

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2020

CORAM

THE HONOURABLE MR.JUSTICE. M.NIRMAL KUMAR

Crl.O.P.No.6967 of 2020

Bramma Moorthy

... Petitioner

Vs.

The State Rep. by
The Sub-Inspector of Police,
Karumalaikoodal Police Station,
Salem District.
(Crime No.429 of 2013)

... Respondent

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C, to enlarge the petitioner on bail pending investigation in P.C.R.No.22 of 2016 on the file of the Judicial Magistrate No.2, Mettur.

For Petitioner : Mr.M.Subash

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

ORDER

The petitioner was arrested and remanded on judicial custody on 23.09.2019 on execution of NBW for the offence punishable under Sections 147, 148, 294(b), 324 and 307 IPC in Crime.No.429 of 2013, seeks bail.

2. The case of the prosecution is that on 25.05.2013 at about 10.30 pm, the petitioner along with other accused formed themselves into an unlawful assembly with a common object of committing mischief, they came to Agni Mariamman Kovil, which is situated at the rear side of the defacto complainant house. They consumed alcohol and caused nuisance to the public and neighboring houses. When the defacto complainant questioned the same the petitioner had used abusing word and assaulted the defacto complainant and caused injuries to him.

3. The learned counsel appearing for the petitioner would submit that false case was foisted against the petitioner. The petitioner has not gone to the place where the incident occurred. Due to the previous enmity the false complaint has been implicated against the petition. Further he submitted that in the above case the petitioner was released on bail in Crl.M.P.No.3163 of 2013 on the file of the Principal Sessions Court, Salem dated 18.08.2014 and the petitioner complied the conditions issued by the Court

below. After investigation the charge sheet was filed on 07.11.2015, which was taken on file in P.R.C.No.22 of 2016 before the learned Judicial Magistrate No.II, Mettur. Further on 04.05.2018, the learned Judicial Magistrate No.II, Mettur issued NBW against the petitioner with an endorsement that " Summon to A1 and A3 neither returned nor served. Hence NBW against A1 and A3" and on execution of NBW the petitioner was arrested on 23.09.2019. He would further submit that the petitioner was very much available in the said address and he was never served with any summon nor steps taken by the respondent to serve summon and the petitioner had not refused to receive any summon. Therefore, prayed for enlargement of the petitioner on bail.

4. The learned Additional Public Prosecutor (Crl. Side) would submit that the offences taken place on 25.05.2013 and thereafter accused was arrested and released on bail in Crl.M.P.No.3163 of 2013 on the file of the Principal Sessions Court, Salem dated 18.08.2014. On completion of investigation, charge sheet was filed which was taken on record in P.R.C.No.22 of 2016. He would further submit that from the year 2016 onwards the accused has been evading the service of summons. Taking into consideration the summons were refused by the accused the learned Judicial Magistrate No.II issued Non-bailable warrant on 04.05.2018 and on execution NBW the accused was arrested on 23.09.2019. thereby he strongly objected to enlarge the petitioner on bail.

5. It is seen from the records that this Court by an order dated 26.03.2020 had released the petitioner on interim bail till 27.04.2020 on executing own bond for a sum of Rs.10,000/- before the Superintendent of the prison concerned and directed to list the case for further orders on 20.04.2020, that is the reason the present case has been posted today. Considering the submissions and finding that the refused summons were not returned by the respondent police and considering that the petitioner has already been granted bail, this Court is inclined to regularise the interim bail to the petitioner, subject to the following conditions:

(a) the petitioner shall appear before the learned Judicial Magistrate No.II, Mettur on the hearings days without fail either in person or through counsel. The petitioner should not be a reason for any delay in committal of the case.

(b) the petitioner shall execute two sureties for a sum of Rs.10,000/- (Rupees ten thousand only) each, before the concerned Magistrate within a period of 15 days from the date of lifting of lockdown and commencement of regular functioning of Court below, failing which the bail granted by this Court shall stand dismissed automatically.

(c) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Magistrate may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity;

(d) the petitioner shall report before the respondent police as and when required for interrogation.

(e) the petitioner shall not commit any offences of similar nature;

(f) the petitioner shall not abscond either during investigation or trial;

(g) the petitioner shall not tamper with evidence or witness either during investigation or trial;

(h) on breach of any of the aforesaid conditions, the learned Judicial 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]**;

(i) if the accused thereafter absconds, a fresh FIR can be registered under Section 229A IPC.

6. With the above directions, this Criminal Original Petition is ordered.

-sd/-

10/06/2020

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,
NO.II, METTUR.

2 THE CHIEF JUDICIAL MAGISTRATE
SALEM [FOR INFORMATION]

3 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
KARUMALIKOODAL POLICE STATION, SALEM DISTRICT

CC to M/S. M.SUBASH Advocate on payment of necessary charges

CRL OP.6967/2020

Date :10/06/2020