the relief available to the petitioner is to surrender before the learned Magistrate concerned and file a petition U/s. 70(2) of Cr.P.C. to recall the Non Bailable Warrant of Arrest issued against him. Therefore, the question of granting anticipatory bail does not at all arise.

7. Considering the fact that the non-bailable warrant is pending against the petitioner, the petitioner is directed to surrender before the trial Court i.e., learned Judicial Magistrate No.I, Kuzhithurai and file a petition under Section 70(2) of Cr.P.C., to recall the non bailable warrant. On filing of such petition, the learned Judicial Magistrate No.I, Kuzhithurai, is directed to consider the said petition on merits and pass order on the same day.

8. Accordingly, this criminal original petition is disposed of.

sd/-
08/02/2019

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE JUDICIAL MAGISTRATE NO.1,
KUZHITHURAI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI AT NAGERCOIL.

3 THE INSPECTOR OF POLICE,
PAZHUGAL POLICE STATION,
KANYAKUMARI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.H.VELAVAVADHAS, Advocate (SR-2741 dated 08/02/2019)

ORDER
IN
CRL OP(MD) No.2029 of 2019
Date :08/02/2019