



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

Monday, the Eighth day of April Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice M.DHANDAPANI

CRL OP (MD) No.5246 of 2019

S.KANNAN

... PETITIONER / ACCUSED 2

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
KOLLEMCODE POLICE STATION,
KANYAKUMARI DISTRICT.
CRIME NO.268/2012

... RESPONDENT / COMPLAINANT

For Petitioner : Mr.S.XAVIER RAJINI Advocate

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

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

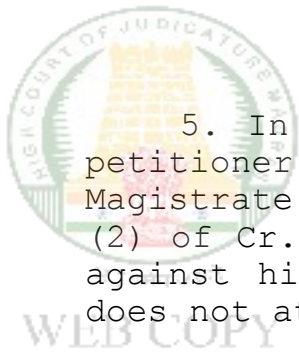
ORDER : The Court Made the following order :-

The petitioner, who apprehends arrest for the alleged offences under Sections 379 & 353 of IPC r/w 4 (I) (ii) of Mines and Minerals Act in connection with Non-Bailable Warrant issued in C.C.No. 76 of 2013, on the file of the learned Judicial Magistrate No.II, Kuzhithurai, seeks anticipatory bail.

2.The petitioner was absent during the trial in C.C.No. 76 of 2013 before the learned Judicial Magistrate No.II, Kuzhithurai. Therefore, Non-Bailable Warrant came to be issued on 30.06.2016.

3.The learned counsel for the appearing for the petitioner submitted that due to unaware of pending case against the petitioner, he could not appear before the learned Judicial Magistrate No.II, Kuzhithurai, and therefore, Non-Bailable Warrant was issued against him on 30.06.2016. He further submitted that the act of the petitioner is neither wilful nor wanton and prays for anticipatory bail to the petitioner.

4.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.



5. In view of the above position, the relief available to the petitioner is to surrender before the learned learned Judicial Magistrate No.II, Kuzhithurai, and file a petition under Section 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.

6. 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.II, 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.II, Kuzhithurai, is directed to consider the said petition on merits and pass orders on the same day.

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

sd/-
08/04/2019

/ TRUE COPY /

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

TO

1. THE JUDICIAL MAGISTRATE NO.II, KUZHITHURAI.
2. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI DISTRICT AT NAGERCOIL.
3. THE INSPECTOR OF POLICE
KOLLEMCODE POLICE STATION, KANYAKUMARI DISTRICT.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to MR.S.XAVIER RAJINI Advocate SR.No.6424

ORDER
IN
CRL OP(MD) No.5246 of 2019
Date :08/04/2019

MS/MMS/SAR-4/15.04.2019/2P.6C