

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Thirteenth day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL ORIGINAL PETITION No.4126 of 2020

IN

P.R.C.NO.42 OF 2017

[On the file of the Judicial Magistrate, Tittaudi,
Cuddalore District]

BIRTHORSKHAN @ BIROSKHAN

[PETITIONER / ACCUSED]

Vs

THE STATE REP BY
STATION HOUSE OFFICER,
RAMANATHAM POLICE STATION,
CUDDALORE DISTRICT
CRIME NO.389 of 2012

[RESPONDENT]

For Petitioner : M/S. M.SELVAM Advocate

For Respondent : MR.K.PRABAKAR, ADDITIONAL PUBLIC PROSECUTOR

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

ORDER : The Court Made the following order :-

The petitioner, who apprehends arrest at the hands of the respondent police for the offences punishable under Sections 201, 302, 34 & 414 IPC, in P.R.C.No.42 of 2017 on the file of the Judicial Magistrate, Tittakudi, Cuddalore District, seeks anticipatory bail.

2. The learned counsel for the petitioner would submit that the petitioner is arrayed as A1. The case is of the year 2012, he was arrested and later, he was enlarged on bail. Thereafter, the petitioner got employment in abroad. In the meantime, the respondent police has completed the investigation and filed a final report in PRC.No.13 of 2013 before the learned Judicial Magistrate, Tittakudi, and it was taken on file on 31.07.2013 as against all the accused. Since, the petitioner and yet another accused A3 were absconding, the case against them was split-up into PRC.No.34 of 2017 and in the meantime, the case in PRC.No.13 of 2013 was committed to the Court of the Sessions and taken in file in S.C.No.361 of 2017 are pending trial before the 3rd

Additional District Judge No.II, Virudhachalam. In the mean while, A3 was arrested and the case against him was split-up and later committed to the Court of Sessions and now taken up in S.C.No.442 of 2017 on the file of the 3rd Additional District Judge No.II, Virudhachalam. He would further submit that the case against the petitioner is pending committal in PRC.No.42 of 2017. The learned counsel for the petitioner would submit that the petitioner was unable to appear since he went abroad on employment. However, he would submit that the petitioner is ready and willing to appear before the Court and prepared to co-operate in the progress of trial Court . He would further reiterate that the trial against the other accused has not commenced so far.

3. The learned Additional Public Prosecutor would submit that since the petitioner was absconding, the case was split up and pending against the other accused in S.C.No.442 of 2017 and S.C.No.381 of 2017 on the file of the 3rd Additional District Judge, No.2 Virudhachalam.

4. This Court had earlier called for the report from the learned Judicial Magistrate, Tittakudi with regard to P.R.C.No.42 of 2017 and the report has been received in D.No.346 of 2020 dated 04.03.2020. The report is extracted hereunder.

'I humbly submit, on careful perusal of Court Records that originally, the case in PRC.No.13 of 2013 was taken on file of this Court on 31.07.2013 against 1.Birthos Khan @ Bairoskhan, 2. Sahul Hameed, 3.Praveen Prakash @ Praveen, 4. Kadher Sultan @ Khadher and 5. Raghavan for the offences u/s.201, 397, 302, 414 and 34 of IPC in Crime No.389 of 2012 of Ramanathan Police Station.

I further humbly submit that subsequently, the case against A1-Birthos Khan @ Biros Khan and A3 Praveen Prakash @ Praveen has been split-up in to PRC No.34 of 2017 since they were not appearing before the Court for the hearings. The case in PRC. No.13 of 2013 against A, A4 and A5 was committed to the Hon'ble Principal District and Sessions Court, Cuddalore on 15.09.2017 for Trial. Subsequently, A3-Praveen Prakash @ Praveen was produced before this Court on execution of NBW and A1-Birthos Khan @ Biros Khan was not secured. Hence, the case against A1 was split up by this Court into PRC.No.42 of 2017 and the case in PRC.No.34 of 2017 as against A3 - Praveen Prakash @ Praveen was committed to the Hon'ble Principal District and Sessions Court, Cuddalore on 07.11.2017 for trial.

I further humbly submit that after having split-up the case as against Al-Birthosh Khan @ Bairosh Khan in PRC.No.42 of 2017 Fresh NBW was issued by this Court against him in D.No.2688 dated 21.11.2017 and since then onwards, NBW against him has not been executed till date. In the meanwhile, NBW was returned on 15.10.2018 without execution by Police. Again, this Court had issued Fresh NBW in D.No.9674 dated 20.12.2018 and the same was returned by Police without execution in view of Parliamentary General Election and this Court had again issued Fresh NBW in D.No.1438 dated 17.05.2019 and the NBW against Al-Birthosh Khan @ Bairosh Khan is till pending. The accused could not be secured since the year 2013 and the case could not be committed to the Hon'ble Principal District and Sessions Court, Cuddalore for Trial and further proceedings. The case now stands posted to 08.04.2020 with direction to Registry of this Court to issue Court Notice to Police for execution of the NBW as against A1.1438''

5. Now that the case as against the other accused are pending in S.C.No.442 of 2017 and S.C.No.381 of 2017 on the file of the 3rd Additional District Judge, No.2 Virudhachalam and that the petitioner has undertaken to surrender before the committal Court and appear before the committal Court on all hearing dates and co-operate for progress of the trial. Therefore, this Court is inclined to grant anticipatory bail to the petitioner with certain conditions.

6. Accordingly, the petitioner is ordered to be released on bail in the event of arrest or on his appearance, within a period of fifteen days from the date on which the order copy is made ready, before the learned Judicial Magistrate, Tittakudi,, on condition that the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned, failing which, the petition for anticipatory bail shall stand dismissed and on further condition that:

[a] the petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of their Aadhaar card or Bank pass Book to ensure their identity.

[b] the petitioner shall report before the learned Judicial Magistrate, Tittakudi daily at 10.30 a.m., until the case in P.R.C.No.42 of 2017 is committed to Sessions and thereafter, directed to appear before the 3rd Additional District Judge, No-II, Virudhachalam on all hearing dates without fail.

[c] the petitioner shall not tamper with evidence or witness either during trial.

[d] the petitioner shall not abscond either during trial.

[e] On breach of any of the aforesaid conditions, the learned Magistrate/Trial Court is entitled to take appropriate action against the petitioner in accordance with law as if the conditions have been imposed and the petitioner released on bail by the learned Magistrate/Trial Court himself as laid down by the Hon'ble Supreme Court in **P.K.Shaji vs. State of Kerala [(2005)AIR SCW 5560]**.

[f] If the accused thereafter abscond, a fresh FIR can be registered under Section 229-A IPC.

The learned Judicial Magistrate, Tittakudi, is directed to complete the trial as expeditiously as possible preferably within a period of six months from the date of receipt of copy of this Order.

-sd/-
13/03/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
TITTAKUDI.

2 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE [FOR INFORMATION]

3 THE 3RD ADDITIONAL DISTRICT JUDGE,
NO-II, VIRUDHACHALAM

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE STATION HOUSE OFFICER,
RAMANATHAM POLICE STATION,
CUDDALORE DISTRICT.

+1CC to M/S. M.SELVAM Advocate on payment of necessary
charges SR NO.5039

CRL OP.4126/2020

Date :13/03/2020

MK:21/05/2020



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