

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.08.2020

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CrI.O.P.No.11555 of 2020

Dinesh Kumar S/o.Pandiyar

... Petitioner

Vs.

The State
The Inspector of Police
Fairland Police Station
Salem District
(Crime No.175 of 2017)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 439 of Criminal Procedure Code to enlarge the petitioner on bail in S.C.N.262 of 2018 on the file of the III Additional District Judge, Salem in Crime No.175 of 2017 on the file of the Inspector of Police, Fairlands Police Station, Salem District.

For Petitioner : Mr.S.Gunalan

For Respondent : Mr.T.Shunmugarajeswaran
Government Advocate (CrI. Side)

O R D E R

(The case has been heard through video conference)

The petitioner, who was arrested and remanded to judicial custody on 26.08.2019 for the offences punishable under Section 148, 307, 506(ii) IPC and Section 3(1) of TNPPDL Act, in Crime No.175 2017, seeks bail.

2.It is a case of jumped bail. The petitioner has been arrested and remanded to judicial custody on 26.08.2019.

3.The learned counsel appearing for the petitioner would submit that the petitioner along with other accused is facing trial for the accusations under Section 148, 307, 506(ii) IPC and Section 3(1) of TNPPDL Act and was regularly appearing before the Trial Court. On 08.07.2019 the petitioner due to some unavoidable circumstance could not appear before the Trial Court and hence the Trial Court issued a non bailable warrant (NBW) against the petitioner. Coming to know of the NBW, the petitioner surrendered before the Trial Court on 14.08.2019 and filed a petition to recall the warrant issued under Section 70(2) of Cr.P.C. The recall petition was dismissed by the learned Trial Judge. However, the petitioner on wrong advice gone out of the Court, hence a fresh NBW was issued against him, He would further submit that the earlier bail application filed by the

petitioner in CrI.O.P.No.2095 of 2020 was dismissed by this Court on 03.02.2020, granting liberty to the petitioner to move this Court for bail after the charges are framed. He would further submit that due to COVID-19 situation and since one of the co-accused absconded, the Trial Court could not frame charges and the petitioner is languishing in prison from 26.08.2019 for almost a period of one year. He would further submit that the petitioner is prepared to abide by any stringent conditions and even prepared to furnish close relative surety as soon as the lock down is lifted.

4.The learned Government Advocate (CrI. Side) would submit that it is a case of jumped bail. The petitioner did not appear on 08.07.2019 and the Trial Judge had issued warrant. The petitioner surrendered before the Court on 14.08.2019 by filing 70(2) Cr.P.C. Petition to recall the warrant. The learned Trial Judge was pleased to dismiss the same. However, the petitioner without informing the Court has absconded, pursuant to which, a complaint was given by the Bench Clerk of the Court and a fresh case was registered and a fresh warrant was issued in the subsequent case and the petitioner was arrested on 26.08.2019 and subsequently bail was granted to the subsequent case and the case now stands posted on 02.09.2020. The learned Trial Judge is unable to frame charges since one of the accused has absconded.

5.Taking into consideration of the facts and circumstances, considering the submissions made by the learned counsels, and also the fact that the petitioner voluntarily surrendered before the Trial Court and the Trial Court is unable to frame charges due to abscondence of yet another accused, this Court is inclined to grant bail to the petitioner subject to the following conditions:

(a) Accordingly, the petitioner is ordered to be released on bail on condition to execute his own bond for a sum of Rs.10,000/- (Rupees ten thousand only), before the Superintendent of the concerned prison, in which the petitioner has been confined and thereafter on his release;

(b) Thereafter, the petitioner shall execute two sureties for a sum of Rs.10,000/- (Rupees ten thousand only) each, out of which, one surety should be a blood surety, before the learned III Additional District Judge, Salem, within a period of two weeks after lifting of lockdown or the commencement of the Court's normal functioning whichever is earlier, 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 daily at 5.30 p.m. until further orders.

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

(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 petitioners in accordance with law as if the conditions have been imposed and the petitioners 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/-
04/08/2020

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 III ADDL. DISTRICT JUDGE,
SALEM

2 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE
FAIRLAND POLICE STATION,
SALEM DISTRICT.

+1 CC to M/S.S.GUNALAN Advocate on payment of necessary charges
sr.no.5850

CRL OP.11555/2020

Date :04/08/2020

RD 07/08/2020