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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.02.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.3094 of 2020

Babu

... Petitioner

Vs.

The Inspector of Police,
Anaimalai Police Station,
Anaimalai, Coimbatore District.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the docket order dated 24.01.2020 made in CMP.SR.No.1958 of 2020 in CMP.No.4453 of 2019 in CA.No.421 of 2019 on the file of the Principal District & Sessions Court at Coimbatore.

For Petitioner : Mr.D.R. Arun Kumar

For Respondent : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed by the accused to set aside the docket order dated 24.01.2020 made in CMP.SR.No.1958 of 2020 in CMP.No.4453 of 2019 in CA.No.421 of 2019 on the file of the Principal District & Sessions Court at Coimbatore.

2. The learned counsel for the petitioner has submitted that the petitioner was convicted by the Assistant Sessions Judge, Pollachi on 13.11.2019 in S.C.No.144 of 2016 for the offence under Section 307 of IPC and sentenced to undergo 5 years of Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default he shall undergo Rigorous Imprisonment for 6 months. He further submitted that on the date of judgment i.e., on 13.11.2019 itself, the petitioner was remanded to judicial custody and from that date onwards, he is in custody. He further submitted that as against the said judgment of conviction and sentence passed by the learned Assistant Sessions Judge, Pollachi, the petitioner has filed an appeal in C.A.No.421 of 2019 on the file of the Principal District and Sessions Judge, Coimbatore. He further submitted that the petitioner has also filed CMP.No.4453 of 2019 to suspend the sentence till the disposal of the appeal and that the Principal District and



Sessions Judge, Coimbatore by the order dated 20.12.2019 has suspended the said sentence and directed to release the petitioner on bail by executing a bond for Rs.10,000/- with two sureties for a likesum each to the satisfaction of the Assistant Sessions Judge, Pollachi, within two weeks from the date of receipt of a copy of the said order. He further submitted that since the petitioner is in custody, he is not able to arrange the sureties within the aforesaid time. Hence, the petitioner has produced the sureties before the Assistant Sessions Judge, Pollachi on 21.01.2020 and that the learned Assistant Sessions Judge, Pollachi has returned the said sureties memo stating that the period fixed by the Sessions Court for producing the sureties was already over and thereafter, the petitioner has filed a petition in CMP.SR.No.1958 of 2020 before the Principal District and Sessions Judge, Coimbatore, to extend the time for producing the sureties, but the learned Principal District & Sessions Judge, Coimbatore has returned the said petition by the order dated 24.01.2020. He further submitted that since the petitioner is in custody from the date of judgment of the trial court, the learned Principal District and Sessions Judge should not have fixed the time for producing the sureties and therefore, he prayed to extend the time for producing the sureties.

3. The learned Additional Public Prosecutor has submitted that he is leaving it to the discretion of this court.

4. A perusal of the order passed by the Principal District and Sessions Judge, Coimbatore in Crl.MP.No.4453 of 2019 in C.A.No.421 of 2019 dated 20.04.2019 shows that he passed an order directing to release the petitioner on bail on his executing a bond for Rs.10,000/- with two sureties for a likesum to the satisfaction of the Assistant Sessions Judge, Pollachi, within two weeks from the date of the order. He also stated that on failure of the petitioner to comply with any of the abovesaid conditions, the suspension granted by him shall stand automatically cancelled and the Magistrate shall take necessary steps to secure the petitioner. If the accused is already on bail, then only time can be fixed for surrendering before the court and execute the bond. If the accused is in custody, so long as he is in custody, he is entitled to ask for bail, but the learned Principal District and Sessions Judge has imposed a condition that he should execute a bond within two weeks from the date of the said order. The said condition itself is not a valid one and hence the consequential order of return for extension of time is also not valid. Accordingly, the impugned order is set aside. The petitioner is entitled to produce the sureties so long as he is in custody without any time limit.



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5. With the aforesaid directions, this petition is disposed of.

Sd/-

Assistant Registrar (C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

1. The District & Sessions Judge,
Coimbatore.
2. The Inspector of Police,
Anaimalai Police Station,
Anaimalai, Coimbatore District.
3. The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.D.R.Arun Kumar, Advocate Sr.No.12108

AKM/14.02.2020/3P-5C /

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