

THE HON'BLE JUSTICE G.SRI DEVI

CRIMINAL PETITION No.6823 of 2019

ORDER:

This Criminal Petition, under Section 482 of Code of Criminal Procedure, 1973, is filed by the petitioner/Accused seeking to quash the order, dated 01.10.2019 passed in Crl.M.P.No.939 of 2019 in Crl.M.P.No.317 of 2019 in Crl.R.P.No.76 of 2018 on the file of the Principal Sessions Judge, Khammam, and consequently to recall the NBWs issued against him in P.R.C.No.1 of 2013 in Crime No.86 of 2013 of R.P.S, Khammam.

Heard the learned Counsel for the petitioner/Accused, the learned Additional Public Prosecutor representing the respondents and perused the entire material available on record.

The petitioner was arrayed as an accused in Crime No.86 of 2013 of R.P.S police, Khammam, for the offences punishable under Sections 354 and 509 of I.P.C; the respondent-police after completion of investigation in the aforesaid crime, filed final report, which was taken cognizance as P.R.C.No.1 of 2013 for the aforesaid offences; the committal order was passed on 19.11.2015 and for the last three years, as the case file was not sent to the Court, the attendance of the petitioner to the proceedings could not be secured. In the said circumstances, by docket order, dated 30.11.2018, the Principal Sessions Judge, Khammam, directed the Judicial Magistrate of First Class for Railways, Warangal, to submit the remarks for the delay. Pursuant to the same, the police issued notices to the petitioner and the

sureties. Thereafter, the Court issued summons to the petitioner and though he received the same, he did not appear before the Court and hence the Court below issued Non-Bailable Warrant against the petitioner on 18.03.2019. Thereafter, the petitioner filed CrI.M.P.No.317 of 2019 in CrI.R.P.No.76 of 2018, seeking to recall the NBW issued against him. The Court below by docket order, dated 28.03.2019, passed the following order:

“Surety No.2 discharged on his request after imposing penalty by forfeiting bond. Therefore, the accused shall personally present before the Court on the next date of hearing. Call on 15.04.2019.”

Aggrieved by the same, the petitioner approached this Court by filing Criminal Petition No.4796 of 2019. By an order, dated 20.08.2019, this Court while setting aside the docket orders dated 18.03.2019 and 28.03.2019, stayed the Non Bailable Warrant issued against the petitioner on 15.07.2019 for a period of two weeks from that day. This Court further directed the petitioner to appear before the Court concerned and make a suitable application, if so, advised for recalling of Non Bailable Warrant, pending, if any, which shall be considered in accordance with law. As per the directions of this Court, the petitioner filed a CrI.M.P.No.939 of 2019 seeking to recall the Non Bailable Warrant issued against him on 15.07.2019. By an order, dated 01.10.2019, the learned Principal Sessions Judge, Khammam, dismissed the said petition. Challenging the same, the present Criminal Petition is filed.

Learned Counsel for the petitioner would submit that the docket order, dated 18.03.2019, passed by the Court below, is contrary to the records and that due to the wrong entry made by the police authorities stating that summons were served on the petitioner. In fact, no summons whatsoever were served on the petitioner; as such the petitioner filed an application to recall the NBW issued against him, but, the learned Principal Sessions Judge without looking into the said aspect, directed to issue NBW against the petitioner vide order, dated 18.03.2019 and subsequently when the petitioner has filed an application to recall the NBW, instead of recalling the NBW, has directed the petitioner to personally present before the Court on the next date of hearing i.e., on 15.04.2019. Challenging the said orders, the petitioner/accused filed CrI.P.No.4796 of 2019 before this Court. By an order, dated 20.08.2019, this Court while staying the Non Bailable Warrant issued against the petitioner on 15.07.2019, for a period of two weeks, directed him to file suitable application for recalling of Non Bailable Warrant. In compliance to the orders passed by this Court, the petitioner filed CrI.M.P.No.939 of 2019 seeking to recall the Non Bailable Warrant issued against him on 15.07.2019 and instead of recalling the warrant, the learned Principal Sessions Judge, Khammam, dismissed the application, contrary to the very intent of this Court and the said order is liable to be quashed as the same is being illegal and contrary to provisions of law.

Learned Additional Public Prosecutor appearing for the respondents-State submits that the petitioner/accused has been

absconding to the proceedings by creating hurdles, as such, Non Bailable Warrant cannot be recalled. Therefore, there is no illegality in the impugned order.

A perusal of the impugned order passed by the learned Principal Sessions Judge, Khammam, would show that application to recall the Non Bailable Warrants was rejected only on the ground that the sureties furnished by the petitioner/accused on the previous occasion were not genuine. Accepting the bail bond and surety bond on behalf of the petitioner/accused is only to secure his personal appearance for speedy disposal of the case. As seen from the record, the matter pertains to the year 2013 and the proceedings are only at the stage of securing the presence of the petitioner/accused. The petitioner/accused is making his continuous efforts by filing different petitions to recall the Non Bailable Warrants issued against him and the same were dismissed. In pursuance of the orders of this Court in Criminal Petition No.4796 of 2019, the petitioner appeared before the learned Sessions Judge Court and filed an application to recall the Non Bailable Warrants, but the learned Sessions Judge dismissed the same only on technical grounds, without applying mind, instead of considering the same on merits.

Having regard to the facts and circumstances of the case, the Non-Bailable Warrant issued against the petitioner/accused is recalled and the petitioner/accused is directed to appear before the learned Principal Sessions Judge, Khammam, in connection with the above

case within 15 days from today and on such appearance, the petitioner/accused shall be released on bail on his executing a personal bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties to the like amount each to the satisfaction of the trial Court. Out of two sureties, one surety must be from the native place of the petitioner/accused. The petitioner/accused is further directed to appear before the trial Court on each and every date of adjournment, without fail.

Accordingly, the Criminal Petition is allowed. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G.SRI DEVI

26.11.2019
gkv/Gsn



