

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2020

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.1843 of 2020

Kanakaraj

...Petitioner/A2

-Vs-

State represented by
The Inspector of Police,
Erumapatti Police Station,
Namakkal,
Namakkal District.
(Crime No.146 of 2015) Respondent/Complainant

Prayer:

Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to set-aside the Docket order of return dated 13.01.2020 made in S.R.No.2699 in Crl.M.P.No.- of 2020 (Bail Petition) in S.C.No.116 of 2016 on the file of the Principal Sessions Judge, Namakkal.

For Petitioner : Mr.K.V.Sridharan

For Respondent : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

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ORDER

This Criminal Original Petition has been filed by the accused No.2 to setaside the docket order of return made by the learned Principal Sessions Judge, Namakkal made in S.R.No.2699 in Crl.M.P.No.- of 2020 (Bail Petition) in S.C.No.116 of 2016.

2. The learned counsel for the petitioner has submitted that the petitioner was arrested in Crime No.146 of 2015 on the file of the respondent for the alleged offences punishable under sections 324 and 302 of I.P.C and he was remanded to judicial custody on 25.02.2015 and subsequently he was released on bail. He further submitted that though the petitioner regularly appeared before the trial court, the

trial court on 19.11.2019, has remanded the petitioner till 21.11.2019 and subsequently the trial court has periodically extended the remand till today. He further submitted that the petitioner herein and another accused have filed Crl.O.P.No.33286 of 2019 before this Court to transfer the case in S.C.No.111 of 2016, from the file of the Principal District and Sessions Court, Namakkal to some other court and in that petition, this Court on 11.12.2019 has granted interim stay for further proceedings in S.C.No.116 of 2016. He further submitted that the petitioner herein on 10.01.2020 has filed bail application in S.R.No.27100 of 2020 before the learned Principal Sessions Judge, Namakkal. But, the learned Principal Sessions Judge has returned the said petition on 13.01.2020 stating that the High Court has stayed the case proceedings as per Crl.O.P.No.33286 of 2019, while so, how the said petition is maintainable. He further submitted that this Court has granted interim stay only for making further progress of trial in S.C.No.116 of 2016, but, that will not stand in the way of considering the bail application. Therefore, he prayed to direct the trial court to entertain the petitioner's bail application and pass orders in accordance with law.

3. When this Criminal Original Petition came up for hearing before this Court, the learned Additional Public Prosecutor has been directed to verify as to whether the trial court has extended the remand to the petitioner herein after passing of the interim stay by this Court. Accordingly, the learned Additional Public Prosecutor after getting instructions from the respondent police has informed this Court that on 17.12.2019, the petitioner herein was produced before the learned Principal Sessions Judge, Namakkal and on that date, the learned Principal Sessions Judge, Namakkal by recording that this Court has granted stay, has adjourned the case to 20.12.2019 and also extended the remand to the petitioner herein till then. Subsequently, from 20.12.2019, the case was adjourned to 10.01.2020 and thereafter to 03.02.2020 and those days also, the learned Principal Sessions Judge has extended the remand for the petitioner. So, it appears that even though this Court has granted stay, the learned Principal Sessions Judge has extended the remand to the petitioner. When he exercised the power for extending the remand, he should not have returned the bail application by saying that already this Court has stayed further proceedings.

4. Normally, if any stay is granted by the higher forums, it has to be construed that further proceedings in the main case alone stayed. But, there is no impediment for passing any incidental orders. Only on that premise, it appears that in this case also, the learned Principal Sessions Judge has extended the remand to the accused, but strangely he refused

to entertain the bail application by saying that stay has been granted by this Court. Hence, the order of the Principal Sessions Judge, Namakkal, returning the bail application is liable to be set aside.

5. In the result, this Criminal Original Petition is allowed. The impugned order passed by the learned Principal Sessions Judge, Namakkal in S.R.No.2699 in CrI.M.P.No.- of 2020 (Bail Petition) in S.C.No.116 of 2016 dated 13.01.2020 is set aside. The learned Principal Sessions Judge, Namakkal is directed to entertain the bail application and dispose of the same in accordance with law.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Sessions Judge,
The Principal Sessions Court,
Namakkal.

2.The Inspector of Police,
Erumapatti Police Station,
Namakkal,
Namakkal District.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.V.Sridharan, Advocate SR.7257

CrI.O.P.No.1843 of 2020

KJ(CO)
CB(03/02/2020)

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