

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.05.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.7743 of 2020

Edayan @ Periyasamy

... Petitioner

Vs.

State Rep. by
The Inspector of Police,
Attur Police Station,
Salem District.
Cr.No.730 of 2013

.... Respondent

Prayer: Criminal Original Petition filed under Section 439 Cr.P.C. to enlarge the petitioner on bail pending investigation in Crime No.730 of 2013 on the file of the respondent police.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

O R D E R

The petitioner, who was arrested and remanded to judicial custody on 19.12.2019 for the offence punishable under Sections 341, 294(b), 302 of IPC and 302 r/w.109, r/w.34 of IPC in Crime No.730 of 2013 on the file of the respondent police, seeks bail.

2. The case of the prosecution is that the petitioner along with another person A-2 namely Rajkumar committed murder in the year 2013. Subsequently they were enlarged on bail with stringent condition. Against which, the petitioner approached this Court seeking modification in CrI.O.P.No.12213 of 2019 and the condition was modified on 03.06.2019 directing the petitioner to appear before the Court concerned once in a week every Monday from the date of order. The petitioner regularly complied with the condition till 17.12.2019. On 17.12.2019, he failed to appear before the Court due to his sudden illness. Hence, his counsel filed application under Section 317 Cr.PC to condone his absence. But the lower Court refused to accept the petition and dismissed the same and issued NBW against the petitioner. On knowing the issuance of the N.B.W, the petitioner voluntarily surrendered before the Court concerned within two days on 19.12.2019. But the trial Court failed to consider the above fact and dismissed the bail application on the ground that the co-accused failed to appear before the Court on 04.07.2019. On that day, L.W's 1 to 3 were present to depose their evidence due to absence of A-2, the trial could not be commenced. Hence, this complaint.

3. The learned counsel appearing for the petitioner would submit that the petitioner is not involved in the above alleged offence and he is no way connected with the offence as alleged by the prosecution and he did not commit any offence. The learned counsel further submitted that when the petitioner came to know about the issuance of N.B.W against him, he voluntarily surrendered before the Court concerned. But the above fact was not considered by the trial Court and dismissed his bail application on the ground that the co-accused failed to appear before the Court on 04.07.2019. On that day, L.W's 1 to 3 were present to depose their evidence, due to absence of A-2, but the trial could not be commence. For the absence of coming to one hearing, the petitioner is confinement from 19.12.2019. Due to COVID-19 lockdown, the trial could not be commence. Further he submits that the petitioner is in judicial custody from 19.12.2019 and hence, he seeks bail for the petitioner.

4. The learned Additional Public Prosecutor would submit that the accused had been regularly appearing before the trial Court. On 04.07.2019, L.W.1 to L.W.3 were present because of A2 absent. Due to abscondness of A2 and pending of N.B.W, the trial could not be commenced. Though the case is of the year 2013, the trial is yet to commence, since one of the accused is absconding and stalling the progress of the trial and opposing for grant of bail to the petitioner.

5. Taking into consideration the nature of allegations against the petitioner in the FIR and also taking note of the fact that the petitioner is in judicial custody from 19.12.2019, this Court is inclined to grant bail to the petitioner, subject to the following conditions:

(a) the petitioner shall execute his own bond for a sum of Rs.10,000/- (Rupees Ten thousand only) before the Superintendent of the concerned prison;

(b) thereafter, the petitioner shall execute two sureties for a sum of Rs.10,000/- (Rupees ten thousand only) each, before the concerned Magistrate on or before 01.07.2020, failing which the bail granted by this Court shall stand dismissed.

(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 abscond either during investigation or trial.

(f) the petitioner shall not tamper with evidence or witness either during investigation or trial.

(g) 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].

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

6. Considering the case is of the year 2013 and the trial is pending since abscondness of one of the accused/A2, this Court directs the trial Court to split up the case as against the absconding accused/A2 when the Court starts functioning, progress the trail by giving top priority and complete the same within a stipulated time.

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

-sd/-

21/05/2020

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 III ADDITIONAL DISTRICT AND
SESSIONS JUDGE, SALEM.

2 THE JUDICIAL MAGISTRATE,
NO.I, ATTUR(SATISFACTION COURT)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE
ATTUR POLICE STATION
SALEM DISTRICT

5 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

CC to E.KANNADASAN Advocate on payment of necessary charges

CRL OP.7743/2020

Date :21/05/2020

RVR 24/08/2020